

# OVERVIEW AND SCRUTINY IN CHESHIRE EAST FINAL REPORT

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## 1 Context

- 1.1 The new unitary authority of Cheshire East commenced operations in April 2009. It has thus had only 5 years of experience of the overview and scrutiny function, much less than all those authorities which were in existence in 2000 when overview and scrutiny were first introduced. No doubt councillors elected in 2009 from the four predecessor authorities brought their own experience of the function into the new authority. But the fact remains that Cheshire East has a much shorter history of dealing with overview and scrutiny than almost all existing authorities (most new unitaries designated in 2007/08 were co-terminous with former counties or districts).
- 1.2 The system installed in 2009 was (understandably) based on the dominant pattern prevailing at the time. The overview (support) and scrutiny ('holding to account') functions were operated together in five (later six) scrutiny committees (see Section 2 for details). An informal co-ordination mechanism involving the five chairs and vice-chairs started to operate, with a view to achieving a consistent approach to the two related functions. A scrutiny support unit of three officers was appointed, which is broadly of the size one would expect in an authority with size and status of Cheshire East. Cabinet decisions could be called in if any eight members submitted a request, a provision which enabled opposition groups, individually or collectively to do so.
- 1.3 In May 2012, after just three years of existence, the overview and scrutiny arrangements were subjected to a major change. The existing Overview and Scrutiny Committees were dissolved, and replaced by six Policy Development Groups (see Section 2 for details). The Scrutiny Committee structure per se was slimmed down, with two Scrutiny Committees being retained to deal with the statutory scrutiny of

Health and Community Safety, together with a single Corporate Scrutiny Committee to cover the full range of remaining council responsibilities.

- 1.4 So far as we can judge from our interviews and the reports which justified the introduction of these changes, they were inspired less by a dissatisfaction with the existing system, than by a politically-led vision to give a strengthened emphasis to policy development, and the involvement of backbenchers in this task. The intention was to separate it out from the ‘holding to account’ role central to the operations of the previous committees, which combined both overview and scrutiny functions. In these circumstances it was felt (not unreasonably) that fewer scrutiny committees were needed.
- 1.5 The reasons for introducing a system of PDGs are discussed in the next section. A persuasive and coherent case was made for taking this step. The report of the Constitution Committee (20<sup>th</sup> November 2012) also expressed concerns about the capacity of the existing system to meet council priorities.

‘It is our ambition that we become an increasingly inclusive Council...which listens to a wider range of voices and which works in partnership with other key local agencies, as well as across the political divide for the benefit of all the people in Cheshire East. **The current Overview and Scrutiny arrangements have not achieved this**’ (our emphasis).

- 1.6 There was little elaboration as to why the existing overview and scrutiny structure lacked the capacity to achieve these commendable objectives (and in our judgement the introduction of PDGs has failed to deliver on these priorities). We certainly picked up criticisms of the pre-2012 arrangements from our interviews, but also more positive evaluations, included a view that several high quality influential reports were produced, typically utilising ‘task and finish groups’. There is no sense that the arrangements instigated in 2009 had proved widely unacceptable, or were widely viewed as a disaster area. It is also worthy of note that they had been in operation for a relatively short period of time – three years – perhaps insufficient to prove themselves?

- 1.7 In December 2013, a further review of the overview and Scrutiny arrangements was initiated, reflecting the original intention to review PDG arrangements after six months of their introduction, but acknowledging that PDGs have taken longer than expected to settle into their new working arrangements. The review was to cover both PDGs and the three remaining scrutiny committees, but was also mindful of the potential impact on overview and scrutiny of the increased amount of partnership work, and ‘the Council’s long-term aims regarding new service delivery vehicles’. The focus on this potential impact, in particular the role of ‘alternative service delivery vehicles’ (ASDVs) and ‘wholly-owned companies’ (WOCs) intensified as the Review Group commissioned to manage the review developed its thinking.
- 1.8 On 6<sup>th</sup> March 2014, we were appointed by the Review Group to undertake the Review on behalf of the council. The agreed terms of reference and scope of the review are attached to this report as Appendix 1.
- 1.9 In this report, we first provide an evaluation of the effectiveness of the five PDGs since their inception late in 2012 (Section 2). We then examine in Section 3) the three Scrutiny Committees on the same basis. In Section 4 we consider the challenges posed by the move to a Commissioning Council and the introduction of ASDVs and WOCs for the redesign of effective overview and scrutiny arrangements. Finally in Section 5, having clarified the principles of effective scrutiny, we set out and justify our recommendations, which are summarised in Section 6.
- 1.10 The fieldwork for the review commenced on 6 March 2014 and concluded on April 3<sup>rd</sup> 2014. During this period we observed meetings of all five PDGs and the Corporate Scrutiny Committee (our intention to observe the other two Scrutiny Committees were frustrated by postponements and timetable clashes). We interviewed 32 councillors (sometimes in pairs or small groups), and 15 council officers. Minutes, agendas and reports of previous PDG and scrutiny meetings were examined.

- 1.11 In forming our recommendations, we have drawn on our experience in carrying out similar evaluations of overview and scrutiny in over 20 local authorities over the past ten years. We have also incorporated evidence of good practice from reports published by the Centre for Public Scrutiny (including two by one of the researchers) and from other authorities of which we have experience. But it is important to stress that we have applied good practice experience to Cheshire East only where it is appropriate to do so, given the unique history and political and organisational culture of the authority.
- 1.12 Dependent upon the outcome of the Review, and any subsequent decision by the Council it may be necessary to prepare terms of reference of any decision-making or other bodies which Council decides to appoint. This work forms part of our brief.
- 1.13 We would like to thank all those who have discussed with us with such frankness their experience of overview and scrutiny in Cheshire East, and in particular Councillors Peter Groves and David Marren of the Review Group for liaising with us so effectively, and James Morley of the Scrutiny Team for his accessibility, the efficient way he organised our programme of interviews and observations, and his patience when we occasionally had to make late changes in the schedule.

## 2 The Policy Development Groups (PDGs)

- 2.1 In December 2012, six PDGs were established (Corporate and Performance; Finance, Health and Adult Care; Children and Families; Environment and Prosperity; and Communities). The expectations regarding the role of these PDGs were set out in the 20<sup>th</sup> November 2012 report of the Constitution Committee (8.1 – 8.5) and included the following
- ✓ the active involvement of backbench Members on a cross-party basis, giving them a key role in the formulation of policy across the board
  - ✓ the development of major new Council policies from their most formative early stages through to their adoption
  - ✓ ‘real influence’ on the role and work of the relevant cabinet members in the development of policies
  - ✓ a key role in respect of major service and financial changes

- 2.2 The intention was that the PDGs should replace Scrutiny Committees in formulating policy, thereby allowing the latter to focus on monitoring and evaluation of existing policies and decisions.
- 2.3 There were to be eight members on each PDG, allocated on a cross-party basis. All chairs were Conservative nominees, but in two cases, Labour vice-chairs were nominated. Meetings were normally to be held in private (to facilitate ‘blue-sky thinking’) but at least two per year were expected to take place in public.
- 2.4 The dilemma of how to deal with the two key elements of overview and scrutiny; policy development (overview) and ‘holding to account’ (scrutiny) has faced all authorities since the 2000 Local Government Act came into force. The term ‘critical friend’ has been coined to characterise the challenging role involved. In most authorities, the two functions have been carried out by the same organisational mechanisms (Panels, Committees or Commissions), but it is not illogical to separate out the two functions as Cheshire East did in 2012<sup>\*</sup>. To do so gives a clearer focus for the respective ‘support’ and ‘challenge’ activities, although one must be careful not to over-emphasise the feasibility of a total role separation (the review of an existing policy is in principle a ‘scrutiny’ function which often results in a change in (or development of) policy).
- 2.5 The intentions behind the introduction of PDGs in Cheshire East were laudable. For a council with a relatively large number of members, it is potentially beneficial to seek to involve a wider range of members in policy development. In Cheshire East (as elsewhere) cabinet members have many demands on their time, and, in principle, support from a wider group of members, in an informal setting, in thinking about policy, would be expected to be welcomed by them. Indeed the link between cabinet member and PDG is crucial for the success of the initiative. If portfolio holders take the lead in initiating policy development projects which the PDGs work on in depth, and their reports prove helpful to the portfolio holders in influencing the cabinet, then you would have a system which demonstrably adds value. The

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<sup>\*</sup> and as one of their report’s authors recommended in LB Kingston-on-Thames in 2006

involvement of opposition members in the process is also a positive feature of Cheshire East's scheme; in some other authorities the kind of work earmarked for PDGs is carried out by small cabinet sub-committees whose membership is limited to majority party members only.

- 2.6 We observed meetings of each of the five remaining PDGs (Corporate and Performance was disbanded late in 2013) and analysed the content (and impact) of agendas and reports since they were introduced in December 2012. It is worth remembering that PDGs have only been in operation for 15 months, a point emphasised to us by several of the chairs, who felt understandably that all new initiatives of this nature needed time to develop a clear picture of what was expected of them, before they could really make an impact ('steep learning curves' were often referred to). All the chairs felt that the initial role uncertainty had now been overcome. Some members of the PDGs expressed positive views about their experience; others were more critical.
- 2.7 All the chairs could identify pieces of in-depth policy development work which their groups had produced, and which had wholly or largely been taken on board by the cabinet, via the relevant portfolio holder. As far as we could judge they were justified in their view (examples include the Cheshire Neighbours Credit Union Support project, the work on the recruitment and retention of social workers, and the review of waste collection).
- 2.8 But there were also differences of approach which could be identified. Some PDGs relied heavily on cabinet members to suggest topics. Others took a more proactive approach to topic-definition; whilst others were more responsive to suggestions from officers (including the Scrutiny Support Team). Some developed close working relationships with their cabinet counterparts, others more of an 'arms-length' type of contact. Some had used a 'task and finish' approach to policy development, whilst others preferred an intensive one-day approach to the subject. There were several examples too of an officer presentation followed by question-and-answer sessions, from which a list of recommendations (to the cabinet) were drawn up.

2.9 Our observations of meetings yielded the following impressions:

- v meetings were usually formal in their settings and procedures, with an ambience similar to traditional committee meetings. They were not conducive to ‘blue-sky thinking’ or creativity
- v it was not at all clear why some of the items had been tabled, in that they provided little if any scope for policy development as such. Some agenda items (and presentations) were in effect items for information, generating at best a smattering of diverse comments. Others were concerned with existing policies which the group scrutinised (albeit often superficially), thus illustrating the difficulty of a clean break between the ‘overview’ and ‘scrutiny’ functions
- v there was an absence of coherent programming, particularly in respect of adequate time being made available to undertake a piece of policy development work before it was scheduled to be considered by cabinet. The lack of ‘advance warning’ made both in-depth ‘policy development’ and productive ‘pre-decision scrutiny’ difficult
- v there was often lively discussion, but little in the way of tangible ‘added value’ which could be identified
- v attendances varied. The Environment and Prosperity PDG was well attended (and lively), others less so, including Finance, where there is a problem of overlap with work of all the other PDGs.

2.10 However the meetings, although patchy in content and limited in added value, were not without their uses. Members undoubtedly ended up better-informed about a range of policy issues (as used to happen in the old committees) although there may be better vehicles for imparting such information. There were occasions where officers clearly found members involvement and support helpful (e.g. over the proposal in Children and Families PDG to ensure a stronger council briefing for members who were school governors). There were instances where cabinet members had clearly found the work of PDGs useful in influencing the cabinet (e.g. the Health Impact Assessment Policy in the Health and Adult Care PDG). Some projects had proved beneficial at a more operational level (e.g. the work on the Recruitment and Retention of Social Workers).

- 2.11 However our overall conclusion would be that the beneficial outcomes of PDGs have not justified the organisational time and effort involved. The time of both members and senior officers is a valuable resource, which has often not been made best use of in the PDGs.
- 2.12 Disappointment was expressed within the council leadership that the intention to hold at least two meetings a year in public had not been achieved. But there is a dilemma here. If ‘blue-sky thinking’ is to be encouraged, as it should be, then the presence of the public (and in particular the press) is likely to have an inhibiting effect on discussion. If a councillor was to think that the closure of half Cheshire East’s branch libraries should be considered, as part of a savings package, he or she is not likely to bring this idea into the open, if there is a reporter from the press present! However when a PDG is in a position to table and discuss a policy development report, resulting from a series of private sessions, then there is a much stronger case for holding the meeting in public.
- 2.13 It is important, however, to ensure that the potential benefits of PDGs (even if these have so far been realised only partially) continue to be built into the arrangements for overview and scrutiny, in particular the wider involvement of members in policy development, the scope for blue-sky thinking, and the support available for overworked cabinet members. Even if PDGs were to be discontinued, it would be important to ensure that the organisational capacity to operate in this way was retained.

### 3 Scrutiny arrangements

- 3.1 As noted in 2.4, there are finely-balanced arguments for both keeping the overview and scrutiny functions together in the same organisational units, and for separating them out, as Cheshire East did in 2012. In particular there is an area of overlap around ‘pre-decision scrutiny’ (which is in effect ‘policy development’) and ‘policy review’ (which although predominantly scrutiny, contributes to policy development) which hampers an organisational separation of the two functions, as some of the PDGs have discovered. Although the role of ‘critical friend’ in one organisational unit is a difficult one to navigate satisfactorily, there are examples of



authorities which have succeeded reasonably well doing so (Nottingham, LB Merton).

- 3.2 Before the changes introduced in 2012, our impression from interviews and documentary analysis is that a reasonable approximation to the ‘critical friend’ role was achieved in Cheshire East.
- v there were several examples of cabinets decisions being ‘called in’ (call-in should be regarded as an important test of the legitimacy of ‘holding to account’ rather than a ‘problem’)
  - v there were several examples of productive policy reviews (contributing to policy development), most of them, carried out in ‘task and finish’ mode
  - v cabinet members were questioned (usually in a civilised manner; sometimes less so) about proposals or performance data which concerned scrutiny committee members.
- 3.3 Our interviews also suggested that there was variation in the achievements of the different scrutiny committees, and a degree of frustration about their mode of operation; but this is by no means unusual. We have yet to find a problem-free overview-and-scrutiny system! It was also apparent that some members found the pre-2012 system more rewarding than the arrangements which have replaced it
- 3.4 Although it has never been the practice in Cheshire East to share the chairs of scrutiny committees with opposition members, there has been readiness to allow opposition members to hold some vice-chairs, a practice which has continued in the post-2012 scrutiny committees. Some degree of sharing of positions of responsibility with opposition members in the overview and scrutiny arrangements is widely regarded as conducive to effective scrutiny and hence ‘good practice’.
- 3.5 In the new system introduced in 2012, the role of ‘holding to account’ (scrutiny) has undoubtedly been weakened. In addition to the Health and Well-Being and Community Safety Scrutiny Committees (which are by statute required in some form), there is now only one other organisational mechanism for scrutinising the whole range of council activities. Our impression is that much of the time of Corporate Scrutiny is taken up in reviewing performance and financial information

across this range of services (whether internally- or externally- delivered). Valuable though this process is, it leaves inadequate scope for the in-depth scrutiny of other features of council activity (including pre-decision scrutiny and policy review, assuming these are not seen as PDG tasks). Compared with most authorities, the scope for scrutiny as a ‘holding to account’ mechanism is limited in Cheshire East – not a healthy situation in terms of transparency and accountability.

3.6 Not only had the cabinet members we interviewed little or no experience of being summoned to Corporate Scrutiny (as opposed to regular attendance at the performance review sessions), but call-in too has become increasingly rare, despite the accessible criterion for initiating a call-in procedure (8 members, irrespective of party).

3.7 Although the Health and Well-Being Scrutiny Committee has had to grapple with the complex organisational changes in the NHS over the past 18 months, in particular the move to Clinical Commissioning Groups, it has managed to undertake some ‘holding to account’ work (notably on response times in the North West Ambulance Service) as well as some valuable joint activities with the health representatives. The Community Safety Scrutiny Committee has imaginatively operated in ‘Select Committee’ mode, and has on occasions proved influential. It has however found it difficult to persuade the Cheshire Constabulary that the Committee is an appropriate venue for it to be scrutinised. The view was expressed that the Committee would benefit from a widening of its’ terms of reference to include other external partnership-related activities.

3.8 As was the case with the PDGs, our overall conclusion would be that although valuable work has been done in the three Scrutiny Committees, they have not always proved effective in their key task of ‘holding to account’, nor have they inspired commitment in some of their membership.

## **4 The implications of the ‘Commissioning Council’ model**

- 4.1 Cheshire East has recently designated itself as a ‘Commissioning Council’, and, as part of the strategy which underpins this self-designation, is in the process of establishing a series of alternative service delivery vehicles (ASDVs) or ‘wholly-owned companies’ (WOCs). These proposals have been recently set out in the report ‘‘Best Fit’ to be resident first’ (February 2014) and elaborated in further reports (‘Cheshire East Ltd – Group Structure and Governance Arrangements’ and ‘ASDV Scrutiny Governance and Stewardship’ both March 2014).
- 4.2 There is a widespread recognition (which we endorse) that there needs to be a robust form of scrutiny mechanism for ‘holding to account’ the five WOCs already in the pipeline, and any further WOCs (or other forms of ASDV) which may be set up subsequently. A proposal has already been made for the establishment of one or more cross-party commissions with scrutiny-like powers. Amongst the functions that these commissions will be expected to carry out are ‘assistance in policy development’ and ‘scrutinising performance’. In principle there would also be scope, if desired, for these commissions to be consulted in relation to ‘choice of service delivery vehicle’ (for ASDVs considered in the future) and the ‘commissioning process’ (e.g. the outcomes sought in the contract which form the basis of the commission, which is in a sense an extension of the policy development role).
- 4.3 In the next section – A Fit-for Purpose Overview and Scrutiny System for Cheshire East- we seek to combine our understanding of the strengths and weaknesses of the council’s current system (5 PDGs and 3 scrutiny committees) with what we see as the best way of dealing with the scrutiny implications of the move towards WOCs and ASDVs (which is likely to gather momentum in the next few years), taking into account the thinking on this issue that has already taken place within Cheshire East. There is little in the way of precedents from other authorities to draw upon here, as few if any councils have moved in this specific direction. How the ‘Commissioning Council’ would work in practice, including how it could best be supported and held

to account by a wider group of members would be an area for the Commission to continue to develop.

## **5 Towards a ‘fit for purpose’ overview and scrutiny system**

5.1 There have been various attempts to establish ‘principles of good scrutiny’. The best known are those set out in the Centre for Public Scrutiny’s ‘Good Scrutiny Guide’ (CfPR 2004):

- ✓ to provide ‘critical friend’ challenge to executives, as well as external authorities and agencies (holding to account)
- ✓ to reflect the voice and concerns of the public and its communities (engaging the public as active citizens)
- ✓ to take the lead and own the scrutiny process on behalf of the public (facilitation of community leadership and effective representation)
- ✓ to make an impact on the delivery of public services (performance/quality assurance)

5.2 Although this list is admirable, it does not make specific reference to the benefits scrutiny can generate in terms of supporting the work of the executive, notably in relation to kind of policy development work which Cheshire East had in mind when it introduced the PDGs. It is appropriate, therefore, in our view to add a fifth principle, viz:

- ✓ to support the cabinet in the process of developing and reviewing council policy

These principles will be used in evaluating the potential benefits of our recommendations.

5.3 Our proposals, set out below, are also intended to

- ✓ provide a powerful mechanism for holding the WOCs and ASDVs to account
- ✓ incorporate into the new arrangements the ethos of the ‘Commissioning Council’ across the whole range of council responsibilities.
- ✓ provide ample scope for non-executive council members to be involved
- ✓ maximise opportunities to ‘add value’

- ✓ embody a sense of fairness in relation to the involvement of the different party groups

5.4 There are four changes which can contribute to effective overview and scrutiny:

- ✓ changes in structure
- ✓ changes in processes and procedures
- ✓ changes in support mechanisms
- ✓ changes in attitudes and behaviour

5.5 Of these, the most important is arguably the fourth; changes in attitude and behaviour. Indeed changes in structure and processes which have potential benefit can often fail to realise that potential of the political/organisational culture of a council acts as a barrier.

## **Structural changes**

5.6 If it were not for the major changes in the way Cheshire East sees its role, and in particular the move towards a Commissioning Council (including ASDVs, WOCs etc), we would be inclined to recommend only limited changes of structure. Most overview and scrutiny structures can be made to work, if the political and managerial commitment is there. The PDGs in Cheshire East have been patchy in achieving the objectives set for them, but they have only been in operation for 15 months and if their role was clarified and the processes for carrying out policy development strengthened, there is no reason to suppose that they could not deliver what it was hoped they would deliver. Similarly, with some structural adjustments, the effectiveness of the current Scrutiny Committees could be significantly enhanced.

5.7 But because of the introduction of its WOCs, and the (totally justified) recognition on the part of the council that there will need to be some scrutiny mechanism introduced to strengthen their accountability and ensure a wider involvement of council members in their operations, a more fundamental structured review is

necessary, not least because it is envisaged that the proposed Commissions will have both a policy development **and** a Scrutiny role

5.8 Let us consider the structural options. In principle there are two.

- (1) The introduction of one (or more) Commission as envisaged in the 'Best Fit' report, to deal with the unique circumstances of the five WOCs, but otherwise to make only minor amendments to the existing structure.
- (2) The re-shaping of the overview and scrutiny arrangements on an authority-wide basis in the form of number of Policy and Performance Commissions which would operate both a scrutiny and policy development role for the whole range of council responsibilities.

5.9 The main problem with the first option (although it has its attractions) is that it would be incompatible with the (almost certain) extension of the number of services provided by ASDVs, WOCs etc. The vision underpinning 'The Commissioning Council' indicates that, in time, the majority of council services are likely to be provided by an arms-length mechanism, be it a WOC, a private or voluntary sector contractor or a partnership organisation. In these circumstances, there would be a cumulative increase in the number of Commissions to scrutinise the growing number of WOCs etc. The retention of the existing structure would in these circumstances be unsustainable.

5.10 The main advantage of the second option is that it embodies a flexibility which the first option lacks. Although it would be possible to designate, at this stage, a single Commission to cover the five WOCs which are soon to be created, it has to be said that they cover a disparate set of activities (Transport, Bereavement, Tatton Hall etc). If an authority-wide set of Commissions were to be introduced, then each WOC could be allocated to a Commission which also covered a related set of council activities not organised in this way. There would then be a much clearer focus to the activities of each Commission, resulting in a better opportunity for members to follow up their particular areas of interest.

5.11 What would be lost if Cheshire East were to adopt a scrutiny structure of this nature? Well if, as suggested above, the role of policy development were to be

transferred to the Commissions, there would be no need to retain the PDGs. But there is no reason why the type of work carried out by PDGs (with varying degrees of success) should not be undertaken, where appropriate, in this new environment. So long as there was a mechanism for a portfolio holder to commission a piece of policy development work from the relevant Commission (which was intended to be the main way in which PDGs would operate) then this important facility would be retained. What might be needed would be a ‘fall-back’ position for the portfolio holder, if the Commission concerned chose not to agree to the proposal (which, as an independent piece of organisational machinery, would be within its rights).

5.12 If the council wished to retain a discrete policy development role on a more formal basis, it would be perfectly viable to establish a single policy development group (or panel) specifically to undertake commissions of this nature from cabinet members. It would be beneficial if it carried out all such commissions on a ‘task and finish’ basis (or, where appropriate, by means of a ‘spotlight review’ – see below). The panel should have the power to co-opt any member of the council to participate in a commission, depending on members’ particular policy interests.

5.13 There are a range of different possibilities regarding the number and subject matter of the proposed Commission. We consider that five such Commissions would provide an adequate opportunity for topic specialism, without proving an over-elaborate piece of organisational machinery. One option would be Commissions with responsibility for:

- ✓ Health and Adult Social Care
- ✓ Children and Families
- ✓ Environment and Transport
- ✓ Community well-being (including Community Safety)
- ✓ Economic Development

But a better alternative might be to define the responsibilities of the five Commissions to reflect the council’s five strategic priorities (see Section 6 below).

5.14 If a model such as the above is adopted, there would be less need for a Corporate Scrutiny Committee per se. In our view it would be preferable to reinstate an overarching piece of machinery called a Cheshire East Policy and Performance

Commission (or some such title). The argument for such a device is rehearsed in a recent Centre for Public Scrutiny publication.\*

‘There is value in a situation where the key overview and scrutiny players operate in a collective fashion (whilst leaving a good deal of choice for individual committees or panels). A mechanism for this nature provides a degree of parity with the executive, which of course meets regularly on a collective basis. It strengthens the ability of overview and scrutiny chairs to negotiate with the executive over work programme items’.

- 5.15 A list of suggested responsibilities for the Scrutiny Co-ordination Committee is set out in Section 6 below. But there is no reason why, in addition, it cannot undertake any aspects of overview and scrutiny which transcend the briefs individual Commissions (e.g. budget review) or which do not fit logically into the work programmes of any of the Commissions.
- 5.16 One of the main sources of tension in the operation of overview and scrutiny has always been the intrusion of party politics, either as a source of disruption in scrutiny committees engendered by opportunistic points-scoring on the part of the opposition, or alternatively by a sense on the part of opposition groups that they have been excluded or marginalised because there has been no (or very little) sharing of chairs and/or vice-chairs.
- 5.17 Cheshire East has been dominated by one party ever since its inception, and currently 50 of its 82 members (or 61%) belong to the Conservative Party. The Conservatives have been prepared to allocate some vice-chairs of PDGs and Scrutiny Committees (pre-and post-2012) to opposition members, but not, as yet, any chairs. The sharing of chairs amongst all represented groups is widely regarded as ‘good practice’ and conducive to effective scrutiny. Ultimately it is a matter of political judgement as to how far along this route (if at all) it is appropriate to go, given the political culture and tradition of the authority.

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\* Party Politics and Scrutiny in Local Government; Clearing the Hurdles. Steve Leach CfPS, 2009



5.18 At the very least, the practice of having an opposition vice-chair of all Scrutiny Committees or Commissions should be continued. The vice-chair of the Scrutiny Co-ordinating Committee should ideally be a high profile member of the main opposition party. Over the next two or three years, if the majority group were prepared to allocate the chair of one or two of the Commissions to an opposition member, then that would certainly strengthen the perceived inclusiveness of the arrangements. Such a move should be accompanied by an agreed behavioural protocol, this would hopefully minimise the chances of disruptive politically-motivated behaviour. If such behaviour did occur, the majority party could of course reverse its decision.

## **Changes in process**

### **Call-in**

5.19 Changes in process are just as important as changes in structure in contributing to effective scrutiny: probably more so set out below are a number of changes in process which in our view would be likely to improve the effectiveness of overview and scrutiny in Cheshire East.

5.20 The conditions for call-in in Cheshire East are relatively open (any eight members) which is healthy in democratic terms (in some authorities it is impossible for opposition groups to invoke a call-in without the support of majority party members), five or six members would be a more typical requisite number. However call-in in Cheshire East would benefit from a requirement that reasons should be given for requesting a call-in. The following criteria are typically seen as ‘good practice’:

- ✓ decision is outside the policy/budgetary framework
- ✓ inadequate consultation relating to the decision
- ✓ relevant information not considered
- ✓ viable alternatives not considered
- ✓ justification for the decision open to challenge on the basis of the evidence considered

- 5.21 It is suggested that the council's monitoring officer should assess whether a call-in is justified on any of these grounds, with the 'benefit of doubt' being given to those submitting the request.
- 5.22 Whilst call-in would continue to be relevant to cabinet decisions as such, it could not be used in relation to decisions made by one of the WOCs, or indeed any of the ASDVs. A more informal opportunity for discussion would have to be deployed in these circumstances.

### Mode of operation

- 5.23 One of the advantages of overview and scrutiny machinery, however labelled, is the flexibility in relation to modes of operation. Although in formal session such committees are required to be politically-balanced, and to meet in public, they have the option of establishing task-and-finish groups to undertake particular policy development or review projects, which can legitimately meet in private, and are not required to be politically-balanced. Some of the PDGs, and the pre-2012 Scrutiny Committees have already taken advantage of this opportunity, with some beneficial results. Alternatively, intensive one-day or half-day spotlight reviews can be undertaken, to establish whether or not an issue giving cause for concern merits a full-scale scrutiny review (a practice well-established in Nottingham). Scrutiny can also operate in 'select committee' mode, replicating the practice of the House of Commons Select Committees (an approach which has become well-established in the Community Safety Scrutiny Committee. It is also possible to co-opt representatives of private and voluntary sector organisations, community groups, and individual members of the public (e.g. those with a relevant expertise) on to scrutiny committees.
- 5.24. With some notable exceptions (see above) Cheshire East has rarely taken advantage of this flexibility in mode of operation. The PDGs and Scrutiny Committees we observed operated in a formal way, very similar to the experience of the pre-2000 committees, with little scope for productive interactive discussion (including 'blue-sky thinking'). The introduction, where appropriate, of the different alternatives set out in 5.22 above would enhance the effectiveness of overview and scrutiny in Cheshire East, and provide a more fulfilling experience for the members involved.

## Public Involvement

5.25. There are currently no co-optees on the Scrutiny Committees in Cheshire East, and indeed very little public involvement of any kind in their work. The council cannot be said to have implemented two of the key principles of ‘good scrutiny’, namely ‘to reflect the voice and concerns of the public and its’ communities’ and ‘to take the lead and own the scrutiny process on behalf of the public’ (see 5.1 above). For a council which prides itself on a ‘residents first’ approach, this is a missed opportunity. Because of its’ flexibility, overview and scrutiny provides scope for public involvement of various kinds in council affairs, which is rarely feasible in more formal settings (e.g. council meeting, cabinet or regulatory committee) There would thus be great advantage in opening-up the overview and scrutiny process to the public in the following ways, as appropriate to the task in hand.

Recommendation (15) sets out some possible ways forward.

## Widening the support for Scrutiny

5.26. To be effective, overview and scrutiny has to be evidence-based. One of the functions of a Scrutiny Support Unit is to provide relevant evidence to facilitate the work of the committees it serves, and to ensure that their recommendations are supported by the evidence set out. Cheshire East’s Scrutiny Support Unit was well-regarded by those we interviewed (and in a less austere financial climate an argument could be made for its enhancement). However support units cannot reasonably be expected to meet all the information needs involved by themselves. Some authorities have established funds to buy in expert advice when it is needed, but in the current financial climate that is probably not justifiable. But what is possible and desirable is to establish a series of ‘scrutiny link officers’ in each of the directorates (and indeed the WOCs, once these are established), part of whose job description would involve the requirement to provide the Scrutiny Support Unit with any information or professional/technical advice it needed to enable it to build up a proper evidence-based argument in any project which involved that particular directorate.

## Conclusion.

5.27. Many of the requisite attitudinal conditions for making overview and scrutiny more effective are present in Cheshire East. The leadership emphasised to us its’

commitment to openness and transparency in the way the council makes decisions and sets policy. It recognises the benefits in involving as many members as possible in both scrutiny and policy development. It is comfortable with its ability to deal with robust challenge in public settings, as an integral part of being ‘held to account’ There is an understandable concern about the potential dangers of openness (and the sharing of scrutiny chairs) being inappropriately exploited for political points –scoring. But these dangers exist in most authorities, and can be dealt with through a council agreed protocol (and/or by the agreement of appropriate guidelines within all party groups) which seeks to regulate opportunistic behaviour of this nature. With these safeguards, overview and scrutiny could and should develop in Cheshire East in a way which results in a sense of shared ownership of the process amongst all parties, underpinned by a recognition of the need for all parties to behave responsibly, if this sense of shared ownership is to prevail.

## **6 Summary of Recommendations**

- (1) The current structure of Scrutiny Committees and PDGs should be replaced by a cohort of five Policy and Performance Commissions, which combine the roles of policy development and review, performance monitoring, and ‘holding to account’ across the range of services within their purview.
- (2) That Cheshire East’s five strategic priorities should form the basis for the definition of the responsibilities of the five Commissions, viz:
  - ✓ Strong and Supportive LOCAL COMMUNITIES.
  - ✓ Strong and Resilient LOCAL ECONOMY
  - ✓ LIFE SKILLS AND EDUCATION that people need to thrive.
  - ✓ A GREEN AND SUSTAINABLE Cheshire East.
  - ✓ GOOD HEALTH AND LONGEVITY.

Note These would not necessarily be the titles given to the Commissions; that can be left to Cheshire East. We are rather indicating the subject matter which we think is appropriate.

- (3) The responsibility for overseeing the work of the WOCs, ASDVs, and other external service- providers should be allocated to the Commission in which they best fit, and that the various overview and scrutiny tasks require for these agencies should form part of the work programme of each Commission. (As the number and range of ASDVs increases, so the Commissions' work programmes will become increasingly dominated by overseeing their performance).
- (4) In relation to the WOCs, the Commissions should report to Cheshire East Residents First Ltd. In other cases the reporting link should be to the cabinet or the relevant external body.
- (5) As Cheshire East introduces further ASDVs, there are four stages at which the Commissions should become involved: policy development: choice of delivery vehicle; specification of outputs required from contract; and performance monitoring.
- (6) For existing WOCs and other ASDVs, policy development and performance monitoring would be the main priorities, plus output specification if the contract is being re-considered.
- (7) The five Commissions should be identified as the council's overview and scrutiny arrangements, to comply with the Local Government Act 2000, and would hence need to be politically-balanced. But they should operate in the distinctive and wide-ranging ways set out above.
- (8) The policy development work previously undertaken by the PDGs should now become one of the responsibilities of the five Commissions. Task-and-finish groups, meeting in private, should normally be used to carry out such work. Their reports should be presented at public meetings of the relevant Commissions.
- (9) If the cabinet wished to retain a policy development facility to ensure that work of this nature that it wished to have done by a small group of interested members could be carried out, then there would be no problem about establishing a single PDG for

this purpose. It would operate solely on the basis of cabinet-commissioned projects, and would normally operate on a task-and-finish basis.

- (10) There should also be established an overarching Cheshire East Corporate Policy and Performance Commission. This body should include the chair and vice-chair of each of the five thematic Commissions, plus additional members needed to secure political balance. Its main functions should be as follows:
- ✓ Scrutinising the Council's corporate core
  - ✓ Ensuring that the five Commissions operated in a coherent and integrated manner (but leaving as much choice as possible to the individual Commissions)
  - ✓ Acting as an informal discussion forum with the cabinet regarding the Commissions' work programmes and priorities.
  - ✓ Undertaking (typically using the task-and-finish model) pieces of work which did not fall within the remit of any of the five thematic Commissions, but which the Cheshire East Commission felt it important to undertake.
- (11) The responsibilities of the existing Community Safety Scrutiny Committee and the Health and Well-being Scrutiny Committee should be included in the remits of the Commissions dealing with Communities and Health respectively. Those responsibilities of the existing Corporate Scrutiny Committee should be allocated to the five thematic Commissions, and to the Cheshire East Policy and Performance Commission as appropriate.
- (12) The chair and vice-chair of each Commission should be held by councillors from different political parties. In the medium-term, it would be advantageous if the Council were to move to a position where there was some sharing of Commission chairs with opposition parties, provided an appropriate behavioural protocol could be agreed.
- (13) The number of members required to call in a cabinet decision should be reduced to six. However the call-in process in Cheshire East must benefit from a requirement that a valid reason should be given for invoking the call-in procedure (see 5.19 above for a suggested list of criteria). The monitoring officer should be the arbiter if

the justification for the call-in is disputed.(The call-in procedure cannot be used in relation to decisions made by WOCs or other ASDVs).

- (14) The Commissions should make full use of the range of modes of operation available to them: ‘select committee’ procedures: task-and finish groups: spotlight reviews; public hearings etc. Formal committee settings should be used only when appropriate to the task, and ‘items for information’ should only be included when there is a demonstrable case for doing so. The Member Training and Development Programme will need to reflect the new styles of working.
- (15) Options for extending the opportunities for public involvement in the work of the Commissions should be evaluated and, where appropriate, introduced. Possibilities include the use of co-optees, expert witnesses, and the taking of evidence from user groups and members of the public as part of a policy review.
- (16) The existing criteria used in deciding whether a particular topic justifies an in-depth review (as set out in the Scrutiny Tool-kit) should be retained and applied systematically, when developing work programmes for the proposed Commissions.
- (17) The work of the Scrutiny Support Unit should be supported and strengthened by the introduction of a system of ‘scrutiny link officers’ in each council service area (and, when established, each WOC), part of whose job description would be to provide the Scrutiny Support Unit with any information or professional advice needed as part of a properly-constituted review.