

ANNUAL COUNCIL:

25 MAY 2017

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

**ESTABLISHMENT OF SCRUTINY COMMITTEES - Recommendation from
Constitution Committee**

Reason for the Report

1. To enable Members to consider the recommendations of 2 March 2017 Constitution Committee on a future model for Scrutiny arrangements that will best equip the Council to provide effective and relevant scrutiny within available resources. The four examples presented to Constitution Committee are attached at **Appendix A**).

Background – The Practice of Scrutiny

2. Scrutiny was introduced in local government across the UK through the Local Government Act 2000, as the traditional “Committee System” of local government administration was replaced with a more streamlined “Cabinet and Scrutiny System”. Scrutiny was seen by the Centre for Public Scrutiny as having four ‘cornerstones’, namely:
 - Led by ‘independent minded governors who own the scrutiny role;
 - Acts as a ‘critical friend’ of the executive, holding decision makers to account;
 - Represents the views and concerns of the citizen; and
 - Leads to the improvement of public services.
3. The quality of the environment in which scrutiny operates, the practice of scrutiny and the outcomes that it delivers can be usefully measured through the framework of the Characteristics of Effective Scrutiny in Wales, developed in 2014 by all 22 local authorities in Wales in partnership with the Centre for Public Scrutiny and Wales Audit Office. This framework identifies 15 key characteristics that if followed effectively will deliver:
 - Better outcomes for the area;
 - Better decisions for the organisation; and
 - Better engagement with the public.
4. Broadly speaking, local government scrutiny committees operate in a manner similar to the select committees supporting the UK Parliament. They are

composed of non-executive councillors of all political groups (in proportion to the Council's overall political balance), and meet both in public and in private to:

- Help the Administration develop and review policies;
 - Test the Council's performance and offer advice for improvement;
 - Provide pre-decision scrutiny of decisions that the administration is about to make;
 - Periodically call in for examination decisions that the administration has recently made;
 - Offer a platform for citizens and citizen groups to represent their concerns or ideas for improvement.
5. Scrutiny is recognised as playing a vital and statutory role in the council's governance, shaping the agenda, influencing policy and holding decision-makers to account, engaging the public and building the organisation's resilience and accountability in its working with regulators, partners, the media and citizens.
6. Being a member of a scrutiny committee can enable a councillor to work constructively and effectively with councillors from other political groups and members of their own group to support and improve the council's performance. This allows them to build their interpersonal, analysis and inquiry skills, often equipping members with the skills and experience required to go on to take on representative roles within the group and within the wider council, for instance as committee chairs and members of the Executive. Scrutiny helps councillors to learn how the council really works, building relationships with officers that will help a member learn how to effectively support their local communities and constituents.
7. Although scrutiny covers all areas over which the Cabinet has authority, a number of key areas are specified in legislation. For instance:
- The Police and Justice Act 2006 requires each Council to designate a committee as its statutory Crime and Disorder Committee, providing powers to scrutinise the way the Council is working with the Police and other agencies to tackle crime and disorder and support community safety;
 - The Local Government Measure (Wales) 2009 gives scrutiny a statutory role in securing improvement of public services under the Wales Programme for Improvement, providing assurance to bodies like Wales Audit Office, Estyn and the Care and Social Services Inspectorate for Wales that the Council is providing robust and effective self-regulation;
 - The Local Government Measure (Wales) 2011 requires Councils to ensure that its scrutiny function takes into account the citizen's view, making provisions for public co-option onto scrutiny committees, a close relationship between the Council and its local voluntary services council, and requiring that authorities have protocols for public involvement.
 - The Wellbeing of Future Generations Act (Wales) 2015 specifies that each Council should designate a committee as its statutory committee to

scrutinise the Council and its local strategic partners in health, policing, environment and the third sector working to secure wellbeing for the population through its local Public Services Board.

8. Each Council is required to have at least one scrutiny committee, but in practice tend to have several committees, according to their own structural arrangements and priorities. There is no statutory requirement for the way the committees are arranged, but by convention, most are arranged by a grouping of political portfolios and organisational structures, so that evidence can most conveniently be gathered from key respondents like Cabinet Members and senior managers, and key findings fed back to the Cabinet. This arrangement also allows scrutiny councillors to become involved in areas of their interest or expertise, such as social care, the environment, young people or the economy. A small number of authorities, however, have chosen to arrange their scrutiny in a thematic way (for instance, pre-decision, policy, performance and partnership committees), to streamline resources and enable members to tailor their involvement to the organisation's business outcomes. Swansea Council set up a single Scrutiny Programme Board in 2012 to which a number of informal scrutiny performance and policy panels report.

Scrutiny in Cardiff

9. Cardiff adopted Scrutiny with a substantial structure of five scrutiny committees in 1999. Although Council structures and political portfolios have changed substantially during the past 17 years, and while scrutiny practice has evolved steadily, the five committee structure has remained fundamentally intact during this time. Many of the Committees have almost identical names and terms of reference to those initially established, providing consistency in the Council's governance arrangements.
10. Scrutiny has been of significant and tangible benefit to Cardiff Council over these years – shaping the organisation's agenda, informing policy, holding to account, representing the concerns of communities, and helping councillors build their representative skills.
11. This has built Cardiff's reputation for scrutiny which has been nationally recognised with Cardiff winning a series of UK wide Scrutiny awards, most recently as the Centre for Public Scrutiny's 'Team of the year 2009', 'Best Individual Project (Night-time Economy Inquiry) 2012', and 'Insight and Involvement Award (Cardiff Youth Council) 2014'.
12. Through their responses to Member Survey 2016 and their feedback during the Review of Scrutiny in 2016, Councillors reaffirmed their appreciation of the value of scrutiny, particularly the connection that it provided between the Council and its citizens. A number of members said that they found in-depth 'task and finish' exercises most rewarding. Most members valued the fact that Cabinet members were willing to give regular account for their work at scrutiny committees, and that meetings and inquiries were well planned and chaired, and methodologically sound. Members wanted scrutiny to allow the voice of local people and communities to be consistently heard, and for this to be effectively communicated. Given the pressures on their time, Members felt that

that to justify the time spent in committee meetings, scrutiny needed to be useful, and for that usefulness to be measured and widely understood.

The 2016 Review of Scrutiny in Cardiff

13. During 2016/17 the Council developed a Review of Scrutiny Project to develop a Scrutiny model that would:
 - Meet the needs of the future administration and wider Council Membership;
 - Take account of a range of recent, current and planned changes to legislation, policy and service delivery;
 - Make best use of Member and officer resources;
 - Provide evidence based policy solutions that will support the Council's governance and improvement; and
 - Help scrutiny fulfil its critical friend role, championing the interests of the citizen.

14. The Review was driven by a number of internal and external factors. Principal among these were:
 - Wales Audit Office (WAO)'s February 2016 recommendations that Cardiff:
 - i. Develop an approach to cross-cutting scrutiny (given the increasing nature of collaborative service delivery and governance, and the Wellbeing of Future Generations agenda); and
 - ii. Consider scrutiny's role in addressing the strategic challenges facing the Council at this point in time.
 - Changes to the Council's service delivery arrangements such as the City Deal Regional Cabinet, the Shared Regulatory Service and other alternative service delivery models.
 - Ongoing budget pressures and Member and officer capacity.

15. The Review initially benchmarked Cardiff's scrutiny arrangements against other Core Cities and Welsh local authorities, and analysed the key local and regional legislative and policy drivers for scrutiny. A number of workshops were arranged to engage Members and managers, and capture their views on the kind of scrutiny arrangements that might best support the Council's governance, given the factors described above. Those engaged included:
 - Scrutiny Committee Chairs
 - Members of the Community & Adult Services and Children & Young People Scrutiny Committees
 - An "All" Member" workshop attended by 10 Members
 - Senior Management Team.

16. Members of Policy Review and Performance Scrutiny Committee considered the Review of Scrutiny on 6 December 2016, giving feedback on some

potential options for the most appropriate number of scrutiny committees for the next Council, and the way they might be structured.

17. Following this meeting, officers reviewed the feedback received at the workshops, and the key findings from the previous research and analysis, and developed options for consultation during January 2107 with Scrutiny Chairs, Political Group leaders and Council managers, and key external partners such as Health, Police and Cardiff Third Sector Council.
18. Key issues emerging from the above process included:
 - A suggested number and structure of committees the Council required to deliver scrutiny, while working within the Council's current financial constraints.
 - How these committees might be arranged, whether by the existing blend of portfolio and organisational grouping, by theme, or as a "one committee model". There was strong support for retaining the current type of grouping.
 - Ensuring that the Council is able to deliver the statutory requirements to deliver scrutiny under the statutes referred to in paragraph 7 above, the expectations of regulators and the priorities of the Administration.
 - The connection of scrutiny and the communities and citizens of Cardiff. Scrutiny committees currently engage citizens and third sector groups in a variety of ways, but Members wished to see the Council develop new ways of building communication and engagement with external stakeholders.
 - The potential benefits of co-opting non-elected representatives onto scrutiny committees.
 - The potential for scrutiny of the Public Services Board to grow, and the implications that this might have on resources available for local scrutiny.
 - Given expectations that the range of emerging regional service delivery structures (eg the South Central Education Consortium, S E Wales Shared Regulatory Service and Cardiff Capital Region City Deal) would be scrutinised regionally, the pressure this might place on resources available for local scrutiny.
 - The potential for driving integration of health and social care services across Cardiff and the Vale of Glamorgan by arranging scrutiny of social care through one single committee, complementing arrangements for Regional Partnership Boards set by the Social Services and Wellbeing Act 2014. Cardiff has traditionally separated scrutiny of the large social care portfolio into two committees, allowing Children's Services to sit alongside Education, Play and Youth Services, and Adult Services to sit alongside Community Development and support, and Housing. The merits of each approach were commended during the Review process.
 - The need to evaluate the outputs and outcomes of scrutiny.
19. Constitution Committee considered a report summarising all of the above activity and views at its meeting on 2 March 2017. Recognising that any recommendations made at the meeting would need to be reconsidered by a future Full Council, the Committee was recommended to:

- A. Consider four potential future Scrutiny Committee models, and agree to recommend a preferred Scrutiny model for recommendation to Full Council and the new administration post May 2017.
 - B. Agree that during the next Council, scrutiny committees will each have nine elected Members;
 - C. Agree that all non-Executive elected Members will be encouraged to participate in Scrutiny, as committee members and / or as members of task and finish inquiries. The maximum number of Members to sit on a task and finish inquiry should be nine.
20. In respect of Recommendation A, the Committee agreed the principle of a future Council having four scrutiny committees (as against the five scrutiny committees in place currently), but preferred not to recommend any of the specific options, given that the next Administration might make different arrangements for the way Cabinet portfolios were structured, and recognising this would be a matter for the future Council.
21. The Committee agreed Recommendations B and C.

Legal Implications

22. The Local Government Act 2000 requires authorities to set up overview and scrutiny committees. The legislative provisions for overview and scrutiny committees for Wales have been amended and supplemented by the Local Government (Wales) Measure 2011. The provisions of the 2000 Act, the 2011 Measure and Regulations made thereunder (for example, the Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013) must be considered when determining the future scrutiny model for Cardiff.
23. In addition, other legislation imposes requirements as regards scrutiny. For example, The Police and Justice Act 2006 made provision for a range of changes to the way in which Community Safety Partnerships (CSPs) in Wales fulfil their responsibilities in relation to tackling crime, disorder and substance misuse in their locality. These changes, contained in sections 19, 20 and 21 of the Police and Justice Act 2006, include a requirement that local authority scrutiny structures should consider crime and disorder matters. The Well-being of Future Generations (Wales) Act 2015 specifies Executive arrangements by a local authority under the Local Government Act 2000 must ensure that its overview and scrutiny committee has power to review or scrutinise decisions made, or other action taken, by the public services board for the local authority area in the exercise of its functions. To ensure compliance with legislative requirements, legal advice has and will be provided on the scrutiny model for Cardiff as the proposals are developed.
24. Consultation - The report refers to consultation undertaken and in considering this matter, regard should be had to the outcome of the consultation.

25. Equality Duty - In considering this matter, regard must be had to the Council's duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to
- (1) eliminate unlawful discrimination;
 - (2) advance equality of opportunity; and
 - (3) foster good relations on the basis of 'Protected Characteristics'. The 'Protected Characteristics' are: Age, Gender Reassignment, Sex, Race – including ethnic or national origin, colour or nationality, Disability, Pregnancy and Maternity, Marriage and Civil Partnership, Sexual Orientation, and Religion or Belief – including lack of belief. In determining the scrutiny model, the decision maker will need to be satisfied that scrutiny can be carried out in a way that ensures the Council's Public Sector Equality Duties are met.

Financial Implications

26. This proposal sets out a recommendation to reduce the number of Scrutiny Committees to four. For the 2016/17 Budget, a saving proposal of £50,000 was put forward and accepted but was deferred for one year as a result of the use of the Finance Resilience Mechanism. For the 2017/18 budget, the Council budget was approved with the Scrutiny budget now reduced by £50,000. In the event of a decision not to reduce the number of Scrutiny Committees then consideration needs to be given to finding alternative means of achieving a £50,000 saving.

RECOMMENDATIONS

The Council is asked to consider and agree the recommendations from Constitution Committee, namely that:

1. Council approves the establishment of four scrutiny committees and to agree the Council's preferred model with reference to Appendix A;
2. Scrutiny committees should each have nine elected Members; and
3. All non-Executive elected Members should be encouraged to participate in Scrutiny, as committee members and / or as members of task and finish inquiries. The maximum number of Members to sit on a task and finish inquiry should be nine.

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19 May 2017

Appendices: Four potential models for Scrutiny Committee structure.