

INDEPENDENT REVIEW OF REGULATION, AUDIT, INSPECTION AND COMPLAINTS HANDLING OF PUBLIC SERVICES IN SCOTLAND

This paper has been prepared to support discussion groups during the Dialogue Events to be held across Scotland: Tuesday 8 May in Glasgow, Tuesday 15 May in Edinburgh, Tuesday 22 May in Aberdeen and Thursday 24 May in Stirling.

In June 2006, the Minister for Finance and Public Service Reform announced an independent Review into the regulation, audit, inspection and complaints handling of public services in Scotland. Professor Lorne Crerar was asked to chair the Review and will publish his findings in August 2007. The Review has a remit to evaluate the current external scrutiny arrangements for public services in Scotland and to recommend improvements. The Review has concluded an initial mapping of the current external scrutiny arrangements and has gathered evidence from a range of stakeholders.

These Dialogue Events provide an opportunity to present the evidence obtained so far and to explore with stakeholders some key issues prior to making final recommendations. Complaints handling specifically will **not** be discussed as this aspect of the scrutiny is being considered separately.

This paper provides delegates with the context for the Review, some interim conclusions made by Professor Crerar to Ministers at the end of March 2007, and material to support discussion at the Dialogue Events. (*Appendix A*). The Dialogue Events will consist of the following:

- Presentation by Professor Crerar of the story so far
- Discussion Groups - Key Issues for the Future (morning)
- Discussion Groups – Interim Recommendations (afternoon)

Context for the Review:

The Scottish Executive's Efficient Government Plan (published November 2004) included a commitment to improve the way organisations responsible for the regulation, audit, inspection and complaints handling of our public services operate. That document made clear that whilst public bodies must be properly accountable *“regulation and performance monitoring needs to be proportionate, and not obstruct innovation”*.

This commitment to improving scrutiny was renewed by the Minister for Finance and Public Service Reform in June 2006 in “Transforming public services – the next stage of reform” which stated that whilst *“a robust scrutiny regime is vital – to protect the public, and to provide reassurance that services are performing well”*, scrutiny should be *“more flexible, proportionate and risk-based”* and

“should ensure that it is not a burden on organisations, but an engine that drives performance improvement and service transformation”.

Any future scrutiny regime must respond to the public service reform agenda. New ways of working are emerging across the public sector in response to the modernisation agenda. Services are being delivered in new ways which cut across traditional organisational and professional boundaries, and offer the potential to improve the experience of service users and make better use of resources.

Aims of the Review

The Review is evaluating the existing system and will make recommendations to Ministers on:

- The purpose, principles and role of effective regulation, audit, inspection and complaints handling, including clarifying who the customers and beneficiaries are;
- Governance arrangements;
- How regulation, audit, inspection and complaints handling can better support continuous improvement in public services;
- How regulation, audit, inspection and complaints handling can be more efficient and better co-ordinated;
- The priorities for change; and
- Any legislative or organisational changes that would be required to implement the recommendations.

Definitions

The semantics of scrutiny are confusing so the following definitions have been adopted by the Review, whilst accepting that current scrutiny bodies apply the terms differently either within their statutory remit or within their methodology. Upon conclusion of the Review these definitions might be refined to describe the purpose and role of the different elements of external scrutiny.

Regulation: a licence to operate – regulation performs a gate-keeping role setting criteria for entry to the market. A system of regulation usually includes the monitoring of explicit standards, backed by statute, to ensure continued compliance in order to maintain a defined quality of service.

Audit is the continuous but periodic scrutiny of corporate governance systems, including financial systems, risk and performance management systems and public reporting.

Inspection is the periodic, targeted scrutiny of services to check whether they are meeting the needs of consumers by checking performance against a range of performance indicators, standards, and legislative and professional requirements.

Complaints handling is the investigation of complaints about public services raised by individuals.

The Big Question for the Review is:

What blend of regulation, audit, and inspection best provide assurance whilst supporting improvement within the public services delivery system in such a way that it is not a burden on providers and does not discourage service innovation?

It is clear from the evidence submitted to the Review that people agree the primary function of external scrutiny is to provide independent assurance about the quality, safety, and effectiveness of public services to a range of stakeholders. These include people using public services, citizens, politicians, the Scottish Executive, and public bodies themselves. A second function is to support improvement within services, by validating the quality of service delivery, by assessing efficiency and effectiveness, by assessing capacity for improvement and reporting good practice.

It is not clear whether external scrutiny is actually fulfilling either of these functions effectively. It appears some of the barriers to greater effectiveness lie within the scrutiny system itself and some within the wider accountability mechanisms that support the delivery of public services in Scotland. These include:

- allocation of responsibilities including lead roles;
- prioritisation of principles of effective scrutiny;
- strengthening accountability, governance and control of scrutiny bodies;
- strengthening citizen/service user focus.

We believe these issues need to be addressed in order to create the more robust and coherent national framework of external scrutiny that people say they would like to see developed. Their resolution should also remove the complexity of current arrangements and prevent further regulatory creep. It might be the case however that their resolution would involve some legislative or structural change, and the Review therefore recognises that there will be a longer term timeframe associated with their achievement.

DISCUSSION TOPICS FOR DIALOGUE EVENTS

MORNING SESSION

The morning session will be devoted to exploring the following four key issues:

- Allocation of responsibilities including lead roles
- Prioritisation of principles of effective scrutiny
- Strengthening accountability and control of external scrutiny
- Strengthening the citizen and service user focus

1. Allocation of responsibilities including lead roles

Evidence obtained by the Review suggests that much of the confusion and complexity of the current system is caused by a lack of clear responsibilities, boundaries and relationships between different parts of the public service delivery system and external scrutiny. The Review believes that two major issues need to be resolved:

- 1) The roles and scope of the different elements of external scrutiny need to be clearly delineated; and
- 2) The relationship between external scrutiny and performance management arrangements within public bodies need to be clearly set out and understood, particularly in terms of public reporting.

Roles & Scope

It is clear from the evidence that there is a confused scrutiny landscape comprising many scrutiny bodies, with different but overlapping remits and responsibilities. This contributes to the confusion and unnecessary duplication experienced by delivery bodies. It creates confused priorities and impacts disproportionately on public services, and on the people working within them. No-one is saying they do not want external scrutiny – rather that it is not as effective as it might be. The question is how to rationalise the number of inspections, visits, demands for data and other information experienced by public service bodies. Is the solution a reduction in the number of scrutiny bodies?

The transforming public services agenda is creating different service delivery models which cut across traditional organisational boundaries. Most current scrutiny arrangements focus on separate public services for example, health, education, and housing. Many suggest therefore that the focus of external scrutiny should shift to take account of new delivery models and partnership arrangements and focus instead on population groups, geographical areas, or some combination of these. It is also suggested that if a lead agency were nominated to manage and co-ordinate scrutiny across specific sectors, the system could be improved, and duplication and overlap minimised. However, it

is noted that the experience in England of trying to achieve this through a Concordat has not been very successful.

External Scrutiny & Performance Management

External scrutiny is often perceived to collide or take the space that belongs more properly with performance management arrangements. There are also concerns about the expectations the Scottish Executive has of scrutiny. For instance, scrutiny bodies have often been asked to focus their activity on serious service failures, and there has been an expectation that external scrutiny can be used in the capacity of an investigative task force to provide information directly to Ministers. It can be argued that this reactive use of external scrutiny is undermining performance management responsibilities within service provider organisations and in some circumstances is creating an adversarial relationship between scrutiny bodies and delivery bodies.

Discussion Topics:

- ***What are the relative merits of organising scrutiny – population groups, geographical areas, services or a combination of these?***
- ***What is required for a clearer distinction of the respective roles of performance management and external scrutiny?***
- ***Would giving individual scrutiny bodies lead roles help streamline and rationalise external scrutiny arrangements?***

2. Prioritisation of principles of effective scrutiny

The main aim of the Review is to establish the purpose of external scrutiny and identify the principles which should support it. There are many principles identified within the evidence obtained by the Review and most scrutiny bodies refer to the principles of Better Regulation: ***proportionality, accountability, consistency, transparency and targeting*** within their literature. Equally important to the Review are those principles which underpin the public services reform agenda: “***services are to be user focused and personalised, drive up quality and encourage innovation. To achieve these outcomes, we must improve efficiency and productivity, join up services and strengthen accountability***”.

There is a lack of consistency about how most scrutiny bodies translate the principles of Better Regulation into practice which further adds to the confusion and complexity of current arrangements. It seems that the principle most difficult to conceptualise and then to put into practice is ***proportionality***, particularly as it

relates to the notion of being **risk based**. Most scrutiny bodies have attempted to adopt a risk based approach, but it is difficult to discern a consistent definition of risk, a common assessment of risk and how it relates to a proportionate approach to scrutiny activity. Public bodies report that despite the commitment to achieve a proportionate and risk based approach, they are experiencing more, rather than less, scrutiny now than ever before. The reasons for this might lie in the increased amount of scrutiny, rather than a failure by individual scrutiny bodies to adopt a proportionate and risk based approach.

Consistency of external scrutiny is also raised as an issue by service providers as it relates to methodology, focus, assessments, and reports. The targeting of external scrutiny is also an issue if external scrutiny is to support the improvement agenda. It is claimed that the reports of external scrutiny rarely reveal things that those delivering public services do not already know about adding to the scepticism with which the current scrutiny system is viewed. Service providers suggest the focus of external scrutiny should be more influenced by the local context and this might help scrutiny reports to be more relevant to the local community and service users.

There is concern expressed in the literature that the principles of better regulation contain inherent tensions if applied with equal weighting and they need to be further tested from the perspective of all stakeholders. Given that delivery models are changing rapidly and partnership working is increasing, what principles are applicable to external scrutiny?

Discussion Topics:

- ***What are the distinguishing features of a practical risk based approach to external scrutiny and is such an approach desirable or achievable for all public services and would it yield benefits to all i.e. citizens, service users and public service bodies?***
- ***What are the key risks which should be addressed?***
- ***Who defines the risk and who carries the risk in a national framework of external scrutiny?***
- ***How can external scrutiny focus on things which matter locally in line with the public service reform agenda?***

3. Strengthening accountability, governance and control of external scrutiny

Strengthening accountability

A key aim of the Review is to make recommendations for a framework for external scrutiny that is effective, efficient and better co-ordinated. The challenge for the Review is to recommend a framework that reconciles the need for scrutiny to be independent in order to provide assurance, with the need for scrutiny bodies themselves to be accountable and controlled. It is suggested that to strengthen the role and focus of external scrutiny and to provide greater clarity on its contribution to public accountability and service improvement, scrutiny bodies should be required to report directly to Parliament (as well as in some cases to the Scottish Executive) on their effective use of public resources.

Evidence suggests that the information provided by scrutiny bodies is used increasingly by Parliament and its Committees as they scrutinise and hold the Executive and public bodies to account from a national perspective, for the delivery of public services. Such a system might also help to restore the confidence of the public in the outputs of scrutiny as the reports would be viewed as independent from the Executive.

Governance & Control

Scrutiny bodies have been set up over time with a range of legislative arrangements and reporting requirements which could be perceived to have different degrees of independence. It seems that these differences contribute to the complexity of the current system, and make it difficult to manage its growth, scope and performance. Without being able to quantify its impact, as there are no explicit measures of success in relation to the two main purposes of external scrutiny, it is difficult to defend any particular current governance arrangement.

Discussion Topics:

- ***How would you strengthen accountability and the governance arrangements of scrutiny bodies?***
- ***What mechanism needs to be put in place to prevent regulatory creep?***
- ***Would making scrutiny bodies lay individual reports at the Parliament and its subject Committees increase public assurance about public services?***
- ***How do you maintain the independence of scrutiny bodies and is there a “best” statutory basis to support this?***

4. Strengthening the citizen and service user focus:

It can be argued that in order to provide assurance to the service user, there must be a clear focus on the experience of the user within the scrutiny system. This can be achieved in two ways – firstly, by including the experience of services users in the assessments they make about the performance of public bodies and second, by involving service users in the process of external scrutiny. The citizen requires a different assurance, i.e. that public money is being spent effectively. Equally important is how notion of independence of external scrutiny and that of its reports.

Reports of external scrutiny

The findings of external scrutiny should be published in reports that are:

- Clear, objective and evidence based;
- Focus on the experience of people who use the service as well as on the efficiency and effectiveness of those services;
- Contain information and assessments that are useful and comparable; and
- Accessible to all.

Evidence suggests that the reports produced by scrutiny bodies are not meeting the needs of the citizen or service user. People report that they do not find reports accessible or useful, for example in terms of language or with regard to using the information to understand what is being said about a particular service which might influence their choice of service. Reports don't tell them what they want to know about services and some do not trust their independence. A study of the reports published by scrutiny bodies suggests they are aimed primarily at the service provider.

The service user focus

It is generally accepted that to deliver high quality public services for citizens you need effective leadership, good management systems and internal processes, and that these should be supported by effective performance management systems. Consequently, most external scrutiny is focused primarily on the internal mechanisms of the delivery body (this might be at an individual service or an organisational level) to the detriment, some feel, of the user perspective. Scrutiny bodies use a mix of performance and quality indicators, standards, and statutory regulations, to assess the quality of leadership, management etc in the expectation that this will measure outcomes for the user. However, there is less evidence that scrutiny bodies directly assess and quantify the actual experience of the people using the service, using evidence directly obtained from them.

Some scrutiny organisations attempt to assess levels of satisfaction and link this to evidence obtained from other sources. Others attempt to gauge how well service providers involve their clients in decisions about the service to judge whether it is meeting its clients' needs. Most now involve service users in their processes, for example in setting the standards, or as part of the inspection team, or by assessing satisfaction levels using questionnaires. Despite these attempts by scrutiny bodies to involve service users in various ways, there is no consistent measure to judge their impact in terms of supporting the overall purpose of providing assurance and supporting improvement.

Discussion Topics:

- ***Is it the role of external scrutiny to assess the experience of the service user?***
- ***How should the experience of the service user be assessed?***
- ***How can the reports of external scrutiny better meet the needs of citizens and service users?***

INTERIM SUGGESTIONS FOR CHANGE – AFTERNOON DISCUSSION

The interim report presented to Ministers in March 2007 (*appendix a*) included some actions which could be implemented in the short term to pave the way for the development of a national framework of external scrutiny. Their implementation would go a long way to removing the confusion, complexity, duplication and overlaps caused by current scrutiny arrangements.

A national plan for external scrutiny could be developed during 2007/08 for implementation during 2008/09, which clearly defines the role and purpose of different scrutiny bodies, how they relate to each other, and to other regulatory systems (such as Scottish Executive reporting requirements and internal performance management arrangements within public bodies). This plan would shape external scrutiny of Scotland's public services by:

- Setting out national scrutiny priorities in consultation with delivery bodies and other stakeholders (e.g. the Scottish Executive, COSLA, Parliamentary Committees)
- Setting out a national timetable, agreed with delivery bodies, that defines which scrutiny body is going where, within a defined period, to avoid overlapping visits

- Agreeing a common performance dataset for each key public service sector (local government, health, social care, education, housing etc) for use by scrutiny bodies in the course of their work
- Developing a common self-assessment framework for all public bodies which is available for all scrutiny bodies where necessary
- Developing a common public reporting language and assessments in their reports to make them more accessible to citizens and service users

Discussion Topics:

- ***To what extent would these actions solve the current problems?***
- ***What are the three most important actions to make them happen?***
- ***Can these changes be delivered in the timescales suggested?***
- ***What is the best mechanism to make them happen – a lead agency, an external control mechanism such as the Better Regulation Commission or?***

APPENDIX A:

An Interim Report was presented to Ministers in March 2007 which contained a summary of the Review's emerging findings, together with some interim conclusions and recommendations which are presented below.

Interim conclusions:

- The burden of external scrutiny has grown significantly since Devolution
- The costs of external scrutiny have increased significantly
- The system is unnecessarily complex, lacks coherence and there is a lack of evidence of impact
- There is duplication and overlap between scrutiny bodies causing unnecessary burdens on service providers
- The public voice is not sufficiently represented in external scrutiny; and
- Public service complaints procedures are unnecessarily complex and not fit for purpose.

Interim Suggestions for Change

- A national scrutiny plan (supported by consultation at a local level) setting out priorities to be agreed between scrutiny bodies and in consultation with delivery bodies
- A national timetable, agreed in conjunction with delivery bodies, that sets out which scrutiny body is going where, within a defined period, to avoid overlapping visits etc
- An agreed core dataset to be provided by each delivery body, which all scrutiny bodies use in the course of their work, with the proviso that any additional information request should meet a specific set of criteria before being complied with
- The development of a common self-assessment framework for all public services to enable greater focus on self assessment which is presented for external scrutiny
- Scrutiny bodies to report on how their activities/work focuses on the experience and outcomes for service users and/or citizens
- All scrutiny and delivery bodies to develop common public reporting language and assessments in their reports

A copy of the full Interim Report presented to Ministers in March 2007 is available on the Review website: www.scrutiny.review.org.