Scrutiny: the new assurance?
A good governance discussion document

John Bullivant, Chair, GGI

Tim Gilling, Director, CfPS

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Foreword from Sir Paul Williams

Sir Paul Williams, author of the Report of the Commission on Public Service Governance and Delivery, has kindly provided a preface which in part reflects back on the work of the Williams Commission – itself highly critical of the complexity which has built up around collaborative working, but also looking forward to new regional partnerships. The Commission's key messages are not only relevant to Wales, but also to all parts of the UK.

This is a timely document.

Leaders of the future will need to be working across the spectrum of public services and become more adept at operating in highly complex environments.

Collaboration and partnership working needs to be more streamlined, more strategic and more effective.

Organisations spending public monies should be constantly redefining their roles and responsibilities, searching for economies, reduced overheads and one would hope looking for synergy and constant improvement.

Partnership working will need public accountability and systems leaders. Partnerships needs to be more business-like; with a clear sense of purpose, outcomes and accountability.

This is perhaps no more so than in Wales, where partnerships rather than being subjected to structural reform have been given greater prominence (and responsibility) across a whole swathe of local authority functions to deliver the ambitions of the Well Being of Future Generations Act.

In terms of Governance and Accountability partnerships should:

- have a clear, ambitious and realistic purpose and vision
- work within a national single, robust governance model which is equitable and transparent based on identifiable responsibilities and actions and joint rights and obligations, creating clear accountability for delivery
- have measurable outcomes
- be empowered to take significant decisions which will contribute to attaining their purpose and vision
- comprise senior representatives from each organisation who have relevant authority and influence.

In addition, public sector leaders must develop and embrace a shared set of public services values and the concept of 'collective responsibility 'for issues such as delayed transfers of care, the environment, and the economy.

Sir Paul Williams, OBE, DL; August 2017

Introduction

Across the UK, people who take decisions about public services are facing a common challenge - how to spend public money effectively and efficiently in ways that meet the needs and demands of society and ensure the best outcomes for local communities.

Meeting this challenge increasingly requires public agencies to work better together and with the voluntary, community and social enterprise sector, making the most of shared resources and tapping into the social assets that exist in communities themselves. Different approaches have emerged in England, Scotland, Wales and Northern Ireland that reflect the political dynamics of the Westminster and Scottish Parliaments and the Welsh and Northern Ireland Assemblies.

Whilst structures and practice vary across the UK, the fundamental principles of good governance and good scrutiny remain constant.

This paper looks at scrutiny across a number of organisations. All four home nations are seeking better outcomes by the alignment of health, social care and other funders and providers. GGI have tended to call this governance between organisations (GBO) and have written a number of papers on the issues and challenges inherent in this – originally in Integrated Governance II: Governance Between Organisations (2009), but followed up in more detail in 2012 and 2016.

In health, boards in seeking to gain confidence that all is working well, tend to talk about challenging, probing, and assurance, whilst in central and local government the term scrutiny is more frequently used. Despite differences in language between sectors, as we work more closely together across organisational boundaries, it is important we hold single and joint funders or providers to account but with sensitivity. To support this, GGI and CfPS have built on the work of the Williams Commission in Wales, the codes of conduct developed in Scotland and Northern Ireland, and lessons from good scrutiny practice in England to create a scrutiny etiquette card (see Exhibit 4).

'Scrutiny' of strategic direction and operational performance happens in different ways - for example through:

- regulation and inspection
- locally elected representatives
- non-executive directors and governors
- community and service user voice
- print, broadcast, and social media
- the courts

Although governance and scrutiny structures and practice vary across the public sector, developing a common understanding of principles is important. CfPS advocates four principles of good scrutiny:

- that it offers constructive 'critical friend' challenge
- that it amplifies the voices and concerns of the public
- that it is led by independent people who take responsibility for their role
- that it drives improvement in public services

Why is this important now?

An essential role of all governing bodies is to hold the executive to account. In health, this has usually been secured through challenge and assurance whereas in central and local government it has generally been described as scrutiny. Although there is some confusion and ambiguity about the role, it essentially requires a separation of the executive powers and scrutiny functions. This has happened better in Parliament and the Welsh Assembly with the independence of select committee chairs but is less consistent in local government. CfPS's 2017 survey of local government overview and scrutiny practice in England and Wales highlights perceptions about how well scrutiny is working.

The new arrangements for joint service planning, commissioning, and delivery in England, Wales, and Scotland, and planned for Northern Ireland, provide opportunities for establishing both accountability and a focus on improved delivery through effective scrutiny at a pan-organisational level. We have tended to assimilate this under the general umbrella of 'governance between organisations'. This is important now as all four nations attempt better integration or alignment of health and social care, sometimes with rather clumsy or ad-hoc arrangements for governance. GGI and CfPS welcome the innovation that a lack of central direction has created but believe some basic principles need to be applied in multi-organisation funding and delivery arrangements.

The moral imperative

Public services cannot allow others to compromise their obligations and performance. The moral imperative is to secure better joined up service delivery to achieve explicit and stakeholder approved outcomes. Increasingly, this is recognised as a joint effort between organisations especially as the appetite for formal re-organisation is low.

It is telling that the old business excellence model (EFQM etc.) described partners as a resource and not a relationship. Partners must be explicit in their expectations of those who work with, or to, them and follow up when agreed performance is slow or outcomes lacking, but this approach still needs sensitivity and respect.

Increasingly, there is greater emphasis on public bodies to demonstrate awareness of 'risk' and clear plans to develop 'resilience' - not just in organisations themselves but in the communities they serve. Building a strong economy for the future relies on healthy, happy communities - public services can support this by demonstrating risk awareness, developing early intervention strategies, and setting ambitious outcomes.

The legal background

The legislative provisions for local government overview and scrutiny committees for England can be found in the Localism Act 2011, which amended the Local Government Act 1972. Those for Wales are in the Local Government (Wales) Measure 2011 and the Well-being of Future Generations (Wales) Act 2015, and those for Northern Ireland are in the Local Government Act (Northern Ireland) 2014. There are no legislative provisions for overview and scrutiny in Scotland though many Scottish local authorities do operate scrutiny committees alongside executive structures and use a Shared Risk Assessment (SRA), to ensure proportionate and risk-based scrutiny in line with the recommendations of the 2007 Crerar Report.

England

Since the introduction of the health scrutiny functions under the Health and Social Care Act 2001, local authority scrutiny committees have prioritised issues of health improvement, prevention, and health inequalities as areas where they can add value through their work. In their reviews, local authorities have looked at the wider social determinants of health and health inequalities, not least because of local government's own contribution through the whole range of its services.

Alongside this, scrutiny has also been aligned to commissioning and quality of services. The relationship between scrutiny, regulation and inspection, and public voice has also developed.

The Local Government and Public Involvement in Health Act 2007 sought to strengthen local authority leadership. It envisaged empowered citizens and greater engagement of local people in shaping public policies and services. A new duty required local authorities to inform, consult, and involve local people in running local services. Councillors were also empowered to resolve issues of concern to the communities they represent, if necessary by requiring consideration by overview and scrutiny committees.

Health and Social Care Act 2012

The Health and Social Care Act 2012 brought in a range of changes to the NHS in England. Principally, the creation of the NHS Commissioning Board (now known as NHS England) and clinical commissioning groups (CCGs), the abolition of Primary Care Trusts and Strategic Health Authorities, and the transfer of public health responsibilities to local authorities.

Changes made to the health scrutiny provisions in previous legislation came into force in April 2013, amending the National Health Service Act 2006, including making health scrutiny the responsibility of the authority, instead of a specific overview and scrutiny committee. The 2012 Act expands the scope of health scrutiny by applying it to health service providers and CCGs in addition to NHS bodies, and makes consequential amendments, particularly relating to joint scrutiny. The Act established local Healthwatch organisations which are the new champion for patients, the public, and users of health and social care services. It provides them with information and advice to help them make independent, informed choices about their health and social care and it also gathers their views and ensures they are taken into account when local health and social care services are designed and delivered. The Act requires relevant overview and scrutiny committees to receive, have regard to, and respond to referrals, reports, and recommendations from local Healthwatch.

The 2014 regulations in relation to health scrutiny make provision for local authorities to review and scrutinise matters relating to the planning, provision, and operation of the health service in their area. They replace the previous 2002 regulations on health scrutiny. Under the new approach to health scrutiny, local authorities have greater flexibilities in how they discharge their health scrutiny functions. And there are new obligations on NHS bodies, relevant health service providers, and local authorities around consultations on substantial developments or variations to services to aid transparency and local agreement on proposals.

Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health, and social care is working – relevant to this might be how well health and wellbeing boards, the new Sustainability and Transformation Partnerships (STPs), and emerging Accountable Care Systems are carrying out their duty to promote integration, and in making recommendations about how it could be improved. CfPS, the NHS Confederation, NHS Clinical Commissioners, and National Voices have published a governance and scrutiny checklist for STPs.

CfPS has identified 5 'clarity' questions regarding STPs:

Clarity about the status of STPs: are they products of informal collaboration that now need to go through more detailed discussions with stakeholders? Or are they a set of detailed, costed proposals for service changes that require consultation with council scrutiny functions?

Clarity about the content of STPs: are they simply an amalgamation of existing organisational plans that have been in public view for a while? Or are they radical transformation plans that contain lots of new thinking that now needs testing in public?

Clarity about the timeline for implementing STPs: is there an intention to write new contracts for new patterns of service during 2017/18? Or is there a longer timescale?

Clarity about purpose of STPs: what are the ambitions for the outcomes from STPs? Is there a balance between better outcomes and reduced cost?

Clarity about responsibility and accountability for STP implementation: where there has been an independent local STP leader, has that role ceased with publication of the plan? Or have they a role in future discussions about implementation?

Wales

The Beecham Review of Public Service Delivery in Wales (2006) concluded that scrutiny was potentially a strong lever for improving delivery by holding council executives and other public bodies to account, and by contributing substantively to policy development. The review recommended scrutiny at the local level should work across organisational boundaries, should be inclusive, forward looking, extend to all services, and involve a broad spectrum of stakeholders.

The Consultation Paper on the proposed first Designated Persons Order reflected Welsh Government's approach to ensuring all public organisations with responsibility for service delivery are subject to a scrutiny process which examines the services provided in one geographical area, from the 'holistic perspective' of the quality of life for its inhabitants.

The Well-being of Future Generations (Wales) Act 2015 requires that a public services board is set up in every local authority area in Wales. There is a duty on specified public bodies to work through these boards to improve the economic, social, environmental, and cultural well-being of their areas by contributing to the national well-being goals set out in the Act. The Act requires that a local government scrutiny committee is designated to scrutinise the work of the public services board for that area.

The guidance says:

> In order to assure democratic accountability there is a requirement for a designated local government scrutiny committee of the relevant local authority to scrutinise the work of the public services board. It will be for each local authority to determine its own scrutiny arrangements for the public services board of which it is a member.

CfPS has helped to develop some characteristics of good scrutiny which have been published by the Wales Audit Office (WAO) in its publication 'Good Scrutiny? Good Question'.

Northern Ireland

The Local Government (Northern Ireland) Act 2014 allowed councils to choose between a number of governance options, one of which involves an executive/scrutiny split. Under that option, powers for scrutiny committees broadly reflect the powers of overview and scrutiny committees in England and Wales. The overall objective is to give greater transparency and efficiency to the decision-making processes, increasing its accountability through overview and scrutiny committees and giving greater public access to meetings and information. All councils in Northern Ireland still currently operate the committee system and have had integrated health and social care since 1973, but in October 2016 the then health minister, Michelle O Neill, recognised the system itself was at breaking point:

> Put simply, the system has not changed quickly enough to meet the demands and the needs of the population…Professor Bengoa's expert panel report, 'Systems, not Structures' told us that we need whole system transformation if we are to meet the needs of the population.

The expert panel's report, alongside the Sir Liam Donaldson and 'Transforming Your Care' reports, have been instrumental in developing 'Health and Wellbeing 2026: Delivering Together'. Launched in October 2016, this report sets out a ten year approach to transforming health and social care across Northern Ireland, and provides a clear roadmap for reform and means by which to deliver radical transformation in the way health and social care is received and services accessed. Bengoa's expert panel report recommended the development of Accountable Care Systems (ACS) 'to integrate – by agreement rather than by creating new organisations – the provider sector', and recognised the need for the development of new governance arrangements for the ACS models. However, the Department of Health's strategy talked more about empowering local providers and communities to work in partnership and 'to plan integrated and continuous local care for the populations they serve'. The emphasis is placed on partnerships for planning, as opposed to for providing care.

Scotland

Legislation to implement health and social care integration in Scotland came into force on April 1, 2016. This brings together NHS and local council care services under one partnership arrangement for each area. 31 local partnerships have been set up across Scotland and they will manage £8 billion of health and social care resources. Working together, the NHS and local council care services will be jointly responsible for the health and care needs of patients, to ensure that those who use services get the right care and support whatever their needs, at any point in their care journey.

The new Integration Authorities (IAs) need to establish effective arrangements for scrutinising performance, monitoring progress towards their strategic objectives, and holding partners to account. The Accounts Commission argues that using the nine statutory outcome measures (listed at Exhibit 1) will help IAs to focus on the impact of health and care services. However, as well as simply monitoring performance, Integration Joint Board (IJB) members will need to use these statutory outcomes to help redesign services and ensure services become more effective.

There is also a need for regular reporting to partner organisations. This is particularly important where most members of the local authority or NHS board are not directly involved in the IJB's work. Aberdeenshire Council, for example, has 68 councillors, with five sitting on the IJB. Those not directly involved need to be kept informed on how the budgets provided to the IJB have been used and their effectiveness in improving outcomes for local people. This transparency and accountability is also crucial in authentically engaging service user and carer representatives, as well as third sector and partner organisations.

It is essential for IAs to set out clearly how governance arrangements will work in practice particularly when disagreements arise, to minimise the risk of confusing lines of accountability, potential conflicts of interests, and any lack of clarity about who is ultimately responsible for the quality of care and scrutiny.

Since 2008, scrutiny bodies have worked together to identify and agree the key scrutiny risks in each of Scotland's 32 local authorities and to develop a plan of scrutiny activity to respond to those specific risks. This approach, called Shared Risk Assessment (SRA), is designed to ensure proportionate and risk-based scrutiny in line with the recommendations of the Crerar Report. All 32 local authority areas have a Local Area Network (LAN), consisting of representatives of all the main scrutiny bodies for local government. The purpose of the LAN is to share intelligence and agree scrutiny risks for each council. Annually, each LAN prepares an Assurance and Improvement Plan which contains a scrutiny plan. This document captures agreed areas of risk and good practice, and the resulting scrutiny response for each council. It is the primary planning document for scrutiny bodies. These individual plans are aggregated each year to form the National Scrutiny Plan.

In the absence of legislation for a local government overview and scrutiny function that matches provisions in England, Wales, and Northern Ireland, it is important for Scottish councils to consider how local councillors can best hold services to account.

Exhibit 1

The Scottish Government, National Health and Wellbeing Outcomes (IAs are required to contribute to achieving nine national outcomes):

1	People are able to look after and improve their own health and wellbeing and live in good health for longer.
2	People, including those with disabilities or long-term conditions, or who are frail, are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.
3	People who use health and social care services have positive experiences of those services, and have their dignity respected.
4	Health and social care services are centred on helping to maintain or improve the quality of life of people who use those services.
5	Health and social care services contribute to reducing health inequalities.
6	People who provide unpaid care are supported to look after their own health and wellbeing, including to reduce any negative impact of their caring role on their own health and wellbeing.
7	People who use health and social care services are safe from harm.
8	People who work in health and social care services feel engaged with the work they do and are supported to continuously improve the information, support, care and treatment they provide.
9	Resources are used effectively and efficiently in the provision of health and social care services.

New regional arrangements

Just as significant are the new city region deals, for example in Cardiff and Swansea and the new mayoral arrangements in England, most of which seem to be designed to work with a cabinet arrangement with representatives of the constituent authorities. Cornwall has agreed a deal which does not involve a directly elected mayor. This is in contrast to combined authorities, for example in Greater Manchester and Liverpool City Regions, and the West Midlands.

In Cardiff:

Utilising the existing statutory framework, the ten local authorities will establish a Cardiff Capital Region Cabinet. The Cabinet will have the status of a joint committee and will be the ultimate decision making body in the governance structure. It will be the first step in the development of greater city-region governance across the Cardiff Capital Region. The Cabinet, which will comprise the ten participating local authorities, will provide the basis for initial decision making regarding the Investment Fund. The ten local authority partners of the Cardiff Capital Region City Deal have agreed to establish a governance model that:

- complies with the existing statutory framework that exists in Wales to deliver this City Deal
- strengthens and streamlines the existing governance and partnership arrangements across the Capital Region
- improves business involvement in local decision making
- provides confidence and assurance to both the UK and Welsh Government that the local authority leaders are making decisions which will drive economic growth across the Capital Region; and
- enables local authorities to explore with the Welsh Government alternative governance arrangements in the medium term

A comprehensive agreement will be drawn up between the participating authorities which will bind and commit each individual local authority and any successor authority (in the event of local government re-organisation) for such duration as is necessary to deliver the City Deal. The agreement will also allow for the possibility of additional functions and powers to be devolved to the Cabinet in the future.

The Cardiff Capital Region commit to reviewing the City Deal governance and exploring the future options for moving to even stronger and effective governance that is legally binding. The review will include consulting the Welsh Government and the UK Government to identify actions needed to take forward future governance options.

CfPS has published guidance about good governance and scrutiny arrangements in respect of devolution.

Assurance

The NHS in England has a well-developed approach to assurance against strategic objectives embedded within the Board Assurance Framework (BAF). Assurance: the board agenda sets out that 'the board ensures that there are proper and independent assurances given on the soundness and effectiveness of the systems and processes in place for meeting its objectives and delivering appropriate outcomes.'

Wales has now adopted this approach, but in Scotland the traditional approach is more akin to local government risk registers, which do not include an assurance column.

Assurance provides the confidence that what managers have instigated as controls actually work. Ideally the assurance is independent rather than another form of control such as a management report or project management. Audit and external reviews can provide independent assurance but it is important that the board or governing body owns and has confidence in the assurance offered. It is not good enough simply to list sources of assurance; they should be actively engaged and subject to scrutiny, usually by the audit committee, that they are actually working. Financial scrutiny is important, combining not just the audit role, but also looking beyond formal compliance to consider outcomes and value achieved for the 'public pound'.

Assurance is 'a positive declaration that a thing is true'. Assurances are therefore the information and evidence provided or presented which are intended to induce confidence that a thing is true amongst those who have not witnessed it for themselves. Scrutiny can bring a 'reality check' to assurance, especially through connections to public voice networks. We know from examples such as Mid-Staffordshire, Rotherham, and more recently, Grenfell Tower, that checking public perceptions of assurance is important.

University Hospital Southampton NHS Foundation Trust was an early adopter of the practice of including an additional column for independent assurance. This is helpful as it is often left blank requiring board members to respond whether they are comfortable with this or need additional assurance to be sought. The standard assurance column we have found to always be populated though often with rather bland and insufficient evidence.

More recently, CCGs in particular have experimented with a more succinct assurance sheet summarising risk appetite, controls, and assurance for each strategic objective on a single page. This innovation originally by Hammersmith and Fulham CCG has revitalised the BAF, which in many places had fallen into dis- or misuse. It is also possible to combine performance trajectories with the controls/ assurance summary, which allows boards to focus on future risks to objectives not being achieved.

Getting a grip

Boards are often described as needing 'grip'. This is another way of saying that challenge needs to be effective. Lord Carter's review of efficiency in hospitals uses the term 13 times; the CQC who monitor, inspect and regulate health and social care services in England like it and it is often used in their reports:

> It is our expectation that providers should use our inspection reports to get to grips with their problems and ensure they sort them out.

> We will continue to monitor the trust closely, and will be returning in the near future to check that the trust has got an improved grip on these immediate issues.

A summary report, 'Mergers in the NHS: lessons learnt and recommendations', which is based on research commissioned by NHS Improvement, provides practical advice for board members and senior executives of foundation trusts and trusts going through a merger or acquisition process. The guidance extols boards to 'get a grip on the target business as quickly as possible and maintain the momentum of integration'.

Maintaining grip across organisational boundaries without mergers is an even more formidable challenge. Holding partners to account requires a sophisticated approach to challenge and an understanding of the partners approach to accountability. Local government has traditionally used the term scrutiny but it is becoming more prevalent in health. Scrutiny itself is evolving both in legislation and in practice. In 2014, the Department of Health offered guidance to health and local government on the changing context in light of the 2012 Act and the advent of new players such as local Healthwatch.

This affirmed that the primary aim of health scrutiny is to act as a lever to improve the health of local people, ensuring their needs are considered as an integral part of the commissioning, delivery, and development of health services.

Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health, and social care is working – relevant to this might be how well health and wellbeing boards are carrying out their duty to promote integration - and in making recommendations about how it could be improved. At the same time, health scrutiny has a legitimate role in proactively seeking information about the performance of local health services and institutions; in challenging the information provided to it by commissioners and providers of services for the health service, and in testing this information by drawing on different sources of intelligence. In the light of the Francis Report, health scrutiny will need to consider ways of independently verifying information provided by relevant NHS bodies and health service providers – for example, by seeking the views of local Healthwatch.

It is interesting that as commissioners or providers of public health services and as providers of health services to the NHS, services commissioned or provided by local authorities are themselves within the scope of the health scrutiny legislation. The guidance says that:

* local authorities may be bodies which are scrutinised, as well as bodies which carry out health scrutiny
* the duties which apply to scrutinised bodies such as the duty to provide information, to attend before health scrutiny and to consult on substantial reconfiguration proposals will apply to local authorities insofar as they may be 'relevant health service providers'

However, the Department of Health report recognised that being both scrutineer and scrutinee is not a new situation for councils, but warned 'it will still be important, particularly in making arrangements for scrutiny of the council's own health role, to bear in mind possible conflicts of interest and to take steps to deal with them.'

Local authorities may appoint a discretionary joint health scrutiny committee (Regulation 30) to carry out all or specified health scrutiny functions, for example health scrutiny in relation to health issues that cross local authority boundaries. Regulation 30 also requires local authorities to appoint joint committees where a relevant NHS body or health service provider consults more than one local authority about substantial reconfiguration proposals.

There are therefore arrangements in place to deal with some of the complex issues arising from whole system health and social care management but there are also cautions to be raised.

Developing scrutiny competence

The report of the Commission on Public Service Governance and Delivery in Wales identified scrutiny as an important lever to secure improvement but recognised it needed development. Too few saw the fundamental importance of scrutiny in driving improvement instead understanding it as a burdensome process which had to be tolerated but could be largely ignored. This did not bode well for the more complex scrutiny across boundaries:

> *Scrutiny that is resisted or undervalued within organisations is unlikely to be successful when extended to other public sector organisations.*

The Commission found that under-resourcing scrutiny mechanisms had contributed to major governance failures. The joint inspection by WAO and Health Inspectorate Wales (HIW) into Betsi Cadwaladr found that the health board collectively lacked the capability and capacity to provide the appropriate levels of scrutiny in relation to service.

The Commission identified five key features of good scrutiny:

- separation of executive delivery and review roles
- focus on improvement
- independent and constructively critical rather than oppositional
- engaged early enough to influence strategy and plans
- scrutiny, audit, inspection and regulation must become complementary, clearly aligned and mutually reinforcing

All of these issues come more sharply into focus as we consider arrangements across health and social care economies. CfPS have argued that 'integration' is potentially the greatest policy priority for those who plan and deliver health and social care services. Councils are central to making integration a reality, working with CCGs and providers of health and social care services to establish a shared framework for delivering seamless health and social care.

However, experience in Scotland makes it clear that external scrutiny should not be seen as the starting point for integration rather it is those public bodies that are most self-aware of their strengths and weaknesses and act upon that knowledge, that tend to be better performers.

The Crerar Report in Scotland made it clear that external scrutiny can be a catalyst for improvement in the way that services are delivered especially when it influences behaviours and the culture of service providers. However, the primary responsibility for improving services lies with the organisations that provide them. The Crerar Report recommended that the degree of future external scrutiny should be dependent upon the range and quality of performance management and associated self-assessment in place within public services.

CfPS have identified some common themes to overcome: potential barriers to effective scrutiny when working across boundaries (see Exhibit 2).

Exhibit 2

Overcoming potential barriers to effective scrutiny of integration

Potential barrier		Possible solution
Lack of clarity about roles and responsibilities causes tension between health and wellbeing boards, commissioners, providers and scrutiny	➡	Agree a common statement of roles and responsibilities to help avoid duplication and help to plan scrutiny effectively
Scrutiny is not included at an early stage or does not get the information it needs leading to reactive and less influential scrutiny, rather than helping to improve integration plans	➡	Agree a common approach that sets out clear arrangements for scrutiny to be built into the whole cycle of planning, commissioning, delivery and evaluation
Party politics leads to conflicts within scrutiny and between scrutiny, council, executives and partner bodies	➡	Agree a non-partisan approach that separates councillor's scrutiny role and their representative role
Information about the way health and social care services are planned, operated and funded can be complex and proposals for changes are not always well received	➡	Agree to support scrutiny so that councillors can navigate the health and social care system, appreciate its complexities and respond effectively to proposals for change
Lack of clarity about the policy development and 'holding to account' roles of scrutiny	➡	Agree that scrutiny is a balance between collaboration and challenge about priorities and outcomes
Frequent changes in scrutiny arrangements, chairs or members leads to scrutiny becoming inconsistent	➡	Agree a consistent approach to organising scrutiny to help long term effectiveness of the function

GGI support the view that scrutiny is an important lever to secure improvement, but one which needs development. For NHS boards seeking to operate effectively in complex partnership arrangements, they must now not only understand their own roles and accountabilities within, but also recognise and have a grip on their responsibilities and obligations beyond their organisation's boundaries.

Various reviews across the UK suggest that scrutiny across boundaries will require both grip and sensitivity; an etiquette for working together.

Codes and multi-agency scrutiny etiquette

In 1995, the Committee on Standards in Public Life (the Nolan Committee) identified seven principles of conduct underpinning public life 'for the benefit of those who serve the public in any way', and recommended that public bodies should draw up Codes of Conduct incorporating these principles. The seven Nolan Principles are as follows:

Selflessness: Holders of public office should act solely in terms of the public interest.

Integrity: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty: Holders of public office should be truthful.

Leadership: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Scottish Executive took the Nolan Committee recommendations one step further with the introduction of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which brought in a statutory Code of Conduct for Board Members of Devolved Public Bodies and set up a Standards Commission for Scotland to oversee the ethical standards framework.

The Scottish Executive also identified nine key principles underpinning public life in Scotland, which incorporated the seven Nolan Principles and introduced two further principles.

Public Service: Holders of public office have a duty to act in the interests of the public body of which they are a board member and to act in accordance with the core tasks of the body.

Respect: Holders of public office must respect fellow members of their public body and employees of the body and the role they play, treating them with courtesy at all times.

The Principles of Conduct in Northern Ireland

In Northern Ireland a new Local Government Code of Conduct for Councillors became effective on 28 May 2014 with Guidance on the Code launched by the Commissioner for Complaints on 20 March 2015.

The Code consists of twelve principles of conduct (the Principles) and a number of rules of conduct (the Rules). The Principles are intended to promote the highest possible standards of behaviour for councillors. The Rules are the practical application of the Principles. Adherence to the Rules will assist in ensuring compliance with the Principles for example in the rules section on decision-making it says:

You should also remember that, the Code requires you, as an individual, to provide a reason if, in certain circumstances, you decide to remain in a meeting after you have declared an interest (Code paragraph 6.7). If these circumstances apply, you should ensure that your reasons for remaining are recorded in the minutes of the meeting.

The 12 principles of conduct in Northern Ireland are:

Public Duty: You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you. You have a general duty to act in the interests of the community as a whole. You have a special duty to your constituents and are responsible to the electorate who are the final arbiter of your conduct as a public representative.

Selflessness: You should act in the public interest at all times and you should take decisions solely in the public interest. You should not act in order to gain financial or other material benefits for yourself, your family, your friends or associates.

Integrity: You should not place yourself under any financial or other obligation to outside individuals or organisations, which might reasonably be thought by others to influence you in the performance of your duties as a councillor.

Objectivity: In carrying out council business, including considering public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit.

Accountability: You are accountable to the public for your decisions and actions and for the way that you carry out your responsibilities as a councillor and must submit yourself to whatever scrutiny is appropriate to your responsibilities.

Openness: You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions when required and restrict information only when the wider public interest clearly demands it.

Honesty: You should act honestly. You have a duty to declare any private interests relating to your public duties. You should take steps to resolve any conflicts between your private interests and public duties at once and in a way that protects the public interest.

Leadership: You should promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of your constituents, and to ensure the integrity of your council and its councillors in conducting business.

Equality: You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

Promoting Good Relations: You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms.

Respect: It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and their councils. You should therefore show respect and consideration for others at all times.

Good Working Relationships: You should work responsibly with other councillors for the benefit of the whole community. You must treat other councillors and with courtesy and respect. You must abide by your council's standing orders and should promote an effective working environment within your council. The relationship between councillors and council employees must at all times be professional, courteous and based on mutual respect. You must show respect and consideration for council employees at all times, and ensure that your actions do not compromise their impartiality.

A new multi-agency scrutiny etiquette

GGI have considered all these developments and have produced a scrutiny etiquette card, endorsed by CfPS, specifically geared to multi-agency working *(refer to Exhibit 4 on page 23 of this discussion document)*.

GGI/CfPS multi-agency scrutiny etiquette principles

1.   Agree common outcomes, values and metrics

The new partnership board must seek to determine its common purpose and it might best be able to do this by agreeing what will be different as a result of the collaboration. Story telling such as 'what will this be like for the patient being discharged? or the care worker receiving a referral?' might be an effective means of doing this.

The new arrangements will bring together different cultures so an early discussion of agreed values, unearthing variations in working practice and language will be important. Co–location will help avoid 'us and them' feelings and improve communication. Once outcomes and values have been agreed, alignment of system and metrics will be important to ensure common reporting back to 'parent' bodies.

2.   Ensure separation of executive delivery and scrutiny review roles

Most partnership arrangements involve officers and elected or lay members and it is important to unravel respective roles so there is no ambiguity between executive delivery and scrutiny review roles. In practice, the new partnership board will need to be taking executive decisions with delegated authority from their respective hosts. Lay and elected members must determine if they are there as members for the new board or are representing the parent body who has elected or engaged them. If the former, the parent body will need other means of scrutinising decisions and progress.

3.   Re-establish and share engagement principles

Good governance is about taking the best decisions based on good insight. Insight exists inside and outside of organisations and developing shared engagement principles can help executives and people with a scrutiny role talk to the right people at the right time to influence strategic direction and operational performance. Executives can use engagement principles to understand risk and help develop resilience. People with a scrutiny role can use engagement principles to check how services are performing and suggest future improvements.

4.   Allow stakeholders to engage early enough to influence strategy and plans

All organisations will have stakeholder engagement models in place, some with statutory force. The new partner body will need to share and where possible align these allowing stakeholders to engage early enough to influence strategy and plans. We are developing this theme with Healthwatch England. This means going beyond legal duties to inform and consult, but making sure that the Gunning Principles remain central.

5.   Ensure attendees have delegated authority to take decisions

Those attending joint board meetings should come prepared with delegated authority when decisions are required. They may have this as an agreed element of their role or may need to seek on an ad hoc basis depending on the item under consideration. Board papers need to be explicit when decisions are required to allow members to seek authorisation to act, so as to avoid constant reworking of issues. If not attending, the preferred action should be conveyed to the chair of the board so as to encourage progress rather than delay.

6.   Log, share, and track agreed decisions inviting each sovereign body to provide assurance of delivery trajectories

Decisions taken should be logged and explicit in what they will achieve, sharing with parent bodies intended outcomes and progress against these. When progress is at risk of running off agreed trajectory, reference should be made to delegated tolerances for escalating to parent bodies. Audit should be commissioned to check this operates as planned. Others with a scrutiny role can also check that levels of ambition for outcomes and progress are reasonable.

7. **Understand each other's risk appetite to allow for shared costs and risks**

A shared approach to risk and resilience is vital to successful partnership arrangements so that planned actions are not de-railed by unexpected circumstances. This means developing a common understanding about respective performance management and regulatory frameworks which can impact on the realities of joint working.

8. **Delegate to partners and suppliers within agreed risk tolerance**

Parent bodies should be clear of their own and partners risk appetite for change to allow for informed risk sharing of costs and reputation. Agreed tolerances will help those representing them at partnership meetings to know when variations in expected performance need to be referred back to the parent bodies for additional effort, prioritisation, or resources.

9. **In scrutinising papers focus on improvement rather than opposing**

Scrutiny should focus on improvement of outcomes rather than simply opposing decisions that have been taken. Where executives and those with a scrutiny role have a different view about actions to be taken, asking the question 'are executives doing what they said they would do?' can help take 'heat' out of difficult conversations.

Scrutiny should always be positive rather than dismissive, seeking to improve the outcome for service users and carers

10. **Aim for 'what goes around, comes around' rather than win-win**

It will not always be possible for partners to be equal gainers from decisions so rather than seeking only bilateral win-win outcomes, a 'what goes around, comes around' approach will help remove log jams, recognising that different partners will secure different benefits at different times.

11. **Recognise that our boards and stakeholders must police governance and scrutiny before regulators**

Good governance is not demonstrated only through compliance with external rules and regulations, but by adopting a transparent, inclusive and accountable culture within and across organisations. Boards and those with a scrutiny role must take governance seriously, recognising that good insight is required to take the best decisions. There are lessons from the past about what can go wrong when good governance is not fully understood.

12. **Seek alignment of scrutiny, audit, inspection and regulation within and between different agencies to provide mutually reinforcing systems**

The combined boards should aim to develop their own assurance that intended standards and outcomes are being achieved. This should be shared with parent bodies on a no surprise basis. It is the combined boards role to achieve this rather than rely on external regulators.

In addition, combined boards should support their auditors, inspectors and regulators to work together to develop a holistic pathway or place based approach to audit and regulation. This should gradually replace the many institutional based reviews which fail to tell the whole story.

13.   **Be prepared to explain variance rather than simple compliance with regulation or norms**

Boards need to know the best evidence about what works – and what doesn't. They also need to benchmark their performance against the best and avoid taking actions that risk matching the lowest performers. These steps will help overcome a 'post code lottery' and ensure that people who use services and communities benefit from innovation and improvement.

14.   **Appoint an arbitrator to agree local resolution arrangements and handle disputes before they arise**

It will be challenging for new organisational forms to handle varying priorities, regulation and practice. This might encourage more push back on simple compliance but always with the explanation of why the regulation has not been met. Doing the right thing is better than compliance that misses the true need.

Be prepared for disputes with partners by appointing an arbitrator before they are needed. This will avoid the difficulty of reaching agreement on an independent broker when tensions are already high.

Reviewing the effectiveness of governance and scrutiny

Finally, regularly review progress of joint working to resolve barriers and improve working arrangements. The maturity matrix for sustainability and transformation partnerships, integration joint boards, and public service boards will provide a simple ready reckoner of progress from agreement in principle to result being achieved and sustained (see Exhibit 3).

Exhibit 3

Maturity Matrix for Sustainability and Transformation Partnerships (STPs-England), Integration Joint Boards (IJBs-Scotland) and Public Service Boards (PSBs-Wales)

TO USE THE MATRIX: IDENTIFY WITH A CIRCLE THE LEVEL YOU BELIEVE YOUR ORGANISATION HAS REACHED AND THEN DRAW AN ARROW TO THE RIGHT TO THE LEVEL YOU INTEND TO REACH IN THE NEXT 12 MONTHS.

VERSION 2.1

PROGRESS LEVELS → KEY ELEMENTS	0 No	1 BASIC LEVEL — Principle Accepted	2 AGREEMENT OF COMMITMENT AND DIRECTION; PLANS IN PLACE	3 EARLY PROGRESS — Practice mainstreamed	4 RESULTS	5 MATURITY — comprehensive assurance in place	6 EXEMPLAR
1. PURPOSE AND CLARITY OF REMIT	No	Purpose, values, vision, and remit clarified, debated and agreed across partner organisations with a strong focus on delivering improved outcomes.	Purpose and strategic vision affirmed in public. National targets and local priorities agreed. KPIs identified.	The organisations have established robust mechanisms for service redesign, adding or removing services provided together or separately.	Focus on delivery. Performance against defined collective KPIs is recorded and improving.	The organisations together consistently perform highly against a range of national standards and local priorities.	The organisations influence national and international standards and are recognised for publishing and sharing examples of best practice. Success has allowed the organisations to redefine / extend remit.
2. LEADERSHIP AND STRATEGY	No	The Joint Board / Committee (group) is clear on their roles and responsibilities. Joint strategic objectives have been discussed and agreed.	Members are able to take decisions with authority on risk sharing on behalf of their parent body. Conflicts have a resolution mechanism.	The organisations are tangibly working towards the delivery of their collective strategic objectives. A joint BAF has been created.	Performance against defined strategic objectives are recorded and improving. The strategy is regularly reviewed.	The organisations are able to evidence how they are recognised as leading the local health and social care system.	The organisations are recognised nationally for their sustainability and system transformation work.
3. RISK SHARING	No	The group have identified shared risks to achieving their joint objectives / purpose. Each organisation will record such risks in their systems.	Risk appetite has been discussed and resolved in relation to joint objectives.	Continuity plans are regularly tested. The group uses scenario testing or similar exercises to develop joint understanding of risk and opportunities.	A high degree of risk sensitivity is demonstrable across the organisations. The organisations are comfortable being held to account.	The organisations are responsive to risks, and are able to rapidly address challenges. The group is assured that the collective BAF is balanced and reflects priority issues.	A joint audit has confirmed assurance. The sharing of risk has created extra value in the system.
4. ASSURANCE OF DELIVERY ACROSS BOUNDARIES	No	The partner organisations (group) have agreed a joint commitment and accountability to compliance with national guidelines.	Potential internal and external system failures are identified in a shared way, and these are jointly mitigated. There is ongoing effective communication around potential pressure points.	The organisations are able to track improvement against the (measurable) strategic objectives. There are no surprises in outcomes data.	Issues are systematically identified and are addressed if necessary by jointly commissioned deep dives.	National standards and local targets are consistently achieved across the health economy.	The parent boards are confident they have intelligent analysis and assurance across the health economy. Lessons learned and best practice is shared within the group & externally.
5. INTERNAL STAKEHOLDERS	No	A collective engagement strategy is in place for staff and wider partners. Staff and partner input is sought and valued as a means of driving improvement.	Staff are engaged in developing the approach to system transformation in targeted areas.	Mechanisms are in place to ensure that staff feedback is routinely collected. The group receives reports on internal engagement including feedback. Pay differentials are being tackled.	Staff are recognised as effective ambassadors for their organisations. Appropriate group forums exist for staff to learn from any improvement initiatives, and for staff to receive structured feedback.	Third party feedback confirms the effectiveness of the approach to staff engagement. Audit provides evidence of sustainable positive change in regards to staff engagement.	The organisations have been audited and are recognised nationally as a collective learning organisation. Initiatives and improvements introduced by staff are shared within and beyond the group The organisations can demonstrate they are employers of choice.

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PROGRESS LEVELS / KEY ELEMENTS	0 No	1 BASIC LEVEL Principle Accepted	2 AGREEMENT OF COMMITMENT AND DIRECTION; PLANS IN PLACE	3 EARLY PROGRESS Practice mainstreamed	4 RESULTS	5 MATURITY comprehensive assurance in place	6 EXEMPLAR
6. EXTERNAL STAKEHOLDERS	No	A collective engagement strategy is in place for patients, the public and wider stakeholders. Patients, public and wider stakeholder input is sought and valued as a means of driving improvement across the group.	Patient and stakeholders are engaged in developing the approach to system transformation in targeted areas. Stories define how the vision impacts users and staff.	Mechanisms are in place to ensure that patient feedback is routinely collected. Patients and carers are engaged and feel confident providing their feedback to the organisations via a variety of means	Effective partnership engagement working is in place and can be evidenced through improved outcomes.	A review of external stakeholders demonstrates that the joint work undertaken by the organisations is trusted by both service users and the local community.	The group actively contribute to the improvement of health and social care in their health economy. The group engages and learns from other providers and have experienced tangible operational and strategic benefits.
7. TRANSPARENCY AND CANDOUR	No	The group have agreed to share assurance systems; to commission joint audits and deep dives as necessary and to share and publish results.	A conflicts of interest register is reviewed and updated by the group and individual boards.	The board has defined the need for probity in all dealings with partners and contractors. Local sourcing is encouraged but compliant with Standing Orders.	Each board is confident that appropriate group actions to mitigate conflicts can be actioned and followed through.	Reputational risks are routinely considered by all organisations. The group is seen publically as open and transparent.	The group have adopted standards such as integrated reporting to share their commitment, success, failures and learning.
8. SYSTEMS AND STRUCTURES	No	The group has identified the need to define governance structures and systems fit for purpose.	The group has established or aligned governance structures and systems fit for purpose.	Decisions and operational plans are now clearly aligned to the various partner organisations and the joint strategic objectives.	Systems are aligned and allow for the easy sharing of information, risk and assurance.	Audit demonstrates the consistent achievement of delivery across the group to national, standards and local joint objectives.	The group has shown it is able to share and use data to drive system-wide improvement. Results and Assurance are routinely shared externally.
9. PARTNERSHIP ETIQUETTE AND COMPLIANCE WITH COLLECTIVE DECISION MAKING	No	The group has agreed to a joint etiquette on decision taking.	The group has defined a joint etiquette for decision taking based on parent organisations defining their individual risk appetite and tolerance for delegation.	Group decisions are usually accepted by parent organisations. Conflict resolution mechanism working well and has been tested.	Member organisations have demonstrated an ability to hold to collective decision-making processes.	Member organisations have audit evidence that collective decision making processes have not compromised their corporate responsibilities.	Collective decision making arrangements have been recognised as model system by external regulators.
10. SYSTEM WIDE QUALITY IMPROVEMENT	No	The group has identified the strategic outcomes it wishes to achieve together.	Improvement plans are in place recognising health economy priorities such as service resilience, value for money, sustainability, handover etc.	Joint strategic objectives have clear performance trajectories and recognition of risks that could compromise achievement.	The group have confidence in the quality of results, and are able to present one version of the truth externally.	Audit and peer review demonstrates the consistent achievement of delivery.	The group is able to promote its success regionally, nationally and internationally.

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Exhibit 4

Multi-agency
scrutiny etiquette card

1. Agree common outcomes, values and metrics

2. Ensure separation of executive delivery and scrutiny review roles

3. Re-establish and share engagement principles

4. Allow stakeholders to engage early enough to influence strategy and plans

5. Ensure attendees have delegated authority to take decisions

6. Log, share, and track agreed decisions inviting each sovereign body to provide assurance of delivery trajectories

7. Understand each other's risk appetite to allow for shared costs and risks

8. Delegate to partners and suppliers within agreed risk tolerance

9. In scrutinising papers focus on improvement rather than opposing

10. Aim for 'what goes around comes around rather than win win

11. Recognise that our boards and stakeholders must police governance and scrutiny before regulators

12. Seek alignment of scrutiny, audit, inspection and regulation within and between different agencies to provide mutually reinforcing systems

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14. Appoint an arbitrator to agree local resolution arrangments and handle disputes before they arise