

**Written evidence submitted to the Communities and Local Government Inquiry on
Overview and Scrutiny in Local Government**

**By
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9th March 2017**

I welcome this opportunity to submit written evidence to the Communities and Local Government Inquiry on Overview and Scrutiny in Local Government. This reply draws on my personal senior level experience and recent published academic work on financial sustainability, accountability and transparency in central and local government.

Overall, the main focus of my response concerns *'Who is there to speak truth to power? - Local Accountability Arrangements for Public Money in a Post-Brexit World'*. The scope of the response is confined to England, and it should be noted that there are some important differences in arrangements for other parts of the UK.

1. Introduction

Overview and scrutiny arrangements for local government in England cannot be looked at in isolation, but must be considered in the broader context of devolution and the historic Brexit negotiations.

In the expected context of Brexit where we are no longer automatically part of a protected EU market, there is an opportunity to rebalance the UK economy under a devolution agenda. This could provide a boost to the English regions in particular as *'Integrated and Sustainable Cities'*.

In rebalancing the UK economy, the regions must play a crucial role in Brexit and help make a success of it. Under an industrial strategy the regions can be drivers of economic growth. Lord Michael Heseltine's (2012) report 'no stone unturned' had already convinced government of the necessity to drive growth in the regions, but Brexit provides an external and unexpected shock that can fire a serious change. Indeed most of our main cities, with the exception of Hull, have their biggest trading partner in the EU and so stimulus in the regions to not only attempt and maintain EU markets but also to better develop world markets is a pressing issue (Bounds and Tighe, 2017). At the same time the regions can help to address issues for a fairer society and repair the bonds of social cohesion (Ferry, 2016a). The Prime Minister Theresa May has stated her absolute commitment to continuing the devolution revolution that began in 2010, but momentum has slowed (Hunter, 2017).

Following Brexit the public services must be given the powers and resources to support the industrial strategy across the diverse regions of the UK. As a result, the government itself will inevitably grow as roles currently carried out in the EU will now need to be undertaken here in the UK, and local government will become more intertwined in supporting economic growth (Ferry and Eckersley, 2017).

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Under these changes, new regional institutions and forms of accountability, overview and scrutiny will be necessary. Important questions have been raised around '*Who is there to speak truth to power?*' and '*What local arrangements should we have to oversee all these devolved funds?*' (Hillier, 2016a).

This response considers potential local accountability arrangements for public money. More specifically, it will discuss the desire for each area to have its own '*Local Public Accounts Committee*' (LPAC) for '*place based accountability*', and the issues involved. The take away messages of the response relate to how public accountability is not currently appropriate to assure Value for Money (VfM), and that LPACs can provide a '*strong*' means to address this situation in terms of not only looking at financial sustainability but also service performance. In addition, the local nature of these arrangements will help ensure governance is not merely about structures, but also the culture and context. The response sets out potential ways that LPACs could be implemented, and alternatives, including issues that should be considered in determining arrangements and implementation. The ultimate benefit to citizens is stronger accountability and scrutiny of public expenditure and revenue raising assuring VfM for taxpayer pounds. Furthermore, it seeks to ensure increased devolved funding and risks around Brexit can be managed at the local level for both economic growth and social cohesion.

The response therefore sets out the background to overview and scrutiny arrangements, main models of overview and scrutiny, and ten key points.

2. Background to Overview and Scrutiny Arrangements

Traditionally, all local authorities in the UK employed a '*committee system*' to make decisions, which involved meetings of the full council and/or committees managing one or more council services or departments.

The Local Government Act 2000 replaced the committee system for English (and Welsh) local authorities with '*overview and scrutiny*' arrangements. This meant adopting political management systems with a separate executive as a way of countering increasing decision-making powers of leaders and Cabinets or directly elected mayors. Department for Communities and Local Government (DCLG) (2001) guidance suggested all local authorities (except smallest) have more than one overview and scrutiny committee, which meet regularly.

Since then overview and scrutiny arrangements have been subject of much criticism. Many councillors perceived they had less decision making involvement relative to the committee system, and the government was now more interested in the executive role than an overview and scrutiny checking and reviewing function. In contrast it was suggested obstacles to scrutiny may come from both senior officers and members, arising not necessarily from overt political behaviour but culture (Centre for Public Scrutiny (CfPS), 2015a).

Also whilst overview and scrutiny committees can hold inquiries, produce reports and require council executive members and officers to appear before them, individuals from outside the council can be invited but not compelled to attend. Overview and scrutiny reports must receive a response from council executive within two months, but cannot oblige executive, council or external bodies to act upon their findings. Each authority must appoint at least one scrutiny officer, but Local Government Act 2000 made no provision for dedicated staff and financial resources for overview and scrutiny role and the scrutiny officer does not even need

to be a dedicated post, and may be combined with other responsibilities. For example with regards to capacity a CfPS annual survey found average number of FTE officer posts for municipal year 2014/15 was 1.87 that was above the predicted average, but in contrast for the eighth year running the dedicated average scrutiny budget fell to merely £3,277 for 2014/15 (CfPS, 2015b).

In addition there are issues of political balance, role with partners and separation of the role of councillors. For example, the political balance of the local authority does not have to be taken into account when allocating chairs of overview and scrutiny committees in England. It is therefore unsurprising a CfPS survey found in 65% of respondent councils all scrutiny chair positions were held by majority party (CfPS, 2015c). In terms of partners, in England the Secretary of State can make regulations obliging provision of information to an overview and scrutiny committee by a relevant partner authority that may also be required to have regard to a report by the committee, which accords with powers around community strategies under Local Government and Public Involvement in Health Act 2007. With regards to separation on the role of councillors there have been past proposals for executive members to sit on overview and scrutiny committees during external scrutiny. However, whilst raised, this proposal has not got through House of Commons and was criticised by CfPS (2009) who suggest the Local Government Act 2000 established a clear separation of roles for councillors and should not be blurred in that there should not be direct involvement of executive councillors in scrutiny process, other than providing information and evidence as part of scrutiny reviews and responding to recommendations.

Furthermore there have been many challenges to robustness of arrangements, especially following high profile cases. Recently these cases have unfortunately included the need for government intervention in local authorities following governance failings in Tower Hamlets and child sexual exploitation in Rotherham (CLG Select Committee Report, 2016), where culture was also a paramount consideration (Ferry, 2016b, 2016c). Earlier challenges have also been in other parts of the public service such as high mortality rates at Mid Staffordshire NHS Foundation Trust (Commons Select Committee, 2013).

To combat criticisms there have been ways put forward to strengthen the overview and scrutiny committees. For example, Wilson and Game (2011) state three conditions. Firstly, new skills to draw out evidence from witnesses and understand financial and performance data. Secondly, councillors have to learn how to work together across party divides. Thirdly, a dedicated officer and resource support are deemed crucial.

For England (the focus of this response), the main provisions can now be found in schedule 2 of the Localism Act 2011. This mostly consolidated previously existing law, which built on the original legislation for overview and scrutiny in the Local Government Act 2000.

Importantly the Localism Act 2011 made it possible for all councils to adopt a committee system of governance (from only district councils in England and Wales with a population of less than 85,000 under the Local Government Act 2000), and as a result some councils have re-adopted the committee system.

Following the Localism Act 2011 a number of fundamental changes took place. In particular, the Audit Commission abolition and scrapping of centralised performance management systems means there are currently limited institutional arrangements for assessing local VfM (Ferry, Eckersley and Zakaria, 2015). Sector Led Improvement regimes have merits as well

as weaknesses dependent upon context and policy priorities, just like centralised performance management regimes (Bennett, Allen, Grace, and Martin, 2014; Downe, Martin, and Doring, 2014; Ferry, Eckersley and Zakaria, 2015; Local Government Association (LGA), 2015; Murphy and Jones, 2016), but it is arguable that there should be greater emphasis on more appropriate levels of public assurance than is currently the case (Ferry and Murphy, 2015, 2017; Murphy and Jones, 2016). The focus has been financial conformance rather than operational performance (Ferry and Eckersley, 2015). Central government relies on the system of local accountability for assurance over the VfM of funding it gives local authorities. The DCLG's core principles state that local authorities' prime accountability is to their local electorate, and that local councillors are best placed to decide what is VfM locally (Ferry and Murphy, 2015a, 2015b).

To complicate matters further the public service accountability landscape has become more diverse with decentralisation leading to creation of combined authorities that are required to establish overview and scrutiny committees by the Cities and Local Government Devolution Act 2016. However, scrutiny systems established by combined authorities have struggled for relevance and effectiveness, and not engaged consistently with local scrutiny with a risk scrutiny is perceived as a bolt-on to governance than an integral element (CfPS, 2016b).

Devolution however has begun to stall, and Hunter (2017) at the Institute for Public Policy Research (IPPR) in looking at how to re-boot devolution highlights the importance of geography in terms of what is the right scale for devolution, and the importance of a shared sense of place and history to ground the devolution. This points to the importance of context, culture and emotions inherent in the historical and geographical underpinnings of contemporary practices of accounting and accountability arrangements (Ahrens and Ferry, 2015, 2016; Ferry, Coombs and Eckersley, 2017). Indeed, similar evidence from previous local government reorganisation again directs the attention of how local identities and the way people carry out their lives must be reflected in administrative boundaries (Swann, 2016). Existing institutions and a common sense of belonging are therefore important for a devolution area to provide that bond for partnership working and the public imagination. To date, disagreements over governance have complicated negotiations, with proposals about the suitability of government's preferred structural model (a combined authority with directly elected mayor) for the local area not been met with open arms. Plans for managing the new arrangements for those areas involved with Mayoral elections in 2017 highlights the requirement for collaborative working and the importance of scrutiny in managing governance uncertainty of collaborative decision-making could be achieved through LPACs (CfPS, 2016b).

Hunter (2017) further identifies four stages for development of devolution deals to achieve a more successful approach with some elements already in place, including the open-ended cities and local government devolution bill, ability for local areas to develop a proposal for their context, and acceptance devolution will be asymmetrical. Nevertheless, he also suggests the Government's approach to devolution requires clarity of purpose, process and timescale for devolution deal-making, and a willingness for greater decentralisation.

Whatever the situation with the development of devolution, given that the trajectory is for services to be increasingly devolved to local areas there are concerns of a gap in VfM scrutiny (Ferry and Murphy, 2017). For example MP Meg Hillier (2016b), Chair of the national Public Accounts Committee (PAC), recently highlighted in October 2016 that select committees and local government scrutiny similarly face problems of scrutinising against the

context of public spending cuts, increased demand and Brexit. She thereby called for a '*whole system view*' of how to continue effectively scrutinising public services spend. In particular, she stated that given more devolution it was necessary for the PAC to consider where accountability rests regarding devolution. She also suggested parliament, local government and the public must be absolutely assured devolved spending was subject to effective scrutiny and there were clear lines of accountability for delivering VfM. In addition, she advocated that new governance and scrutiny arrangements arising from devolution must complement and not further complicate what already exists. Whilst all of this is imminently sensible, it could even be taken further as consideration may need to be given to a complete overhaul of the funding, accountability and scrutiny arrangements to take account of the implications of devolution and Brexit rather than attempting to complement the existing arrangements which arguably no longer appear fit for purpose (Ferry, 2016; Ferry and Murphy, 2017).

With the abolition of the Audit Commission, the National Audit Office has become the main professional body examining public expenditure to ensure VfM, but while they look at sector-wide issues they cannot assess whether individual local authorities are achieving VfM (Ferry and Murphy, 2015a, 2015b, 2017; NAO, 2014).

MP Meg Hillier (2016a) recently highlighted in December 2016 that this raises a significant issue of who is there to speak truth to power? Public value is best determined by citizens and their local representatives, but if so what local arrangements should we have to oversee all these devolved funds. Should each area have its own LPAC for example?

3. Overview and Scrutiny Models

Over recent years several overview and scrutiny governance models have emerged, ranging from the '*LPAC*' model at one end of the spectrum to the traditional model at the opposite (CfPS, 2016a).

In 2008 the New Labour Government published a White Paper entitled *Communities in Control*, and following announcements it was clear there was an ambition to raise the profile of local government overview and scrutiny committees to something similar to the select committees system at national level and for broader powers so they could get information from partners (DCLG, 2008), but the Bill did not pass into law.

Nevertheless, following the Localism Act 2011 much debate concerned devolution of power and funding to local government and place-based joint working arrangements.

The CfPS (2013, 2015a, 2016a) proposed the creation of a powerful and independent LPAC for every place, which had a number of benefits for place based accountability. A LPAC would mean a move from merely 'tiers' to 'spheres' of accountability (Crowe, 2015). Operationally it would be similar to the national PAC for scrutinising public expenditure. However, responsibility would come from local partner agreement and/or legislative powers for place based scrutiny examining public value, spending and revenue-raising in a given area to hold to account their officers, elected members and contractors. The LPAC's principal focus would be the VfM achieved by combined spending of public money in the local area, with emphasis on assessing whether planned outcomes are being achieved through partnership working and pooled or joint budgets agreed under place based finance arrangements.

Potential benefits included reassuring central government devolved finance would be properly scrutinised and accounted for, stronger accountability for partnerships with a single and visible place for the public to find out how money was spent and challenge outcomes, and more opportunities for public engagement as publication of expenditure over a set limit (Originally £500) tells you what money was spent but not the outcome and VfM that requires context and analytical understanding. Benefits also included an ability for the LPAC to be able to refer matters up to the national PAC and NAO if systemic or national issues emerge or for them to draw on local evidence and vice versa as part of horizontal information sharing, especially around systemic and/or national issues that may emerge. In addition, local governance and accountability could be streamlined across partnership working, and there could be added value from external audit procurement by getting them to support LPACs in corporate governance and provide VfM analysis. Furthermore, there is a potential to link governance and financial accountability of partnership arrangements more closely (CfPS, 2013).

Power of a LPAC had three main considerations. Firstly, right of access to any papers / information held by anybody involved in delivering public services with representatives to attend meetings as required to give evidence, (Those covered by this right would mirror the FOI Act definition around 'delivering functions of a public nature'). Secondly, 'enter and view' power over any organisation delivering publicly funded services, (using the same definition) - a right to access real-time management information, managers and service users. Thirdly, power on the basis of the evidence to make recommendations to which the commissioner / provider would be obliged to respond with acceptance of the recommendations and an action plan or if not accepted giving reasons why not. The LPAC would have the right to refer any refusal to implement a recommendation they regard as crucial for good governance and VfM to the national PAC for determination or further investigation.

It is considered LPACs could cover areas of combined authorities or upper-tier authorities, have a separate legal personality, and be funded by a precept to cover staffing costs. A councillor would chair the LPAC, and a majority of members would be councillors, with others drawn from non-executives from relevant partner bodies, with possibly members of the public. CfPs (2013) suggested that MP's could play a role within the LPAC's. The establishment of overview and scrutiny committees by combined authorities has since become a requirement of the Cities and Local Government Devolution Act 2016, consisting of a majority of non-executive councillors from member councils of the combined authority and it must appoint at least one scrutiny officer. Members of the combined authority cannot sit on the committee. The committee will have power to compel members and officers of the combined authority to attend meetings and answer questions, including the elected mayor if there is one. In these cases a framework may already be in place that a LPAC could build upon.

However, the LPAC may not have the expertise to call upon as austerity has fundamentally challenged governance relationships by resulting in the loss of performance management information that could be benchmarked between councils, national studies such as those the Audit Commission carried out and research capacity at the DCLG. This has not been replaced by informal arrangements (Ferry and Murphy, 2015a, 2015b). Following the first wave of city deals, Meg Hillier (2015) expressed her disappointment that there is no effective mechanism for comparing results in different cities, nor to scrutinise knock-on effects projects in one area might have elsewhere.

LPACs would therefore need to establish professional support through use of auditors and other powers, as highlighted by the CfPS. As mentioned, these include being able to request people and papers from any institution spending public funds, the ability to refer matters to parliament where systemic risks are identified and the power to enter premises for evidence gathering.

Universities could also partly step in to breach this gap, although they would certainly not be a panacea for a professionalised audit service. Nevertheless, universities are now required by the Research Excellence Framework, the system for assessing the quality of research in higher education institutions, to produce case studies demonstrating their impact beyond their ivory towers, and researching the VfM that councils present and reporting findings to say LPACs could help provide these impact case studies.

In addition, it has been suggested that central government seems to have inconsistent expectations around geography, and of the sense of scale required for a deal to be viable (CfPS, 2016a).

At the opposite end of the spectrum is the traditional overview and scrutiny committee model. Here, a committee meets bi-monthly or quarterly, discussing officer reports and updating on areas of interest. This model risks giving a perception of scrutiny without any real substance and action. However, the biggest concern is that this model is cheaper and given the current financial challenges it may see the path of least resistance between partners.

In between these there are single and multiple overview and scrutiny committee models. The single model places the combined authority at the centre. This combined authority may co-ordinate and commission work for councils to deliver, bring together separate scrutiny activity by councils through a joint committee, and commission short time limited reviews of combined authority business. This model, however, raises concerns around sovereignty and subsidiarity, and resource issues challenge the viability of traditional in-depth tasks. The multiple model has more than one overview and scrutiny committee at combined authority level, which mirrors local council arrangements. This overcomes concerns a single committee will not adequately scrutinise the broad spread of combined authority business, but at the same time it will be much more resource intensive and may even be unnecessary if the focus of the combined authority is as a strategic entity.

While the LPAC model has much to commend it, this would be more expensive to operate and a balance would have to be struck. Structures are important because they can encourage people to behave in certain ways, but there is no exact one-size-fits-all model for scrutiny and governance.

It is therefore also crucially important that structures are adaptable enough to take account of the '*culture*' of each place with regards to budgetary stewardship, performance improvement, transformation or governance concerns at different times and the '*context*' surrounding capacity, capability and other issues (Ahrens and Ferry, 2015, 2016). Indeed whilst local responsibility needs an overhaul, there is also a need to overhaul the funding arrangements for local government and detailed rules surrounding the use of funds that determines much of the power in central and local government relations (Ferry, Eckersley and van Dooren, 2015; Ferry, Coombs and Eckersley, 2017). Otherwise the whole process could be doomed to

failure – A message the Layfield Committee alluded to over four decades ago (Johnstone, 2016).

It is with regard to governance and scrutiny of local government that research suggests local accountability will play a crucial part not only due to Brexit and the industrial strategy but increased devolved funding and revenue raising powers, increased privatisation of services and funding pressures (Ferry, 2017a, 2017b; Ferry and Eckersley, 2017).

4. Ten Key Points

With regards to public accountability in general, and more specifically overview and scrutiny, the following '*ten key points*' summarise the arguments being put forward in this response:

- 1) Since 2010 in general the levels of both accountability and scrutiny have reduced significantly.
- 2) The robustness of the hierarchical system of accountability has been weakened due to various factors. This includes the Audit Commission being abolished and centralised performance management system scrapped. The NAO took on financial conformance audit responsibilities and oversee local government VfM in general reporting to the PAC, but can't assure individual local authority VfM. In addition, the levels of devolved funding have increased with localism, service delivery has fragmented and outsourcing extended significantly making it more challenging for providing an assurance through a hierarchical system.
- 3) Public accountability arrangements in local government are not appropriate to assure VfM, and have instead focussed on ensuring the statutory imperative for a balanced budget. This focus on cost management has meant a systemic risk to certain services. For example the challenges in adult services in local government, and implications for the NHS services and budget that has no statutory requirement to be balanced, were visibly signposted as risks before they materialised.
- 4) Within the broader framework of accountability, scrutiny committees are the Cinderella service that will not go to the ball. It is not seen as glamorous and councillors do not line up to serve on such committees. They have very limited resources i.e. funding and expertise. In addition, they have limited power to get people to come along to provide evidence and no power to make them change things. These problems are compounded regarding those people from outside their organisation, i.e. private sector contractors, who can evade relative levels of scrutiny.
- 5) A potential solution is that each area could have its own LPAC for 'place based accountability'. There would be a move from 'tiers' to 'spheres' of accountability. The emphasis would be on place based accountability rather than hierarchical levels of accountability per se, although there would still be an inherent capability to trace a pound of taxpayers' money on a hierarchical basis with an ability to request downwards information and report systemic risks upwards through the system, and for LPACs to request national information for say benchmarking purposes. Whilst obviously not Comprehensive Area Assessment (CAA) as a formal audited performance management framework, this nonetheless resonates with area assessment mechanisms.
- 6) LPACs cannot merely look at financial sustainability but also service performance.
- 7) The local nature of these arrangements will help ensure governance is not merely about structures, but also the culture and context.
- 8) Ultimate benefit to citizens is for a stronger accountability and scrutiny of public expenditure and revenue raising assuring VfM for taxpayer pounds.

9) It seeks to ensure that the risks from more devolved funding and Brexit can be managed at the local level for both economic growth and social cohesion.

10) The problem is however that even if LPACs are supported with expertise and funding they will still need wide ranging powers concerning access, enter and view, and to use the evidence to make recommendations that could be politically difficult to bestow upon them and make operational.

5. Summary

In summary, the current landscape for public service accountability is not fit for purpose and especially given devolved funding and implications of Brexit.

Overview and scrutiny committees therefore need bolstered, and/or consideration given to a new system embracing a whole system view.

LPACs afford a means of 'place based accountability' that is attractive, but they would need proper powers and resources if they were also not to become a Cinderella service like existing overview and scrutiny arrangements.

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