

**SCRUTINY ARRANGEMENTS – PROPOSED REVISIONS TO THE CONSTITUTION**

Report of the County Secretary

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**1. Purpose of Report**

To enable the Council to consider adopting:

- a) revised procedures to make the scrutiny process more effective
- b) arrangements to implement the new requirement for the County Council to scrutinise the Health Service.

**2. Making Scrutiny more effective**

- 2.1 All local authorities have to have Scrutiny Committees which can examine the Council's policies and decisions and make recommendations. Scrutiny Committees also have power to examine issues outside the Council's control which affect the County.
- 2.2 The County Council introduced Select Committees in August 2000 when it began to pilot the new Constitution. Various changes have been made over the last two years or so to improve the process and we now have six Scrutiny Committees, including the Audit Committee.
- 2.3 The introduction of the new concept of scrutiny posed a challenge to many authorities and, in the County Council's self-assessment for the Comprehensive Performance Assessment, we freely acknowledged that the scrutiny process in Hertfordshire is not working as effectively as it might.
- 2.4 As one means of improving it, a report was commissioned on the County Council's scrutiny arrangements from Professor Stephen Leach of de Monfort University. Professor Leach's initial findings were discussed at a meeting of Chairmen and Vice-Chairmen and draft proposals produced. These formed the basis of Professor Leach's final report which has been circulated to Chairmen and Vice-Chairmen. The recommendations of the report are set out in Appendix 1.
- 2.5 The recommendations have been discussed by the Chairmen and Vice-Chairmen of the Scrutiny Committees. In order to implement them, changes are needed to the Constitution and to the Guidelines for Scrutiny Committees. Appendix 2 sets out possible changes in the Constitution. Appendix 3 sets out revised draft Guidelines for Scrutiny Committees. The Guidelines for

Scrutiny Committees is a working document which has not to date been incorporated into the Constitution. The Council may wish to consider including it in the Constitution as Annex 9A, following on from Standing Orders for Scrutiny Committees.

The Council can of course make further amendments if it wishes.

### **3. Arrangements for Health Scrutiny**

3.1 The Health & Social Care Act 2001 requires County Councils to ensure that one of their Scrutiny Committees has power to scrutinise health services in the area (in place of scrutiny by Community Health Councils, which are disbanded).

3.2 The new requirement is intended to come into effect on 1 January 2003 but the Regulations which give effect to it are not yet finalised. The legislation allows the County Council to work jointly with Hertfordshire District Councils in carrying out health scrutiny. The County Council has therefore been working with the Herts. Local Government Association to develop joint arrangements.

3.3 The proposals most recently discussed by the Herts Local Government Association and the County Council's Health Panel are as follows:

- 8 Primary Care Trust-based scrutiny committees to be established to scrutinise the services provided or commissioned by each PCT. Each committee will include 2 members of the County Council, 5 members from the relevant District Council(s) and 3 non-voting Patients' Forum representatives. A District Council would be responsible for the administration of each PCT-based scrutiny committee.
- Scrutiny of all other health services to be carried out by a new Adult Care and Health Scrutiny Committee of the County Council and/or topic groups set up by that committee. The Committee would be the Statutory Consultee for significant health services changes in the County and would be able to refer changes to the Secretary of State. This committee would replace the current Adult Care Services Committee. The Committee would operate a two part agenda. When scrutinising health services the Committee would have co-opted voting members from District Councils, who would also sit on relevant topic groups. Non-voting Patients' Forum representatives would also be co-opted onto the Committee and relevant topic groups. These added members would withdraw when the Committee progressed to the adult care part of the agenda. The Committee and topic groups would be administered by the County Council. It is proposed that the Committee agree an annual programme for scrutiny of health and adult social care services and then sets up topic groups as appropriate to undertake the detailed scrutiny work. It was initially proposed that the countywide scrutiny committee would include 7 members of the County Council, 3 District Council members and 5 Patients' Forum representatives. As the existing Adult Care Services Scrutiny Committee, which will be replaced by the new body, has 10 members, it will be necessary to review the number of District Council and Patients' Forum representatives to retain the same balance of membership.

- 3.4 Following some discussions, most of the District Councils are broadly in agreement with the proposed approach, subject to their concerns about appropriate representation on topic groups being available to all District Councils with an interest in a particular scrutiny topic and papers on health scrutiny being made available to all District Councils.
- 3.5 Since receiving draft regulations, we have reviewed the above proposals and the arrangements as set out for the countywide Scrutiny Committee may not deliver the necessary political proportionality. Although the position will not be clear until the Regulations are published, it appears that the normal rules of political proportionality will apply. It will therefore be necessary for the members of the County Council's majority group to have a majority over all other voting members of the committee. Thus the options in relation to the current proposal would be, either to reduce the number of opposition members and increase the number of Administration members, or to increase the total County Council membership to allow the existing opposition members on the Adult Care Services Scrutiny Committee to remain, and to add further Administration members to achieve political balance.
- 3.6 Since the Patients' Forum members are non-voting members of the committee, the need is simply for the Administration to have a majority over the County Council opposition members and the District Councillors together. Thus, to preserve the number of Opposition members on the newly constituted committee would require a minimum membership of 14 County Councillors (10:4), 5 District Councillors and 5 Patients' Forum representatives to sit on the Committee when it is considering health scrutiny issues. When the Committee is dealing with adult care issues, the composition of the Committee can revert to the current one of 10 members (6:4).
- 3.7 It is possible that the final Regulations may allow a different approach to proportionality. If so, the issue will be reported back to Council.
- 3.8 In terms of the local Joint Scrutiny Committees based around Primary Care Trusts, District Councils have been considering the proposals. Some propose to adopt the model as set out by the County Council, while others are proposing to adapt existing committees or mechanisms they have, in order to take the role forward. For example, Dacorum Borough Council is proposing to use its existing Housing and Health Scrutiny Committee, which currently has ten members, for this purpose. They would like to retain those 10 members and co-opt County Councillors and Patients' Forum representatives onto the committee for the relevant part of the agenda. If these committees are established as joint committees, then County Council representatives would have a vote on them. The County Council would have to consider whether, if District Councils are having a larger number of members on the committees, they wish to also increase the County Council membership.
- 3.9 Resource Implications

The power to scrutinise health arrangements is a new function for the County Council for which there is neither funding nor resources currently available. If the County Council wishes to adopt the power to set up health scrutiny

arrangements, there will be resource implications, both in terms of administration and operation of committees and panels, but also in terms of the effective commissioning and follow up of reports to scrutiny committees. In our response to the consultation document, the County Council suggested that the minimum resource implication would be around £100,000 per annum.

### 3.10 Matters for Consideration

The County Council needs to consider:

- (a) whether to adopt the model for health scrutiny as described in paragraph 3.3 above,
- (b) whether membership of the countywide committee when dealing with health scrutiny should be as follows:

14 County Councillors - 10 administration, 4 opposition  
5 District Councillors  
5 Patient Forum representatives

and 10 County Councillors (6:4) dealing with adult care scrutiny.

- (c) whether the Council's constitution be amended to accommodate Health Scrutiny by deleting the Adult Care Services Committee in its current form and constituting a new Scrutiny Committee for Adult Care and Health,
- (d) whether to authorise the County Secretary, in consultation with the group spokesmen on the new Committee and the Director of Adult Care Services, to agree the creation of joint arrangements with District Councils for Primary Care Trust-based scrutiny,
- (e) that, unless additional resources are available, the countywide health scrutiny programme be limited to fulfilling the committee's role in responding to consultations on proposed changes in the Health Service,
- (f) that the new arrangements be reviewed after a year's operation.

## APPENDIX 1

### **RECOMMENDATIONS IN PROFESSOR STEPHEN LEACH'S REPORT**

- The Scrutiny Committee should be given an explicit role in Best Value Reviews, contributing in particular to the 'challenge' and 'consultation' stages and evaluating the thoroughness of the final report.
- The right of scrutiny committees to carry out policy reviews (as opposed to policy development activities) on topics which in their view merit review should be acknowledged and written into the Constitution.
- There should be an expectation that scrutiny committees will increasingly engage in a number of inquiries relating to community governance issues in which the Council has a legitimate interest. For example, the use of Public hearings to address matters of importance to the public, but which are beyond the Council's direct control.
- Executive members should play a formal part in scrutiny committee proceedings only when specifically requested to give evidence or face questioning in relation to a particular issue. Otherwise their attendance should be at their own discretion and as 'observers' rather than 'participants'.
- The value of scrutiny committees preparing in private in advance (with appropriate support) for 'select committee' style question-and-answer sessions should be recognised and facilitated in the operation of these committees.
- Following a detailed 'policy review' in a Scrutiny Committee the chair of the topic group concerned should have the opportunity to present recommendations in person to the Cabinet.
- Committee chairmen and spokesmen should assume greater responsibility for determining Committee agendas, calling in Chief Officer support, but not being led by it. This will require appropriate independent officer support.
- It should be expected that items put forward for scrutiny will be accepted, unless there is an overwhelming reason not to do so. A convention should be introduced in relation to all proposals for scrutiny topics, which embodies a presumption in favour of scrutiny. To increase the feasibility of scrutinising Cabinet decisions, the right of members to call special meetings should be emphasised. These conventions should be formally reviewed in 12 months, to check they are working.
- A scrutiny co-ordination panel should be established, with a membership consisting of the chairs and vice-chairs of each of the six scrutiny panels. In order to:
  - develop a coherent programme for scrutiny (whilst retaining scope for individual committees to develop their own agendas)
  - share learning between committees.

- The scrutiny co-ordination panel should meet on a regular basis with one or more members of the Cabinet to ensure that as far as possible the potential contributions of the scrutiny process can be taken into account.
- It should collectively develop a programme for the scrutiny function, which ensures that an authority wide view to the best use of scrutiny time is taken, whilst at the same time allowing maximum flexibility for individual scrutiny committees.
- Cabinet should have the power to make representations to the Scrutiny Co-ordination Committee about the appropriateness of a scrutiny inquiry which a SC wishes to pursue (but the final decision should rest with the Scrutiny Co-ordination Committees).
- The principles embodied in the ‘differentiated but consistent officer advice’ should be clarified and recognised as reflecting the reasonable requirements of the scrutiny function.
- The overall managerial responsibility for scrutiny of the Assistant Chief Executive (ACE) should be strengthened and its independence within the Chief Executive’s Department from the interests of the Cabinet emphasised. The position should embody the role of ‘Scrutiny Champion’.
- The ACE should be supported by scrutiny facilitators. Their role should be to support officers in the preparation of reports so that a consistent questioning style is developed, and to advise the Committees. The fund available for support should be redesignated for this purpose and used by the ACE together with input from the Committee Administrators. It would be appropriate to review the fund after 12 months to ensure it is sufficient.
- Reports, particularly those emanating from the work of topic groups, should be higher-profile documents intended to generate public interest as well as proving internally influential. (There are many helpful examples from other authorities).
- Greater use should be made of public involvement which can often strengthen the impact and profile of the scrutiny process. The work of the Adult Care Services SC provides a helpful steer here. In different circumstances, expert witnesses, co-opted stakeholders, co-opted representatives of user groups, public survey, and public meetings in non-County Hall venues can all contribute to effective scrutiny.

**IMPLEMENTATION OF STEPHEN LEACH'S REPORT: POSSIBLE CHANGES TO THE CONSTITUTION**

1. **To allow Scrutiny members to contribute to the Best Value process ADD new 6.3A in Section 6:**

“The relevant Scrutiny Committee, in consultation with the Best Value Review Group, shall decide how it wishes to be involved in each best value review. The Best Value Review Group should place the review timetable before the relevant Scrutiny Committee for the Committee to indicate how it wishes to be involved.”

2. **To make it clear that Scrutiny Committees can do policy reviews ADD new 6.3B in Section 6:**

“For the avoidance of doubt, each Scrutiny Committee’s powers include the power to review or scrutinise the operation of any policy of the Council and to make recommendations thereon.”

3. **To enable Chairman of Topic Groups to present a report to Cabinet ADD new 6.3 in Annex 7:**

“Where the Executive is considering a report which includes recommendations arising from a scrutiny of a policy the Chairman of the Scrutiny Committee (or the Chairman of the Topic Group if so required by the Committee) shall be entitled to attend the meeting and to address the Executive in order to present the report and any recommendations, and to answer any questions.”

and AMEND C(5) in Annex 10 to read:

“Topic Groups shall report to their Scrutiny Committee unless the Committee requires them to report direct to the Executive or to a Chief Officer.”

4. **To constitute the meeting of the Chairmen and Vice-Chairmen of Scrutiny Committees as a Scrutiny Co-ordination Panel DELETE 6.9 in Section 6 and ADD new 6.9:**

"There shall be a Scrutiny Co-ordination Panel, comprising the Chairmen and Vice-Chairmen of all Scrutiny Committees, with the remit of ensuring the work of the Scrutiny Committees is properly co-ordinated. The Panel shall determine its own procedures for its meetings and conduct of business."

**IMPLEMENTATION OF STEPHEN LEACH'S REPORT:**

***DRAFT REVISED GUIDELINES FOR SCRUTINY COMMITTEES (Changes in italics)***

1. Introduction

These Guidelines are designed to help members and officers operate Scrutiny Committees effectively. They cover:

- Role of Scrutiny Committees
- Preparation of agendas
- Preparation of reports
- Briefings before meetings
- Procedure at meetings
- Involvement of the public

2. Role of Scrutiny Committees

2.1 The Scrutiny Committees *have a number of roles:*

- to scrutinise any decisions made *by, or on behalf of, the Council or Cabinet;*
- to scrutinise any operational or policy aspect of the Council's business;
- *to scrutinise any issue which affects the County and its inhabitants, which may be outside the Council's control.*

2.2 *Having scrutinised a particular decision, policy or issue a Committee may make recommendations to the appropriate body or person – the Council, Cabinet, Chief Officer or outside organisation. A Committee also has power to require a Council decision taker to reconsider the decision if it has not yet been implemented.*

2.3 Each Scrutiny Committee is politically proportionate, and appoints its own Chairman and Vice-Chairman. It has however been agreed between the political groups that *Chairmen will be from the minority groups and Vice-Chairmen from the majority group.*

2.4 Each Scrutiny Committee has allocated to it:

- One or more service Chief Officers
- A support officer
- A committee administrator

2.5 *The Constitution requires the Chairmen and Vice Chairmen of Scrutiny Committees to meet as a Scrutiny Co-ordination Panel to ensure the work of their Committees is properly co-ordinated. This Panel oversees the programmes of work of the Committees (whilst allowing each Committee to*

*develop its own programme and provides a means to share learning and good practice in order to make the scrutiny process as effective as possible with no duplication or overlap. The Panel may invite Members of the Executive to its meetings to discuss the way in which the scrutiny process can contribute most effectively to the Council's business. The Panel meets at such times as it considers necessary and regulates its own proceedings.*

### 3. Agenda Planning

3.1 Any Member of the Scrutiny Committee, including a co-opted Committee Member, can require an item to appear on the agenda. The usual route will be through the group process (through the Chairman/Vice-Chairman/other Group Spokesmen) but Members may simply request that the Committee Administrator include the item on the agenda if they wish. It is the Scrutiny Committee itself which decides whether or not to scrutinise any item. Items may result from e.g.:

- members selecting items from the Forward Plan for consideration
- groups wishing to look at budget/performance indicator monitoring information
- a member asking their group spokesman to ask the Committee to look into an area of concern, which could be a local issue
- a member of the public writing direct to the Chairman of the Scrutiny Committee
- another Scrutiny Committee referring an item.

3.2 *The Scrutiny process needs to be open and objective if it is to be beneficial to the Council. There should be a presumption in favour of scrutiny. Items put forward should be accepted for scrutiny unless there is a justifiable reason not to do so. Where urgent scrutiny is required, Standing Orders allow any three County Councillors members of a Committee to call a special meeting.*

### 4. Preparation of Reports

4.1 Groups or individual Members should notify Committee Services at least 3 weeks before the meeting of items they wish to put on the agenda. Committee Services will notify the Support Officer, the Service Chief Officer, other group representatives on the Scrutiny Committee and the relevant Executive Member. The Support Officer will clarify the remit of the report with the member concerned and liaise with the Service Chief Officer. The Service Chief Officer will then prepare a brief report, giving enough detail to enable the Scrutiny Committee to decide *how* to scrutinise the issue. Reports should:

- be in "bullet point" format. Tables or other easily assimilated data may also be useful in helping the Committee to decide whether or not to scrutinise an item

- focus on the specific issue of concern rather than giving background information
- suggest options for how the scrutiny process might be conducted should the Committee decide to do it.

4.2 The report in draft must be sent, *in good time*, to:

- *the Member who requested the item*
- Scrutiny Committee Chairman and Spokesmen
- the Executive Member
- the Support Officer
- the Committee Administrator
- any other relevant officers

for comment.

4.3 Where it becomes clear from preliminary meetings that it is likely that the Committee will want to scrutinise the item, it may be appropriate for officers to prepare a longer report or presentation which will enable the Committee to carry out the scrutiny at the same meeting.

## 5. Briefings

5.1 The lead Service Chief Officer must arrange pre-meeting briefings for the Chairman and Vice-Chairman (and if requested for the other Group Spokesman) of their Scrutiny Committee. If members agree, these briefings may be cross-party. The Support Officer must attend.

5.2 The Chairman and Vice-Chairman together must ensure that the work programme of scrutiny items is properly organised. *They are responsible with the aid of the Support Officer for agenda planning and will be able to call on the Chief Officer for assistance.* They may wish to meet 4 weeks before the meeting for this purpose, in addition to the pre-meeting briefings.

## 6. Procedure at Meetings

### 6.1 Organisation

- The Chairman (if present) presides; otherwise the Vice-Chairman; otherwise a member of the Committee chosen by the other members.
- The Support Officer sits on the Chairman's right; the Committee Administrator sits on the Chairman's left.
- The Executive Members and Service Chief Officers sit together. *Executive Members are not members of the Committee. They are*

*expected to attend in order to answer questions and to contribute to the debate at the discretion of the Chairman.*

- “Specialist” officers (legal/financial/personnel/property) only attend if required.
- A senior officer may represent the Service Chief Officer. The Support Officer may ask another support officer to substitute.

## 6.2 How to deal with reports:

Scrutiny Committees discuss scrutiny items in order to check out the effectiveness and rightness of Council policy and to investigate issues which may need a new or revised approach.

- The Chairman will ask the Member who put forward the item to speak to it, and justify why the Scrutiny Committee should scrutinise it. The Group Spokesman or another Member can speak on behalf of the Member who put forward the item if they cannot attend the meeting.
- The Service Chief Officer will speak to the brief report, and answer any questions on its content.
- Members may also put questions to:
  - the Member who proposed the item
  - the Support Officer
  - the Executive Member
- The Scrutiny Committee will discuss whether to scrutinise the issue; the Chairman will ask the Support Officer to sum up the Committee’s views. The Chairman will aim for a consensus; if that is not possible, a vote may be taken.

## 6.3 The Scrutiny Committee may scrutinise the issue in any way they think fit, e.g.

- there and then by asking questions of officers/Executive Members
- a further report
- setting up a time-limited Topic Group (i.e. a small ad hoc group of members). The Committee will set the size and terms of reference. Members may be appointed there and then or by the County Secretary after the meeting
- requesting one or more Members to carry out visits/investigations on their behalf and report back
- requesting an independent consultant, partner organisation or interest group to investigate the matter on their behalf and report back

- *holding one or more public hearings which are specifically designed to enable members of the public, interest groups, etc. to give their views. Public hearings will be particularly useful where the Committee is scrutinising an issue of general importance to the County but which is outside the direct control of the Council.*

6.4 *Where members of the Committee wish to question officers, Executive Members or others extensively on a particular subject they may find it helpful to meet in private in advance (with the Support Officer) to prepare their questions.*

6.5 *Where a Scrutiny Committee (or Topic Group) makes recommendations to the Executive, those recommendations will be circulated to Members in advance via the minutes of the Committee.*

## 7. The Role of the Support Officer

Each Scrutiny Committee has a senior officer, who is not part of the service scrutinised by the Committee in question allocated to it. Their role is:

- to advise the Committee on handling of business
- to ensure that reports include sufficient information for the Committee to arrive at a conclusion
- to advise how an issue could be scrutinised
- to sum up *the discussion, significant issues raised and conclusions reached by the Committee.*
- to support the Committee's scrutiny by ensuring that subsequent reports fully address questions raised and that they present a balanced picture of the issue under scrutiny
- to advise on the selection of any independent support.
- *to monitor the outcomes and report back.*

*It is important to remember that all officers of the Council have a responsibility to support all members. The Support Officer however has a specific role to help the Committee achieve effective scrutiny. The service Chief Officer's specific role is to ensure that the Committee has available to it the detailed and technical information it requires and that members are able to understand the service-related issues involved. The roles of these officers are complementary and they must ensure throughout that the advice members receive is clear and consistent.*

## 8. Involvement of the Public and Interested Groups

8.1 Scrutiny Committees are one of the prime public faces of the Council and members of the public should be both encouraged and enabled to attend and

where appropriate to contribute. *Public involvement can often strengthen the effectiveness impact and profile of the scrutiny process.* The public only have a **right** to speak at Committee when they are presenting a petition. However, the Chairman has discretion to allow anyone whom he or she wishes to speak at the Committee to do so. In order to make the contribution of the public most useful the following guidelines should be observed:

- When agendas for Scrutiny Committees are prepared this should be done with contributions from interested stakeholders in mind. Experience has shown that well managed contributions from interested people considerably enhance the debate. When considering the approach to any item the Chairman, Vice-Chairman and officers involved in preparing the item should consider whether any interest groups or individuals need to be involved and how their contribution can be managed.
- Wherever possible people who are to contribute to the debate should be briefed in advance and given a structure for the contribution.
- In the past it has proved helpful for the person introducing the item to also introduce interested people who have come at the request of the Committee to contribute to the debate. Each of these people is then asked to give a short (five minutes maximum) input immediately after the officer presentation of the item. They can then also contribute to following debate by indicating that they wish to speak and being asked by the Chairman to do so.
- The contributors to any item need to be limited to five or six as a maximum. They should therefore be people who are able to represent groups of interest if at all possible. Whilst any number of representatives of a particular interest group are welcome to attend any Scrutiny Committee they should be asked to channel their contribution through one person.
- Members of the public who arrive at the meeting without prior arrangement can nevertheless be allowed to contribute at the Chairman's discretion if this seems appropriate. As before groups should be requested to channel their contributions through one person.
- Where interest groups or members of the public are expected to attend for an item, this item should, where possible, be put at the beginning of the agenda or where there are multiple items so this is not possible, a start time for the item should be given for those invited to attend and every attempt made to stick to it.
- If there is a large number of members of the public attending a meeting it is helpful if the support officer or the Chairman if they prefer, gives a brief introduction at the beginning of the meeting explaining who the various people are, what their role is and how the meeting will proceed.
- Ad hoc contributions from the public are difficult to manage and should not be allowed. The Support Officer's explanation at the

beginning of the meeting can include regret that it is not possible for everyone present to contribute and ask people who have not been nominated as speakers for a particular group or interest to approach their representative or one of the officers if they feel that they have an important point that has been missed.

These guidelines apply to ordinary meetings of the Committee. If the Committee decides to hold a public hearing (see 6.3 above) it will arrange the format so as to encourage the most effective input from the public.

9. Outcomes

*The outcome of effective scrutiny should be improvement to the Council's services to the public or, in the case of issues outside the Council's direct control, clear recommendations to other agencies for improvement.*

*Committees and Topic Groups have the opportunity to determine the nature of their final report and the extent to which they are intended to generate public interest as well as promote the value of the process.*