

Democratic renewal:
Overview and Scrutiny
**Leicestershire County
Council**

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DISTRICT AUDIT

Reference:	lcc15 democratic renewal - overview & scrutiny 01-02 - Draft
Date:	22 October 2003 SW/SJ

Introduction and background

The importance of the introduction of effective overview and scrutiny arrangements by local authorities is increasingly evident. Parts two and three of the Local Government Act 2000 (the Act) set out the requirements for a clearly identified scrutiny function to hold the Executive to account. The local government white paper published in December 2001 – *Strong Local Leadership - Quality Public Services*, reinforces the importance of the overview and scrutiny function and promises to:

- ‘... continue to support local authorities in developing their approach to overview and scrutiny. We will clarify our statutory guidance to make clear our view that overview and scrutiny committees should:
 - focus on reviewing the actual outcomes that their council’s policies are achieving for local people in practice, as well as reviewing the policies themselves
 - search for innovative ways to improve the quality of services within best value
 - involve other stakeholders in their work
 - review the work of other local service providers’.

Scrutiny is proving to be the most challenging area for authorities in setting up new arrangements, requiring not just structural changes but also changes in culture – from a committee style of working to a proactive overview and scrutiny approach which takes tailored approaches to the review of topics and issues.

A further challenge for upper tier and unitary authorities is created by the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 which came into force on 1 January 2003. These regulations implement the power contained in the Health and Social Care Act 2001 for local authority overview and scrutiny committees to take an overview of health needs in their area and to scrutinise priority issues.

Leicestershire County Council has agreed a new constitution which sets out how the Council operates, how decisions are made and comprehensive guidance on a host of procedural arrangements. The Council has implemented a Leader with Cabinet structure and has set up a Scrutiny Commission which oversees the work of 5 scrutiny committees. The Council has made amendments to its structures for the Overview and Scrutiny function since its shadow Leader with Cabinet model was set up in 1999.

Scope and objectives

The aim of this piece of work is to help the Council continue to develop its arrangements for overview and scrutiny. Our review addressed a number of key questions.

- Is the role of overview and scrutiny clearly defined and in accordance with the guidance?
- Do current arrangements enable the overview and scrutiny function to focus on review of outcomes and on performance towards strategic objectives?
- Does the structure adopted help to maximise effectiveness?
- Does the way that meetings are run ensure that the intended purpose is fulfilled?
- Are the Council’s developing approaches to the new health scrutiny role effective?

Audit approach

Our approach comprised:

- **Review of documents:** including scrutiny commission and committee minutes, reports and supporting papers
- **Survey of members:** we wrote to all members asking for their views on the operation of overview and scrutiny to date
- **Observation of scrutiny Commission and committee meetings:** attended a sample of meetings, subject to the agreement of the chairs
- **Interviews with officers and members** to discuss their views on their roles and the strengths and weaknesses of the current arrangements.

We would like to thank all those who gave up their time to participate in the work.

Main conclusions

The Council has put in place some good arrangements for overview and scrutiny. Particular strengths include:

- good guidance notes on overview and scrutiny for members
- the development of a series of 5 member panels to undertake time limited pieces of scrutiny work in more informal settings
- good working relationships between members and officers supporting the overview and scrutiny function.

The Council has demonstrated a commitment to detailed consideration of the options for the operation of the overview and scrutiny function and to its regular review. We have identified a number of areas in which further improvements can be made. There is a need to enable overview and scrutiny committees to have greater flexibility in setting their work programmes and to enable committee members to take a more proactive role in overview and scrutiny work. We make a number of recommendations based on our findings. Key areas include:

- overview and scrutiny committees and 5 member panels need to ensure that the full range of approaches to scrutiny work as set out in the constitution and supporting guidance are considered and used in practice
- the Council needs to define the role of overview and scrutiny of external bodies as part of its work in developing its community leadership role
- greater emphasis needs to be placed on the involvement of external stakeholders and experts in scrutiny activity.

Our complete findings and recommendations are contained in the following section. The next stage will be to discuss and agree these with the Council.

Status of our reports to the Council

Our reports are prepared in the context of the Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission. Reports are prepared by appointed auditors and addressed to Members or officers. They are prepared for the sole use of the audited body, and no responsibility is taken by auditors to any Member or officer in their individual capacity, or to any third party.

Is the role of overview and scrutiny clearly defined and in accordance with the guidance?

1. Whilst the Act does not refer explicitly to the role of overview and scrutiny in policy formulation, the government clearly sees an important 'feedback loop' from scrutiny reviews into revisions of policy (guidance, paras 3.54 - 3.62). The guidance envisages the policy formulation role working in 2 ways: feeding the results of scrutiny of past decisions into policy, and scrutiny carrying out specific policy development into particular areas, probably at the behest of the executive. The Council has clearly stated in its constitution that its overview and scrutiny function has a role in policy development and review.
2. Members and officers cited a number of examples of policy development work being undertaken by overview and scrutiny. These include recent reports from 5 member panels on waste management and school attendance. In addition the Council's arrangements heavily emphasise the importance of overview and scrutiny receiving and commenting on strategic plans and other corporate policy documents. We discuss this issue in more detail later in the report. The Council's arrangements in this regard demonstrate a willingness to ensure that the approach is in line with the guidance. The details set out in the relevant sections of the Constitution are clear and provide a basis for a proactive and flexible approach to involving overview and scrutiny in policy development. However the Council could do more to put its stated approach into practice. For example, Scrutiny Committees could make more use of the range of options open to them laid down in the constitution and in the overview and scrutiny guidance notes for members when planning their work on policy issues. To date the majority of those interviewed felt that the policy focus of scrutiny work had been on making changes to existing documents and policies rather than on developing new ones. The Council could consider whether there is scope for a more active role in policy development for the scrutiny function, in line with its stated aims in the constitution.
3. The Council's arrangements for call in of decisions are clearly defined. In the main the system appears to be working without the need for the use of the call in power. Considerable emphasis has been placed in guidance and other information for members on the need for effective communication between the executive and scrutiny and this is good practice. There appear to be good working relationships between cabinet members, committee chairs and the Scrutiny Reference Group and this has helped to ensure that in the main issues that may have resulted in call in have been dealt with without the need to initiate the procedure. In limiting call in powers to key decisions, the Council's arrangements comply with the requirements. However it could be argued that the arrangement is restrictive and limits the ability of scrutiny to hold decision makers to account. We suggest that the Council regularly reviews the arrangements for call in as part of its ongoing updating of the constitutional arrangements.
4. Section 21 (2) (e) of the Act gives overview and scrutiny functions the power to make reports or recommendations to the council or executive in respect of matters which affect the local authority's area or its inhabitants, even where those matters are not directly within the responsibilities of the council. This is consistent with the new duty and powers in Part I of the Act in relation to community planning. The Council's constitution is in line with the expectations of the Act, with Article 6.03 stating that scrutiny committees may 'review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the overview and scrutiny committee and local people about their activities and performance and question and gather evidence from any person (with their consent)'.

5. The Council has begun to put its constitutional arrangements into practice in this regard by undertaking some scrutiny of external organisations. Examples include reviews of the implications of the closure of clothing factories and consideration of specific issues raised by the public (eg via petitions). Representatives from external agencies have also been invited to make presentations on their work. To date however the focus of scrutiny work has been primarily on Council services. This is understandable and demonstrates a commitment to service improvement. However, the Council now needs to step up its activity in 'wider scrutiny'. As part of its improvement plan in response to the Comprehensive Performance Assessment (CPA) findings, the Council is clarifying its community leadership role. The links between community leadership and overview and scrutiny have been made in the recent ODPM report *The Development of Overview and Scrutiny in Local Government*: 'It is the ability of overview & scrutiny to explore a whole range of policy issues, linked to the activities of a range of public and private bodies and agencies, that impact on the quality of life of communities that places O&S at the forefront of the community leadership agenda'. It will be important that the Council's work to develop its community leadership role includes a defined and explicit role for overview and scrutiny (eg in identifying and exploring community concerns and responses).
6. The Council has chosen not to make any co-options to overview and scrutiny committees beyond those statutorily required. External witnesses and experts in Scrutiny Committees have been used relatively infrequently. 5 member panels have typically secured more involvement from external representatives. A greater focus on external scrutiny as suggested above would be aided by increased use of external witnesses and experts. Our experience at other authorities suggests that this process is a useful method of giving members a clearly defined role in committee meetings. We discuss this issue in more detail in later sections.
7. The scrutiny function and Best Value have similar objectives at their heart: improving the services provided to the local population. They also share a common methodology, based around reviews of particular service areas or policy. The guidance gives a range of ways that scrutiny could have a role in Best Value reviews:
 - an overview and scrutiny committee could have sole responsibility for carrying out a BV review, reporting the outcome to the executive or the full council
 - responsibility could be shared between executive and scrutiny.
8. The Council has ensured that the scrutiny function has a role in commenting on and monitoring progress of the Best Value Performance Plan and in considering the outcome of Best Value Reviews. The Council has recognised that it now needs to ensure that more emphasis is placed on regular monitoring of progress towards the effective implementation of reviews by scrutiny and we support this view.

Recommendations	
R1	Scrutiny Committees to consider the range of approaches open to them as part of planning work on policy issues.
R2	Council to consider whether there is scope for a more active role in policy development for the overview and scrutiny function, in line with the constitution.
R3	Council to regularly review the arrangements for call in to ensure that limiting call in powers to key decisions is not restricting the ability of overview and scrutiny to hold the executive to account.
R4	Council to define the role of overview and scrutiny of external bodies as part of its work in developing its community leadership role.
R5	Overview and Scrutiny function to consider the possibility of involving external representatives in pieces of work as part of work planning.

Does the structure adopted help to maximise its effectiveness?

9. There is considerable flexibility offered to authorities by the guidance on how many scrutiny panels or committees they should set up. There is an expectation in the guidance that committees should meet frequently, that they should take a cross cutting rather than a service based approach and that there should be effective co-ordination arrangements in place. The Council has regularly reviewed and amended its structure in the light of experience and we commend this. Whilst the 5 standing committees include some that are nominally based around more traditional service structures (Education, Highways, Transportation and Waste Management), the approaches being taken demonstrate a commitment to cross cutting working.
10. A series of 5 member panels have been set up to consider specific issues and to prepare reports and recommendations. These are considered to have been a success within the Council and our experience is that such structures are usually effective in helping to develop innovative and effective approaches to scrutiny. We discuss this issue in more detail later.
11. The Council has established effective co-ordination arrangements for its scrutiny function. The Scrutiny Commission resembles structures at a range of Councils and has a clearly defined role. We have seen fewer examples of bodies similar to the Scrutiny Reference Group but it is apparent that there is no duplication of effort between the two bodies and that the structure adopted facilitates effective working relationships across party groupings and between the executive and scrutiny.
12. The Council has set in place explicit arrangements for the allocation of chairmanship of scrutiny panels and of the Scrutiny Commission across the political parties represented on the Council. The chairmanship of the Scrutiny Commission is held ex-officio by the leader of the largest opposition group - the chairmanship of the remaining committees is shared on the basis that half go to the Administration group and half to the opposition - where the number of committees is odd then the Opposition group will hold one more than the Administration. Nationally, opinion on whether all scrutiny panels should be chaired by opposition parties is divided. Although the guidance suggests that this is good practice, it is also recognised that this can unhelpfully align scrutiny with the role of opposition. Some members commented that no scrutiny panels should be chaired by members of the ruling party. It is not the role of the external auditor to prescribe the Council's arrangements in this regard, beyond ensuring that they comply with guidance and legislation. We suggest that if the Council addresses the recommendations in this report this will help the process of changing the way that the scrutiny role is carried out and perceived.
13. Establishing the framework for officer support for scrutiny is an issue that many Councils have found problematic. The guidance is not prescriptive on the subject, beyond noting that all officers are employed by, and technically serve, the whole Council and that authorities should ensure that conflicts of interest are minimised. The Council can demonstrate that it has given consideration to a range of possible models of providing officer support to scrutiny and that the issue is being kept under review. The current system whereby a core group of officers provide support and advice to the scrutiny function whilst undertaking other work across the Council seems to be working satisfactorily at present. Members are appreciative of the work undertaken by this group of officers although a number also expressed a strong view that there should be additional officer support dedicated solely to supporting scrutiny. Conversely, reports produced by the Council have noted the general lack of requests from members for further information and support to help them pursue particular lines of questioning.

14. It is not the role of external audit to prescribe officer structures in this regard. However, we would note that good practice from a range of sources recommends that officer support for scrutiny is located at a suitably high level within the organisation to ensure that the function is appropriately influential and that this is complemented with sufficient time being given to providing ongoing support and advice. The Council's current arrangements comply with recommended practice in both regards. However given the strength of member feeling about the need for additional, dedicated scrutiny staffing resources it may be useful for the Scrutiny Commission to engage members in a discussion based on the stated and practical aims of the Council's overview and scrutiny function and on the officer support arrangements needed. This would enable scrutiny members together with officers to discuss the amount and nature of officer support needed for the work programme. In addition, committees could discuss as part of their work planning how to make best use of their ability to 'commission' work from the officer core on the issues in their annual programme.

Recommendation

R6 Scrutiny Commission to engage members in a discussion about the nature and levels of officer support needed to carry out work programmes.

Does the way that meetings are run ensure that the intended purpose is fulfilled?

15. It is vital that scrutiny committees are able to develop a way of working which allows them to fulfil their role, but many authorities have struggled to establish this. As noted earlier, the Council's overview and scrutiny procedure rules helpfully note that to fulfil their function, committees can undertake a range of activities including holding public meetings, commissioning research and conducting public surveys. In addition to its arrangements in the constitution the Council has produced a handbook of guidance notes on overview and scrutiny for members. This is an impressive, comprehensive document which sets out the expectations of how scrutiny will be carried out and stresses that there is scope for innovative, member led approaches. The Council is to be commended on its development. In practice however, whilst they are efficiently run, the scrutiny committees tend to act in a manner more reminiscent of traditional service committees. In part this is due to the emphasis that has been placed to date on the role of scrutiny in commenting on plans and strategies within the policy framework. There is recognition amongst officers and members that this method of working needs to be reconsidered and we would encourage this.
16. There are clear arrangements for the development and approval of work plans for committees and as noted above the Council has put in place effective arrangements to co-ordinate this process. The emphasis on scrutiny's role in commenting on plans and strategies has however meant that committees have had limited flexibility in setting their work programmes. Members need to be supported and encouraged to put forward suggestions for items to be considered by scrutiny. This should be easier in future if the potential for lessening the emphasis on the planning framework is realised. We note that the Council has developed a system of 5 member panels to undertake more in depth work on specific issues in a less formal setting and that this has been judged to be a success. This accords with our experience at other authorities and we would encourage the Council to continue to expand this method of undertaking scrutiny, where appropriate. With greater control over their work programmes, scrutiny committees would be able to consider the use of differing approaches to the review of particular issues, as set out in the constitution and guidance.

17. The Council's overview and scrutiny guidance notes stress the importance of the Chair's role in reaching consensus and the scrutiny meetings that we observed were conducted in a way that encouraged open discussion. There is a good working relationship between Chairs and the officer team supporting the scrutiny role and it was apparent from the meetings that we observed that officers feel able to interject to provide advice and guidance as appropriate, whilst ensuring that the meetings remained member led.
18. A common problem for Authorities is the development of a clear mode of operation in terms of how much work is done between scrutiny meetings and how much is done in the meetings themselves. Officers and members commented that a considerable proportion of members still feel that they have no tangible role as scrutineers and it is important that the Council continues to take steps to address this. The Council's guidance notes include suggested methods for considering and challenging the contents of reports and plans although the majority of the members we spoke to had not used these. The availability of the checklists should be reiterated, possibly as part of any scrutiny refresher training provided. The manner of questioning we observed was in keeping with the spirit of open scrutiny. However, there is scope to increase the rigour and planning of questioning, without becoming overly combative or confrontational. Any training planned for overview and scrutiny members should include sessions on questioning skills.
19. The Council has developed a system whereby briefing meetings and group meetings are held prior to committee meetings and we suggest that this system could be built on to enable more committee members to have a greater role in the work of their committees. This could be done by using the sessions as a forum to plan the work on particular issues and assigning responsibility to individual or groups of members for reading reports, undertaking background research and preparing questions. The Council has begun to experiment with reports being presented by members (eg reports from 5 member panels and some reports to Education Scrutiny Committee) and this is to be encouraged as it provides further opportunities for members to become fully engaged in the scrutiny process as envisaged by the Act and guidance.
20. In accordance with the Act the Council's scrutiny committees meet in public. At present the emphasis on enabling public involvement in scrutiny is via the presentation of petitions and asking questions at meetings. The raising of petitions is more likely to be a relevant method of engaging with committees such as the Highways, Transportation and Waste Management Committee than some others and the Scrutiny Commission and Reference Group should continue to consider the range of opportunities for ensuring public/stakeholder involvement in scrutiny work as part of the work planning process. Where appropriate, committees could consider holding meetings at external venues where, for example, geographically specific issues are being considered.

Recommendations	
R7	Scrutiny Reference Group and Commission to consult with members and with the Executive on the potential to reduce the emphasis on overview and scrutiny being requested to comment on plans and strategies.
R8	Scrutiny Reference Group and Commission to reiterate the availability of the checklists for considering and challenging reports.
R9	Include sessions on questioning skills in any future training in overview and scrutiny.
R10	Committee chairs to experiment with assigning responsibility for reading reports, researching topic areas and developing questions to individuals or groups of members.
R11	Scrutiny Commission and Reference Group to ensure that the range of possibilities for facilitating public/stakeholder involvement in reviews is undertaken as part of the work planning process.

Do current arrangements enable scrutiny to focus on review of outcomes and on performance towards strategic objectives?

21. To maximise benefits arising from the work, the scrutiny role requires different reporting styles to the service committee system. The Council has recognised this and has set out the suggested format for reports to scrutiny in its report writing guidance. Both officers and members acknowledged that there is still room for improvement in this regard. Officers noted the continuing existence of a culture that resists providing reports to members until all the information contained can be verified. Members felt that reports still bore considerable resemblance to committee reports and a number thought that the information in them could be presented in more readily understandable formats. The Council needs to increase its efforts to tailor appropriate methods of presenting information to members to enable effective scrutiny. Scrutiny members may often require information more akin to a position statement to help frame their thinking around a particular issue or policy. Methods that other authorities have found useful include presentations and bullet point/position papers to stimulate debate. Establishing the appropriate procedures for reporting the outcomes of scrutiny meetings is vital to the success of the role, given that scrutiny committees cannot in themselves overturn any decision or make any new policy. The Council has clear arrangements setting out how reports produced by the scrutiny function will be considered by the Executive or full Council and how these will be acted upon. The Council can demonstrate some progress in ensuring that the scrutiny process results in evidence based reports and clear recommendations (where appropriate). However there is scope for further improvement in this area. In some cases the reports from 5 member panels or committees could be more definite in setting out what outcomes are expected from the reports and on how progress will be monitored by scrutiny. One way to help frame the resulting reports could be to consider what activities being suggested would be done within or outside the Council whether or not scrutiny was recommending them (eg monitor LPSA targets) and to differentiate additional or separate action being recommended.
22. Some members commented that it remains difficult to gauge the impact that the work of scrutiny has on the Executive. Setting out and tracking progress on defined expectations as a result of scrutiny activity as outlined above should help in this regard over the longer term. The adoption of the new medium term corporate strategy should also help the Scrutiny Reference Group and Commission to plan how the work of scrutiny will gauge progress towards the Council's corporate objectives. For instance, scrutiny committees may want to decide to regularly focus questions to portfolio holders around issues and targets in the medium term strategy. As part of its improvement plan in response to the CPA the Council is strengthening its arrangements for target setting and implementing a corporate performance management system. It will be important that overview and scrutiny has a clearly defined role within this and the Council will need to ensure that this is effectively planned.

Recommendations

R12 Overview and scrutiny Committees to continue to experiment with non traditional methods of reporting.

R13 Overview and scrutiny committees and 5 member panels to ensure that where appropriate their work results in clearly defined recommendations and suggestions for how progress will be monitored.

R14 Council to ensure that overview and scrutiny's role within the performance management system is clearly defined.

Are the Council's developing approaches to the new health scrutiny role effective?

23. As a County, the Council has a key role to play in the effective establishment and co-ordination of health scrutiny across its area. The Council has begun to consider in some detail how the role will be organised and implemented and can demonstrate that a range of options have been considered. At the time of reporting the Council was proposing a joint committee of the three Social Services Authorities to scrutinise those NHS bodies with county-wide strategic responsibilities, together with a single committee with 4 PCT based working groups to look at locally based structures. The Council is proposing to retain its existing Health and Social Care Overview and Scrutiny Committee to continue to scrutinise the Council's own Social Services functions. These proposals constitute a reasonable response. The Council is able to demonstrate that it has considered the potential barriers to the smooth operation of health scrutiny processes and that its response seeks to minimise them.
24. It is good practice for Councils with single or joint responsibility for scrutiny of health service functions to seek consensus with NHS bodies on how the role will be carried out, preferably through face to face meetings. The Council has complied with good practice in this regard, having had preliminary discussions at the Leicestershire Executive Group. Ongoing discussions are also being held with the Strategic Health Authority and with the Council for Voluntary Service.
25. County Councils are expected to take the lead in engaging District Councils in planning the health scrutiny function for their area and the Council has responded appropriately by holding discussions with senior representatives from Districts. The Council is aware of the need to progress work in this area by agreeing practicalities and formalising arrangements for membership, structures and other issues.
26. The Audit Commission's *A Healthy Outlook* report suggests that Councils take a pragmatic approach to providing training and development for members. It points out that whilst members are not expected to become health experts, they will usually benefit from some basic background on local and national health issues, NHS culture and related topics. The Council has recognised the importance of the provision of training in health scrutiny for members and has proposed that once new structures are adopted, emphasis is initially placed on ensuring that members receive training and are helped to familiarise themselves with the work of bodies to be scrutinised. This should prove a useful approach. It will be important that the Council augments this work with the continued provision of generic training in scrutiny skills as noted in earlier sections.
27. As the Council's plans for the co-ordination and delivery of health scrutiny are at a relatively early stage, there is not as yet an outline of potential areas for review or a work programme. We recognise that the Council is reliant on securing the agreement of a range of other agencies to enable that the proposed approach and therefore the development of a work programme can go ahead. As noted, the Council can demonstrate that it has been proactive in this area. It will be important that all parties involved are able to agree the basic principles for health scrutiny to enable a work plan to be put together as soon as possible. The process of doing this should help to minimise the potential for scrutiny to duplicate work to be done by other external bodies or within the NHS, to ensure that the scrutiny work proposed genuinely adds value and to identify the external advisors that will need to be recruited to assist with specific pieces of work. To aid the Council and its partners to consider the work plan for health scrutiny we attach a summary of issues to consider at Appendix 1.

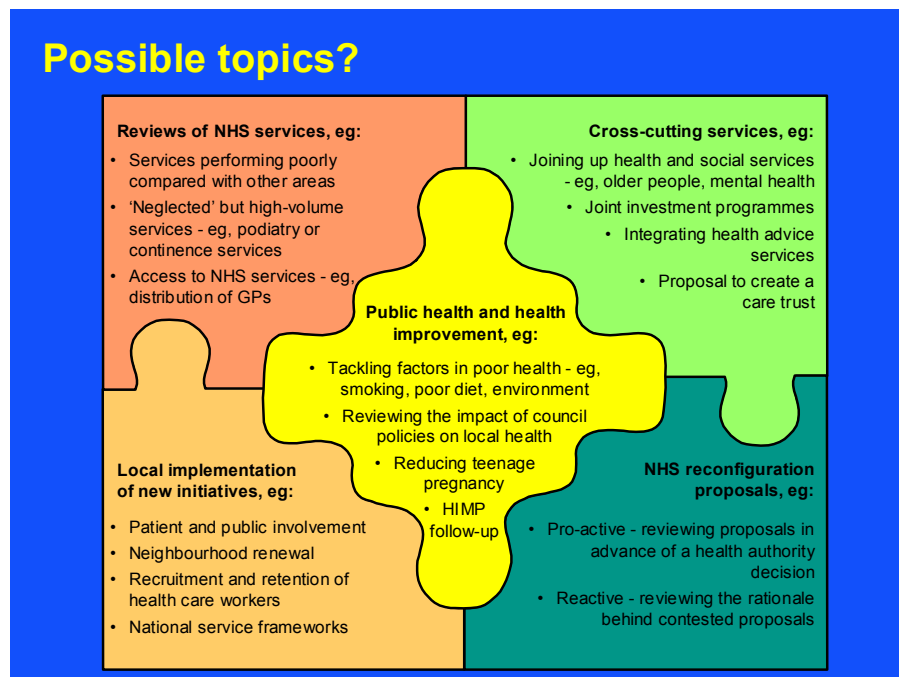
28. In addition to developing a work programme, the Council and its partners will need to consider the audience for health scrutiny reports and recommendations. Officers have begun to do this and there is a recognition that the potential audience for a piece of scrutiny work will differ according to the topic under review. It will be important that the Council and its partners consider arrangements for ensuring that there is effective public involvement in the scrutiny process, that findings and recommendations are effectively disseminated and that there is a process for checking progress on recommendations.
29. It is important that Councils consider the resource implications of the health scrutiny role and make effective plans as a result. The Council has made an initial assessment of the likely workload based on its current proposals and outline suggestions for officer support have been made.

Recommendation

R15 Council and its partners to consider the audience for health scrutiny reports, arrangements for public involvement and progress checking as part of work planning.

Issues to take into account in the planning of a programme of health scrutiny

- Includes time for overview and a limited number of in-depth scrutiny reviews
- Covers one year in detail (eg, milestones for reviews), plus highlights possible reviews for next two years
- Is based on agreed priorities and criteria
- Has been the subject of consultation/advice from interested parties locally
- Does not duplicate activity being undertaken by other bodies
- Allows some 'slack' for unexpected items
- Is reviewed annually



Source *A Healthy Outlook Audit Commission 2001*