

OVERVIEW AND SCRUTINY IN LOCAL GOVERNMENT: WHAT IS IT?

A GUIDE FOR MEMBERS OF PROBATION TRUSTS

Introduction

As you will be aware, your work with Crime and Disorder Reduction Partnerships (CDRPs) in England, and Community Safety Partnerships (CSPs) in Wales, means that you have an increasing responsibility to collaborate with a wide variety of other local organisations in providing services locally. Officially, you will become a “responsible authority” – a full, statutory member of local CDRPs – on 1 April 2010, and this is something for which you are probably already preparing.

What you may not be aware of is the necessary relationship this will involve with the “scrutiny” function of local authorities. Scrutiny is an independent, councillor-led function which has a role in improving local services. The Police and Justice Act 2006 gives scrutiny councillors a responsibility for looking at the work of the CDRP in England – in Wales, the powers are more or less identical but derive from measures passed by the Welsh Assembly Government.

Another Act, the Local Government and Public Involvement in Health Act 2007, gave scrutiny bodies a wide remit to look at the work of other partners (not only those sitting on Local Strategic Partnerships, with responsibility for directing policy under Local Area Agreements) in carrying out their work.

What is “scrutiny”?

Before 2000, decisions in local authorities were made by committees, each of which had a responsibility for a particular service area – a Housing Committee, a Social Services Committee and so on. The Local Government Act enforced a change to these arrangements. It brought about a split between executive (decision-making) functions and non-executive (scrutiny) functions.

Executive, decision-making councillors are formed into a Cabinet, usually made up of nine or ten councillors. Usually all these councillors belong to a single political group. Each cabinet member (in some authorities they are known as “portfolio holders”) has responsibility for a particular area of the council’s work. These councillors are supported by the council’s senior officers and its departments. Sometimes, “deputy” cabinet members are appointed, although they hold no formal powers.

All other councillors are often described as “backbench” councillors, and most will sit on scrutiny committees. These committees’ principal roles are probably best described by the following “four principles” of good scrutiny, (already circulated by PA to members) which were established as a result of research conducted by the Centre for Public Scrutiny in 2003.

OVERVIEW AND SCRUTINY IN LOCAL GOVERNMENT: WHAT IS IT?

Good scrutiny:

- **Provides a “critical friend” to decision-makers;**
- **Enables the voice and concerns of the public;**
- **Is directed by “independent-minded governors” (in this case, councillors) who lead and own the scrutiny process;**
- **Drives improvement in public services.**

Of all these principles, the fourth is arguably most important. The best quality scrutiny adds real value to what local authorities and their partners do. There are a large number of examples from all over England and Wales of really effective work carried out by scrutiny councillors, which has helped to improve the lives of local people.¹ However, it cannot be denied that many in local government remain cynical about the scrutiny process, and that attempts have been made in many authorities to marginalise it.

Scrutiny committees may set up “task and finish” groups – small, time-limited, informal groups which complete investigations into specific issues. Task and finish groups are more common in authorities that provide dedicated policy officer support to scrutiny councillors. Although the majority of councils have at least one “scrutiny officer”, there remain many authorities (predominantly district councils) that do not have this dedicated support. In this respect, like you, they struggle to cope with limited resources and capacity to do their work.

Recently, scrutiny has been given increased and additional powers to look at the delivery of public services beyond the council itself. Scrutiny councillors have been using new legislation, and the strength that comes from their local democratic legitimacy (ie they have been elected) to investigate, hold to account and influence the work carried out by a wide variety of local partners.

Why should we get involved?

Your obligations

You are obliged to do the following as a result of the legislation.

- Provide information to scrutiny in a timely manner, unless you have a reasonable excuse;
- Attend meetings (if given enough notice);
- Have regard to recommendations (this does not mean that you are obliged to implement recommendations from scrutiny committees when they are submitted to you, but that you should consider them as part of your usual decision-making process).

¹ Anyone requiring more information, including examples of good scrutiny work carried out by local authorities, should contact the Centre for Public Scrutiny.

OVERVIEW AND SCRUTINY IN LOCAL GOVERNMENT: WHAT IS IT?

However, you should not treat this as an issue of pure “compliance”. There are some significant opportunities for probation trusts in getting involved in the scrutiny work of local authorities.

However, there are also some risks that you should seek to work with councils to manage.

Opportunities

- Scrutiny’s independence is its greatest strength, and it can cut through sectional interests in the CDRP to produce objective, evidence-based recommendations for improvements.
- Scrutiny provides an ideal opportunity for you to engage with elected representatives, and with the wider local community within which you deliver your services.
- Scrutiny can help you to manage your resources more effectively – you may want to carry out some work jointly on issues of common concern, which will both enhance the impact of such work and minimise the effect on your capacity as an organisation.
- At the discretion of the scrutiny committee (although in practice this will often be as a result of discussions between you) members of Probation Trusts could be co-opted onto scrutiny committees or onto task and finish groups, for specific pieces of work. This will enhance the quality of work and make it more directly relevant to your needs, making the end product more effective.
- Scrutiny can potentially integrate with your approach to the Comprehensive Area Assessment (CAA) process in which HM Inspectorate of Probation will be involved – evidence from scrutiny can form part of the evidence base for the assessment itself, and areas of poor performance arising from CAA work can be investigated further by scrutiny.

Risks

- Because it is a new role, many scrutiny councillors and officers may be unfamiliar with many policy issues relating to crime and disorder, and especially those issues relating to probation. You will need to be prepared to work with scrutiny councillors and scrutiny officers to assist them in understanding the policy context within which you work, particularly at the start of the process.
- There is, naturally, a risk of duplication between the work being carried out by you and local authorities’ scrutiny committees. However, it is important to bear in mind that scrutiny powers are limited to looking at the work carried out by the *partnership*, rather than the individual *partners*. As such, your work should complement each other.
- Many have expressed concern about resourcing and capacity constraints. This is an issue both for probation and for scrutiny and joint working will need to be managed carefully – work programmes need to be carefully configured across wide geographical areas to ensure that the demands being placed on you, and other CDRP/CSP partners, is not too onerous. This point was stressed in the official Home Office guidance and is an issue of which scrutiny functions around the country should all be aware.

OVERVIEW AND SCRUTINY IN LOCAL GOVERNMENT: WHAT IS IT?

How should we get involved?

By and large, scrutiny councillors will be keen to work with you. The official Home Office guidance mentioned above was issued in mid-2009 to assist scrutiny councillors to understand their new CDRP scrutiny role (similar guidance is about to be produced to cover the situation in Wales). This guidance highlighted the importance of working with CDRP partners to make scrutiny of the partnership as effective as possible, and contains several examples of notable practice. Guidance on partnership scrutiny more generally is being published in January 2010.

The guidance suggests the drafting of a local protocol – not to rigidly govern the relationship between scrutiny and the various CDRP partners, but to help scrutiny to build relationships with everyone. You may consider a protocol to be useful in defining how joint working will operate – some areas (eg Birmingham and the West Midlands) are in the process of putting protocols together, and are finding it to be a valuable exercise.

We suggest that single protocols should be developed for a whole police authority, or probation, area. Guidance on partnership working being published shortly to support powers under the Local Government Act 2007 (which does not cover crime and disorder) may provide some guidance, but broadly speaking the content should be decided on locally, as the process of negotiation in putting together such a protocol is often just as valuable as the finished document.

Protocols could incorporate all the local authorities within such an area. This may well involve agreement between a significant number of organisations – but such agreement will minimise the risk and duplication and enhance the work you do by giving you a much more immediate local presence and contact throughout the area within which you work. In most instances you can expect that local government in the area will lead this process.

What are the next steps?

- Contact the Centre for Public Scrutiny or the Probation Association for further advice and guidance. Ed Hammond at the CfPS (ed.hammond@cfps.org.uk or 020 7296 6595) can help in the first instance and Ian Fox (ian.fox@probationassociation.co.uk) from a PA perspective.
- Make initial contact with the scrutiny units / councillors in those authorities within your probation area.
- If you have not already done so, take the opportunity to make contact with the local police authority.
- Identify existing or new areas of joint interest and themes of work which you could deliver jointly with local authorities.
- Start to work with partners in the area to put together a protocol to define how scrutiny and accountability arrangements – incorporating the functions of you, the police authority and local authority scrutiny – will work in influencing the policy of the CDRP and its constituent partners. More on the practicalities of protocols can be found in the official Home Office guidance to CDRP scrutiny.
- Use this as an opportunity to think about your own governance arrangements – e.g. how your Audit function could feed into the wider scrutiny process.