

## **Leveraging the potential of local government scrutiny: a case study of southampton city council's scrutiny inquiry into its private rented sector**

Helen Carr and Mark Jordan

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# Leveraging the potential of local government scrutiny: a case study of southampton city council's scrutiny inquiry into its private rented sector

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5

**KEYWORDS** Private rented sector; local government; scrutiny inquiries; local government act 2000

## Introduction

At a time when it is becoming increasingly difficult for scholarship to influence social welfare provision and improve outcomes for the poorest and most vulnerable in our society, it is important to ensure that social welfare scholars explore every avenue that might assist in the achievement of social justice. One approach that appears to have received little attention from social welfare oriented legal scholarship is the role of local government scrutiny in England. Whilst local government has been a primary victim of the austerity measures of the last decade, it continues to have an important role in ensuring a basic level of social protection for its citizens. Scrutiny Inquiries, part of a New Labour project of local government modernisation initiated by the Local Government Act 2000, provide an important method of checking the quality of local government delivery of social protection and ensuring that local government is held accountable to its citizens, including those who are most in need of its services. They also have a potentially significant role in policy development: the proposed policy changes and actions they recommend must be considered by the council executive (Coulson and Whiteman 2012).

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In this paper we explain how we became involved in a scrutiny inquiry held by Southampton City Council (SCC) into the private rented sector; we consider our contribution as technical experts as well as providing some reflections on the process and outcomes. Our purpose is twofold; to encourage other social welfare scholars to participate in scrutiny and overview inquiries and to contribute to the wider literature on local government scrutiny which is currently driven by public administration scholarship. Drawing on our experience of scrutiny we test the value of the analytical toolbox proposed by Verhelst and Peters (2024) as a means of providing a nuanced understanding of scrutiny, one that integrates the complexity of the broader legal, political, and social environment.

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The paper opens with an explanation of the legal and policy basis for scrutiny and inquiry as well as a brief review of existing scholarship. It then turns to the specifics of the scrutiny inquiry with which we were involved. We explain SCC scrutiny procedures, the aims and objectives of its scrutiny inquiry into the private rented sector and our role as expert advisers. Importantly we seek to evaluate scrutiny within the local context of

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Southampton as well as the broader political and regulatory environment. We conclude by reflecting on what our experience adds to understandings of scrutiny and overview as an effective process and the value of social welfare scholars' participation in scrutiny inquiries.

## What is scrutiny? 40

### *Scrutinising local government*

There are several forms of scrutiny of local government, other than the ballot box. These range from top-down scrutiny such as judicial review, judicial inquiries, and scrutiny by supervisory government mechanisms, such as audit, most notably by the Audit Commission from 1983–2010, to the bottom-up scrutiny by citizens who might use complaints procedures, ombudsmen complaints and/or citizen juries to hold local government to account. Citizens may also, and increasingly do, scrutinise local government via newspapers and social media. 45

In this paper we are concerned with a horizontal process of scrutiny – councillors scrutinising themselves – introduced by New Labour in the Local Government Act 2000 as part of its 'local government modernisation agenda' (Cowell and Martin 2003). The main purpose of the Act was to introduce a new political governance system for councils in England and Wales, requiring them to have a separate executive in the form of a leader or elected mayor, and cabinet. At the same time, and as a counterbalance, the Act introduced a requirement for an overview and scrutiny committee to scrutinise the decisions and policies of the executive, and issue reports and recommendations informed by evidence and an understanding of the needs of local communities. The problem that needed to be solved was role imbalance: the 'backbench' councillor in an executive model may feel redundant. 50 55

The committee structure, which the Act abolished for all but the smallest councils, whilst slow and cumbersome, engendered a sense of comradeship and gave all councillors an understanding that they were elected to serve not just the electors in their wards, but the wider community in the whole council area and a feeling that, in the last resort, they were involved and in control (Coulson 2011, p. 102). Scrutiny and oversight committees were designed to offer a similar sense of purpose. 60 65

Councillors not involved in the executive were given four important opportunities via scrutiny committee membership, to hold that executive to account, to contribute to policy development, to monitor performance and to be involved in the scrutiny of external partners (Ashworth and Snape 2004). The changes were accepted with reluctance by many local councillors. Sandford and Maer for instance note councillor disaffection with scrutiny committees alongside difficulties in adapting to their changed role (Sandford and Maer 2004, p. 7). 70

### *The legal framework*

Section 21 of the Local Government Act 2000 required local authorities to establish scrutiny and overview committees to review or scrutinise, and report on decisions made, or other action taken in connection with the discharge of functions which are the responsibility of the executive. The committee also has the power to make 75

recommendations. The powers include an ability to scrutinise external agents and their impact on the local community.

From the outset there was concern that there was insufficient substance to the provisions. In 2009, the Local Democracy, Economic Development and Construction Act introduced a new section into the Local Government Act 2000 - s.20ZA – requiring that a local authority appoint a scrutiny and overview officer. The aim was to ensure that sufficient resources were devoted to scrutiny and that scrutiny was used as ‘a better way for the public to get involved’ (Hansard 2009, Vol 493 Col 22).

More changes were made by the Localism Act 2011 following the election of the Conservative/Liberal Democrat coalition government in 2010. The purpose of the Act was to loosen the constraints that central government imposed on local government. This was done primarily through the grant, in section 1 of the Act, of a general power of competence. This meant, as Eric Pickles MP, then Secretary of State for Communities and Local Government, explained,

instead of local authorities having to find a statute that allows them to act, the fun-loving legal advisers will have to find a statute that prevents them from taking action. (Hansard 2011, Vol 521 Col 561)

Consistent with the desire to give local authorities control over their own destinies, the Act enabled local authorities to revert to a committee model if they so wished. For those who chose to maintain the executive/cabinet model, the Act introduced new provisions for overview and scrutiny into the Local Government Act 2000, at sections 9 F – 9FI. Whilst these provisions provided greater clarity and flexibility on the workings of scrutiny and overview committees, they did little of substance and failed to provide the teeth that many considered necessary to make scrutiny work effectively. Martin Vickers, a Conservative MP with considerable experience as a local councillor, articulated the concerns,

On the overview and scrutiny role in local councils, a decade of trying to achieve a satisfactory system has, to the best of my knowledge, failed. . . . The biggest problem is to do with officer resources. Scrutiny officers, however hard-working and dedicated, are answerable to senior officers who are rightly charged with implementing the policies of the ruling group. Where is the incentive to create a powerful group to scrutinise and criticise the work of the controlling group? (Hansard 2011, Vol 521 Col 604)

Central government guidance provides only ‘a shadow outline of the role of overview and scrutiny committees’ and local authorities have broad discretion to ‘shape powerful local accountability mechanisms’ (Ashworth and Snape 2004, p. 543). Consequently, there is wide variation in procedures across England. The latest statutory guidance continues to emphasise the importance of flexibility giving local authorities the power to determine which overview and scrutiny arrangements best suit their own individual needs (Department of Levelling Up Housing and Community 2024). Annex 2 to the current statutory guidance provides an illustrative example of using academics as technical advisers. The guidance also provides a concise statement of central government’s ambitions for scrutiny and overview,

Effective overview and scrutiny should:

- provide constructive ‘critical friend’ challenge.
- amplify the voices and concerns of the public.
- be led by independent people who take responsibility for their role.
- drive improvement in public services and strategic decision-making.

125

(Department of Levelling Up Housing and Community 2024, para 4)

The extent to which these are realistic ambitions in the context of the contemporary politics of local government is a major concern of the scholarship discussed below.

### **The broader accountability environment**

The work of scrutiny and overview committees must be understood in the context of the broader environment of accountability mechanisms. The New Labour government elected in 1997, which enacted the Local Government Act 2000, also ‘introduced an extensive set of top-down arrangements for accountability of local government that led to a significant increase in public auditing’ (Ferry *et al.* 2015, p. 204). The idea was ‘to make decision-making processes within local authorities (and other agencies) more transparent and accountable to local electorates’ (Raco and Flint 2001, p. 586). Mechanisms included ‘best value’, comprehensive performance assessment and comprehensive area assessment. The Audit Commission had oversight of the whole system, conducting annual assessments of local authority performance. Up until 2010 the approach to accountability was becoming ‘progressively more centralized with further top-down pressures and focused increasingly on operational performance alongside financial conformance’ (Ferry and Eckersley 2015, p. 206).

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Since 2010 however and the election of the Coalition government, ‘much of the previous arrangements of accountability and audit in English local authorities’ have been dismantled (Ferry and Eckersley 2015, p. 203). This included the abolition of the Audit Commission. All that remained was the spending review used to manage annual budgets and financial audit of local government overseen by the National Audit Office. As Ferry and Eckersley point out, this has consequences,

From a top-down accountability perspective therefore, local government is now assessed on financial *conformance* alone – there is no hierarchical provision for monitoring outputs or operational *performance*. In other words, auditors focus on whether councils adhere to their statutory requirements to deliver balanced budgets (local public service inputs) rather than the extent to which they deliver high-quality operational *outputs* or *outcomes*. (Ferry and Eckersley 2015, p. 204 emphases in the original).

The Conservative government (2019–2024) have, to an extent, recognised that these changes produced gaps in the system of oversight of local government performance and have responded by establishing the Office for Local Government (Oflog) in July 2023. This body is responsible for increasing understanding about data on the performance of local authorities, helping to identify authorities at risk of serious failure who have not already raised the alarm themselves, and providing support to help local authorities with organisational improvement. However, Oflog has no mandate to lobby central

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government or other political actors or to arbitrate disagreements between a local authority and government about levels of funding for individual authorities. It also will not conduct routine inspections, nor issue summary scores for a local authority or make policy to improve the system of external audit of local authorities. Finally, it does not have powers to intervene in a local authority, in the manner of a regulator. 165

The other important context is the ‘austerity localism’ inaugurated by the Coalition government (Featherstone *et al.* 2012). Austerity localism, the simultaneous cuts in public expenditure including large reductions in local government budgets, and a rhetoric of local political empowerment is a, 170

process by which the state can be rolled back via the pretence of dispersing power, when in reality a highly centrally controlled framework of responsabilisation has led local actors to respond reactively in order to contain its worst consequences. (Dagdeviren *et al.* 2019, p. 147)

More responsibilities were placed on local government simultaneously with funding reductions (Ferry *et al.* 2023). Gray and Barford, in a careful analysis of the public finance of local government since 2010 concluded that, 175

Austerity has actively reshaped the relationship between central and local government in Britain, shrinking the capacity of the local state, increasing inequality between local governments, and intensifying territorial injustice. (Gray and Barford 2018, p. 558) 180

The combination of the dismantling of accountability mechanisms and austerity localism matters. As Ferry and Eckersley observe, ‘there will be no expert assessment of how service outputs may deteriorate due to funding cuts’ and this ‘reduces the amount of evidence that critics of the coalition government’s austerity policies can use to support their arguments’ (Ferry *et al.* 2015, p. 207). 185

Moreover the reduction in funding reduces the quality of local government decision making. In these circumstances,

A local authority that lacks the capacity to make good decisions – or faces a very limited range of options – because of a political context that it cannot control, cannot be said to experience increased accountability. (Ferry *et al.* 2023, p. 785) 190

### **Scholarship on scrutiny and oversight**

There has been a range of scholarship on local government scrutiny and oversight committees since the implementation of the Local Government Act 2000, mostly from academics concerned with public administration and finance. Our literature review uncovered no research from legal academics despite the local and constitutional significance of the provision. 195

Ashworth and Snape in 2004 provide a useful overview of research relating to the first five years of the new scrutiny arrangements. For them what emerges is,

The . . . persistence of the general conclusion that overview and scrutiny committees are still struggling to become effective bodies and the emergence of a stark ‘role imbalance’, of a mixed picture of success on the four roles for overview and scrutiny of holding the cabinet to account, best value reviews and general performance management, policy development and review, and external scrutiny. (Ashworth and Snape 2004, p. 542) 200

They highlight the significance of the local political and organisation context in determining the success of scrutiny. What matters is ‘the traditions of the party group system, of inter-party relations, the culture of officer-member relations and the organisational culture’ (Ashworth and Snape 2004, p. 552). Whilst they note the valuable contribution that scrutiny is provided to policy development, their conclusion is stark, 205

When will central government learn that structural solutions are not implemented in a local vacuum but within a prevailing political and organisational culture? Certainly the rather sorry story of scrutiny to date is a salutary lesson of the triumph of local context over centrally prescribed structural solutions. (Ashworth and Snape 2004, p. 554–555) 210

In 2012, around the time of the implementation of the Localism Act, Coulson and Whiteman reviewed what the decade since the Local Government Act 2000 had revealed about effective scrutiny. Using the factors identified by Snape et al in 2002 - member leadership and engagement, a responsive executive, genuine non-partisan working, effective, dedicated officer support and management of the scrutiny process, a supportive senior officer culture and a high level of awareness and understanding of the role of overview and scrutiny, they suggested that, 215

If any of these conditions are not met in a particular local authority, scrutiny is likely to struggle. That alone is sufficient to explain why its performance is patchy. If all of them are in place . . . scrutiny has a good prospect of being able to contribute to policy development, by enabling councillors to explore a small number of issues in depth. (Coulson and Whiteman 2012, p. 188) 220

Their review suggested scrutiny works to, 225

Complement the work of the executives, by holding hearings into matters of local concern, or areas of poor performance and writing effective reports, hard-hitting if necessary. In these ways selectively but not comprehensively, it can hold executives to account. (Coulson and Whiteman 2012, p. 188)

They concluded that an enhancement of scrutiny powers was necessary to strengthen local government as a political process and provide ‘a route back towards effective oversight while avoiding the partisan nature of traditional opposition’ (Coulson and Whiteman 2012, p. 191). 230

There is a quite distinct strand of research, coming from political geographers which has focused on the contradictions inherent in recent reforms of local governance. Raco and Flint, for example, suggest that reforms which seek to widen community participation in decision making processes are potentially risky. They identify the potential for tensions between elected councillors and unelected local activists, despite each claiming democratic legitimacy (Raco and Flint 2001). For them the issue is the lack of congruence between spaces created for administrative efficiency, and places, ‘humanised spaces in which intentions, engagements and associations are established and developed’ (Raco and Flint 2001, p. 591). They conclude that, 235 240

The construction of institutional spaces of local governance is therefore a contestable process, central to any examination of the relations between the local state and local communities. (Raco and Flint 2001, p. 593) 245



This strand of research, drawing on governmentality theory, is not designed to evaluate the technicalities of the reform of local government but to provoke more political theorisation about democratic innovation that purports to be progressive. For instance, Fuller and Geddes suggest that New Labour's reforms of urban governance are best understood as examples of 'roll-out' neoliberalism (Fuller and Geddes 2008). Bennet et al argue that governance-driven democratic initiatives designed to promote more collaborative governance arrangements require research methods that are dialogical, focused on power sharing and democratic engagement rather than being shaped by 'a rational, functional, or goal-oriented approach that frames citizens as 'stakeholders' and 'end-users' for service design and management (Bennett *et al.* 2022, p. 609).

Although scrutiny inquiries have not been the focus of this more theoretical approach to local government initiatives we think that the publicness of scrutiny inquiries, and the involvement of experts such as ourselves and of community stakeholders, makes scrutiny more than a technical exercise. An analytical approach that understands that scrutiny is simultaneously political and technical may be productive. We have drawn on recent work of Verhelst and Peters, who, in an attempt to enhance the conceptual base of research into scrutiny and to capture its complexity, suggest theorising local government scrutiny as a,

Compound concept nested in a broader accountability regime. Its meaning ranges from a broad political process to stricter administrative activities. This is further reflected in the different components that constitute the scrutiny loop in practice, including actors, institutions, policy problems, and the broader environment. (Verhelst and Peters 2024, p. 143)

They propose a threefold research agenda including more comparative and more longitudinal research. For our purposes what is significant is the emphasis they place on a 'holistic approach developed in single case studies'. This, they suggest,

will yield more in-depth knowledge of how scrutiny works. This includes considering the interaction between councillors and other oversight bodies operating on the fringes of council action (e.g., citizens, supervisory governments, experts, interest groups, media). Similarly, this approach fits the purpose of gaining a more detailed understanding of the specific parts of the scrutiny process and how they relate to each other. (Verhelst and Peters 2024, p. 144)

This approach has informed our reflections on our involvement in the scrutiny process enabling us to reflect on the technical processes of scrutiny and simultaneously reveal some of the political contestations that underpinned the inquiry. Before we consider what we learnt as a result of our involvement in Southampton City Council's interrogation of the private rented sector, we first explain the council's scrutiny procedures and how the scrutiny inquiry was operationalised.

## Scrutiny and overview in southampton city council

### Introducing southampton

Southampton, a city on the south coast of England with around a quarter of a million residents, is historically known as Britain's premier passenger shipping port. Since the decline of the transatlantic liner industry the city has become the home port of some of

the largest cruise ships in the world (Pinch 2002). The city is very diverse, with nearly 160 languages spoken, and becoming increasingly so – in Southampton, 68.1% of usual residents are white British, a decrease of 7.9% since the Census 2011.<sup>1</sup> 290

Despite its south east location, Southampton is characterised by relatively high levels of deprivation and in this respect has more in common with northern English cities. The city is ranked 55<sup>th</sup> most deprived out of the 317 local authorities across England – as compared to Bristol (82<sup>nd</sup>), Leeds (92<sup>nd</sup>) and Sheffield (93<sup>rd</sup>).<sup>2</sup> Deep inequalities persist within the city and Southampton has 19 neighbourhoods in the 10% most deprived areas nationally and just one neighbourhood in the 10% least deprived. 295

Deprivation and inequalities between residents and neighbourhoods have been exacerbated by over a decade of austerity localism and they are a significant driver for crime, poor health outcomes and poor educational outcomes. In the most deprived areas of Southampton, men on average live 6.3 years less than those living in the least deprived areas and females 4.3 years less. Furthermore, key educational outcomes for children and young people are significantly worse for those residents living in the most deprived areas of the city compared to those living in the least deprived areas.<sup>3</sup> 300

### *SCC scrutiny procedures*

SCC is a Labour run unitary authority meaning it has the powers of a non-metropolitan county and district council combined.<sup>4</sup> It operates a ‘leader and cabinet’ executive arrangement under which the council elects the leader who then appoints the other cabinet members. As required by statute, SCC has procedures for **scrutinising** decisions of the cabinet and the process is supported by an experienced staff who have undertaken over 30 inquiries into areas including respite services for adults with learning disabilities and air quality.<sup>5</sup> The Council’s claim, in evidence to a parliamentary committee, is that these inquiries have held the executive to account and resulted in significant policy outcomes.<sup>6</sup> 305 310

SCC has an oversight and scrutiny handbook<sup>7</sup> which draws on the Centre for Public Scrutiny’s four principles of effective scrutiny – providing the role of ‘critical friend’ to decision makers, assisting with policy development, serving as a ‘watchdog’ that drives improvements in public services and enabling voices of the public to be heard.<sup>8</sup> 315

In Southampton, the Scrutiny Inquiry Panel is responsible for undertaking scrutiny inquiries in accordance with a programme developed by the Overview and Scrutiny Management Committee (OSMC). Local convention determines the Chair of the OSMC is a member from a political group other than that which forms the Executive and the Vice Chair may, but does not have to, come from the group(s) forming the administration. The OSMC has the role of questioning and evaluating the executive actions, monitoring performance and financial management of the council, developing and reviewing policies, making reports and recommendations on any aspect of council business that affect the city and its citizens. It has legal powers to require officers and Executive Councillors to attend and to answer questions and both officers and Executive Councillors are under a legal duty to comply both in attending and answering questions. Equally, it has wide powers to consult, and involve, involve key partner organisations, groups, and individuals from outside the Council to support the work of the inquiry. 320 325 330

In determining whether to commission an inquiry, the Committee considers the following, (1) the significance of potential policy development (2) performance issues i.e. a service that fails to meet expected targets over a period of time or, appears to provide comparatively low value for money, or generates a large number of complaints and a high caseload of work for elected members, (3) the potential to make a difference to city life and improve a situation for the benefit of people living and working in Southampton, (4) the opportunity to engage partners, (5) avoiding duplication, and (6) available resources. 335

Once selected, the terms of reference and inquiry plan for the topic are agreed by the Committee and the inquiry is undertaken by the Scrutiny Panel. The role of the Inquiry Panel is to conduct the inquiry in accordance with the terms of reference set by the OSMC. The Panel, in meeting the terms of reference, will question the Executive, monitor performance and finances and review policies etc but only as it relates to the subject of the inquiry and the of reference. 340

At the conclusion of the Inquiry, the Chair of the Panel presents the final report to the OSMC. Once approved, the final document will be submitted to the Cabinet which will normally respond to an inquiry report within two months of submission. 345

## **Southampton city council scrutiny of the private rented sector: how do we get a better deal for private sector renters in southampton?** 350

### ***Private renting in Southampton***

The private rented sector in Southampton accommodates approximately a third of all households. In recent years, the sector has nearly doubled in size – rising from 16% of all households in 2001 to 29% in 2021 (ONS, 2003, 2023). During this period, the percentage of owner occupiers and social renters has declined. Although similar tenure trends have played out across England, the sharp increase in the size of the private rented sector in Southampton is distinctive and it has resulted in the percentage of households accommodated in that sector in Southampton (29%) being higher than the national average (20%). 355

Despite the general lack of meaningful data about the private rented sector at national and local level, there are indications that the serious problems that characterise the sector nationally are also present in Southampton. These include acute housing insecurity which is contributing to rising homelessness – the ending of an assured shorthold tenancy is one of the main reasons households become homeless in Southampton.<sup>9</sup> There is also evidence of widespread poor housing conditions in the city. The most recent SCC Private Sector House Condition Survey (2008) found that 38% of privately owned and rented homes in the city did not meet the Decent Homes Standard.<sup>10</sup> Finally, acute inflation in private rents has contributed to growing unaffordability, especially for low-income households. The Office for National Statistics (ONS) estimates that 2023–24 average private rents increased 9.8% in Southampton, as compared to 9.1% in England.<sup>11</sup> SCC noted that the growing unaffordability of private rented housing is apparent in how the average rent for a three-bedroom property in the city was £1,100 per month which exceeds the local housing allowance rate of £922 per month.<sup>12</sup> 360 365 370

### *Scrutiny objectives & plans*

When deciding to commission the Inquiry, SCC's Overview and Scrutiny Management Committee drew attention to the size of the private rented sector, 'the link between poor quality housing and poor health and wellbeing, educational attainment and productivity outcomes, and the concerns relating to poor quality housing, high costs and insecurity'.<sup>13</sup> The Committee's decision was also influenced by the prospect of national reform via the Renters Reform Bill which, at the time, had progressed past the first reading stage.

The committee set the following objectives for the inquiry:

- To identify the challenges and concerns of private sector renters in Southampton.
- To understand existing plans and opportunities to address the identified challenges.
- To identify good practice being employed to get a better deal for private sector renters in the UK and beyond.
- To identify what initiatives and approaches could work well in Southampton to improve outcomes for private sector renters.

The Scrutiny Officer timetabled six meetings running between November 2023 and April 2024. The first meeting was on **16 November 2023**. It introduced private renting in Southampton and set the background and context for the inquiry. The meeting identified tenant concerns in the sector by drawing on the results of a SCC survey of tenants' experiences and evidence presented by Generation Rent and Southampton Tenants Union (STU). The meeting heard the landlord perspectives from the National Residential Landlord Association (NRLA) and iHowz Landlord Association – which represents landlords in the southern region. The meeting included an explanation of how the Council and its partners manage and oversee the private rental sector in Southampton. Our role, as expert advisors, was to provide an overview of the wider legal and regulatory context, to outline the potential impact of the Renters Reform Bill and to answer technical questions from the Panel on these topics.

The second meeting focused on the affordability of private renting in Southampton. It identified acute inflation of private rents in the city and the growing gap between rent levels and Local Housing Allowance rate. Evidence was heard from STU and the NRLA and iHowz about the situation in Southampton. The meeting also heard from external speakers including the Bristol Living Rent Commission – which spoke in favour of rent control, Citizens Advice, Solent University, Spectrum CIL and Hunters Estate and Lettings Agent. At this meeting, we provided an overview of legislation relating to the cost of renting and examples of approaches being applied, or considered, elsewhere to increase the affordability of renting in the private sector.

The third meeting concerned housing conditions in the private rental sector in Southampton. Evidence based on local and national statistics indicated widespread poor housing conditions in the city. As well as STU and the NRLA/iHowz, the meeting heard from external speakers including the London Borough of Newham, the Environment Centre, and the University of Southampton. At this meeting, we provided an overview of the legislation and data relating to the condition of private rented housing and outlined approaches being applied to improve housing conditions.

The fourth meeting was scheduled to review SCC's existing HMO mandatory licencing scheme and its additional licencing schemes launched in 2013, 2015 and 2018 – all of which had expired by 2023. Part of the agenda of the scrutiny inquiry was to consider whether additional licencing schemes should be renewed and the role of selective licencing. The most recent stock condition survey took place in 2008 and without carrying out a costly up-to-date condition survey, SCC considered it would be difficult to justify renewal or application. Unfortunately, the meeting was cancelled due to illness of the Council officer responsible for licencing and consideration of these issues was postponed to the following meeting. 420

The fifth meeting focused on security, stability and overcrowding and also briefly covered SCC's licencing and enforcement policies. As well as STU and the NRLA/iHowz, the meeting heard evidence from SCC's Housing Needs and Welfare Support officer which indicated that evictions of private tenants was a major contributing factor to increasing homelessness in the city. At this meeting, we provided an outline of the legislation relating to security, stability and overcrowding in the private rented sector and drew attention to the impact of the Renters Reform Bill. This was the final substantive meeting of the inquiry and it was followed by the final meeting in April 2024 which was for the approval of the draft report. STU and the NRLA/iHowz were given an opportunity to comment on the report, after which it was then approved. The report was provided to the Council Cabinet for consideration in June 2024 and we will be present for that meeting. 425  
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### **Our contribution**

It was fortuitous that we became involved in the scrutiny. In October 2023, Mark organised a workshop, *Housing and Tenant Activism: Challenges, Opportunities and the Law* which included contributions from Living Rent in Scotland, Southampton Tenants Union, Greater Manchester Tenants Union, CATU in the Republic of Ireland, La PAH in Spain and Unite the Union's SE Housing Action Group and housing law academics. Following the workshop, Mark was contacted by a local councillor to ask if he was aware of the scrutiny and who then passed on his contact details to the Scrutiny Manager. Following this, the Scrutiny Manager met with us to discuss the Inquiry. It was decided that we would provide briefing papers for each of the six meetings, that we would attend, present our work, ask questions of the various witnesses, and provide summaries of the proceedings.<sup>14</sup> We spoke to the Scrutiny Manager before and after each meeting and we agreed priorities for our briefing papers. 440  
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### **Reflections on the scrutiny inquiry**

It is easy to conclude, in line with the scholarship and based on our involvement in SCC scrutiny inquiry that the process, whilst a useful review of council practices, fails to address the role imbalance created by the Local Government Act 2000, even when the process is led, as in SCC, by an experienced and independent officer.<sup>15</sup> The backbench councillors took their role seriously and engaged in extensive discussion with stakeholders and others, but they also framed recommendations in a way that would persuade rather than direct the executive. The final report, for instance, 450

included a recommendation that the Council maintain, rather than expand, its current social and affordable housing commitments. While this arguably reflects the impact of austerity localism, it also demonstrates the limits of the role of critical friend; policy development was nudged rather than steered by the process. We also saw little evidence of public or community engagement at the meetings (Raco and Flint 2001) although there was extensive involvement from those closely involved with the private rented sector whether as activists, or advisors. We find the conclusions of (Cole and McAllister 2015) persuasive to explain the technical limitations of the process. For them there was a lack of any big idea animating the introduction of scrutiny inquiries; scrutiny was not understood as a progressive democratic initiative in itself but an afterthought to solve a problem created by the Local Government Act 2000. 460

But we think there is more scope for scholarship on scrutiny than reflecting on its limits, and here we draw on the work of Verhelst and Peters (2024). They call on researchers to capture the complex legal, political and social environment of a scrutiny inquiry. They suggest an ‘analytical toolbox’ which conceptualises Council scrutiny as a loop of interrelated parts, comprising the institutional and policy context, the actors, the object of scrutiny, the scrutiny of objective, constellation and interaction mode, the scrutiny process, scrutiny effects and personal rewards. In the interests of brevity we have focused on the first three elements of this loop as these have proved most useful to capture the technical operationalisation of scrutiny inquiries alongside their broader political and regulatory significance (Onyango 2020). 470

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### **Context: institutions, policy environment, and problems** 480

The local reasons for the inquiry, high demand for private renting in Southampton, the cost-of-living crisis and the intensification of already existing problems of insecurity, unaffordability, unsafe housing conditions and poor management practices by landlords are powerful. However external factors outside of the Council’s control also impact upon private renting in the city. First ‘austerity localism’ has been very significant, indeed during the SCC scrutiny inquiry, there were various media reports that SCC had begun ‘informal discussions’ with central government over its difficult financial situation and the risk that it would have to file a s114 (bankruptcy) notice.<sup>16</sup> This has impacted directly upon the capacity of SCC to respond to the problems of the private rented sector. Whilst, for instance, the PRS has doubled in size in the city since 2001, and HMO licencing schemes have expanded, during this period the number of SCC staff responsible for enforcement action in the sector has remained static. In addition, whilst there was a policy commitment to renewing the additional licencing scheme in the city, doing so would require evidence that the scheme was necessary, evidence that the Council could not afford to collect. The Executive made an unrealised commitment to carry out a stock condition survey which was included in SCC’s Housing Strategy 2016–2025. 490

Austerity localism also impacts upon the local voluntary sector, reducing its capacity to support marginalised individuals (Clayton *et al.* 2016), and has increased the marginalisation of those reliant on welfare benefits. For instance, the freezing of Housing Allowances between 2020 and 2023 following its reduction from covering rents in 50<sup>th</sup> percentile to the 30<sup>th</sup> percentile in 2008 has pushed an increasing proportion of private 500

rented accommodation out of the reach of benefit claimants (O’Leary and Simcock 2020, Clair 2021).

The second external factor was the Renters Reform Bill that was going through Parliament during the inquiry. Not only did the Bill impose a statutory duty on local authorities to enforce landlord legislation, it also extended local authority investigatory powers. The Bill also sought to apply the Decent Homes standard to private renting and extend the power of tenants to apply for Rent Repayment Orders, where there has been a breach of landlord legislation. As legal experts we were able to alert the Council to the likelihood of its increased responsibilities. However the powerlessness of local authorities also became apparent. Not only was it unclear what resources would be made available to help local authorities deliver the objectives of the Bill, when the election was called on **23 May 2024**, the Bill fell. Although we are confident that the Bill will be resurrected whoever wins the election, it illustrates the volatility of the politics of the private rented sector which has local consequences. The Renters Reform Bill is part of a trend towards greater regulation of private renting, which is now described in the literature as regulated deregulation. The private landlord organisations who participated in the scrutiny inquiry were particularly alert to the increasing constraints on their business practices.

There were two other external factors which were relevant. The first is the impact of the building safety crisis that emerged following the catastrophe of the Grenfell fire (Carr *et al.* 2023). There has been extensive research on the impact of the building safety crisis on leaseholders (see for instance Preece *et al.* 2023). However less attention has been paid to the impact on councils. In Southampton with a particular problem of building safety, the equivalent of one full time officer is deployed to work on with landlords on resolving issues. This has depleted the already limited resources devoted to the private rented sector. The second is the very poor condition of council housing in the city. In 2022 the Department for Levelling Up, Housing and Communities (DLUHC) in the Local Authority Housing Statistic Returns ranked SCC as the second worst authority in England, for the proportion of its properties which fail the decent home standard with 39% (6,411 properties). By January 2023 an internal report indicated that the number of non-Decent Homes had increased to 46.6%. SCC’s policy of upgrading properties when they are emptied has had consequences. Not only are tenants living in poor conditions for longer, but the period when properties are void has increased, to facilitate works, resulting in a serious loss of income. The private landlords were able to use this poor record to their advantage, suggesting that their performance as landlords was better than that of the regulator.

### Actors

What we learned from our observation of the key actors in the inquiry is that whilst scrutiny inquiries are constructed as politically neutral spaces of state action, it is not possible to eradicate the contestations, instabilities, and tensions inherent in the government of place, particularly when there is community participation (Raco and Flint 2001). The primary actors in this context are the councillors. There is considerable focus in the literature on their role within the scrutiny process (Verhelst and Peters’s 2024). We saw that councillors were mostly focused on the attainment of operational objectives including identifying the challenges and concerns of tenants, understanding the existing plans

to address those challenges and identifying good practices, and initiatives that could improve outcomes for tenants. For the most part, it appeared that counsellors struck a ‘constructive’ stance (friendly oversight) that treated scrutiny as an opportunity to improve government. This is perhaps not surprising given that Labour councillors held the balance of power in Cabinet and on the Scrutiny Panel. While this tends to endorse the image of the councillor as a ‘policy analyst’ who deals with ‘policy, not politics’ (Stocker et al. 2004, p. 59), there were less visible and more political motivations for councillors. At different points during the process there were flashpoints where acute political disagreements between councillors became apparent – particularly over the poor condition of housing, housing insecurity, and the role of social housing.

While our experience confirmed that scrutiny required expertise, political skill, experience and focus on the part of councillors (Sandford and Maer 2004), it also demonstrated that a range of other actors, especially interest groups, can play a significant role in shaping the process and outcomes. Representative landlord and tenant organisations in the form of the NRLA/iHowz and Southampton Tenants Union were fixtures at each meeting, providing, and engaging with evidence through presentations, questioning and commentary. During the inquiry there was political contestation between representative landlord and tenant organisations over local government’s enforcement role in the private rented sector. These local contests shed light on how these groups present radically different analyses of the root causes of the housing crisis, propose diametrically opposed solutions to that crisis, and advance quite different visions for local government.

The NRLA and iHowz, the local landlord association, are well-established organisations who were active throughout the Inquiry. iHowz has a history of interaction with SCC. iHowz, formerly known as Southern Landlords Association, unsuccessfully judicially reviewed the Council’s licencing scheme in 2013 and also assisted the Council in piloting a private surveyor led form of inspection for licencing purposes. The landlords thanked the senior enforcement officer for making Southampton one of the best cities in which to be a landlord. The landlord organisations generally presented the housing crisis as stemming from insufficient supply of housing and presented themselves as being eager to work with the Council. They frequently attributed problems in the sector to a ‘small minority’ of ‘rogue’ or ‘criminal’ landlords and suggested occupiers were to blame for poor private rental conditions. While they presented landlords as providing an essential public service, they were critical of more proactive enforcement or reforms that would curtail the property rights of landlords to set rents, evict tenants, and maintain the property as they see fit. Such moves would inhibit the supply of new rental housing, they argued and lead to landlords exiting the market. They sought to extend the debate about housing across all tenures and emphasised the poor standard of Council housing in the city. We also noted that landlord representation reflected a particular demographic, and did not reflect the diversity of Southampton’s population.

In contrast to the landlord associations, Southampton Tenant Union (STU), a relatively new organisation founded in 2022 as an independent tenant representative union in the city which ‘fights for the provision of affordable, healthy housing for all who need it’<sup>17</sup> was much more diverse. In its contributions to the Inquiry, STU presented the housing crisis in the city as stemming from the state promoted transformation of housing into ‘a profit-making exercise’. STU critiqued private landlordism as ‘a deeply outdated



institution' that depended upon the property owners' rights to extract profit from the tenants' need for a decent home.<sup>18</sup> They sought to emphasise housing as a right as opposed to a commodity and were deeply critical of SCC's reactive enforcement policy, lack of ambition, and its 'failure' to lobby the central government for the ability to introduce rent controls. In their final submissions they noted how the landlords were given far more time in the panel meetings to present their case as a result of both national and regional landlord organisations having a platform. 595

The contests between these groups at the inquiry demonstrated how the rise of tenant organising has the potential to provide a significant political counterweight to established landlord associations locally. This is particularly important given how landlords associations have established close working relationships with SCC and with other institutions in the city, including University of Southampton and SUSU, University of Southampton Students' Union which runs a landlord accreditation scheme. As the conditions that have contributed to the rise of landlord and tenant organising intensify, such contests are likely to become more acute. It is striking to note how these local contests reflect similar contests that are taking place around the commodification and financialisation of housing in cities across the UK and further afield (Jordan 2024). 600 605

Of course, we were also significant actors in the Scrutiny Inquiry. Our presence was not neutral. Our assessment is that we were very much welcomed by the councillors for our expertise and knowledge and were seen as an ally by the STU and the third sector organisations present. The local landlord association was much more wary. We challenged some of their accounts of the sector, drawing on national data for instance to argue that poor property conditions could not be blamed on tenants, and that the Housing Health and Rating System could not be written off as unworkable, and we disrupted what might be perceived to be an informal alliance between the enforcement officers and the landlords. We were able to draw on published research to substantiate our position, and to provide weight to the instincts of the scrutiny panel. We were particularly assisted by our own research and evidence available from the UK Collaborative Centre for Housing Evidence.<sup>19</sup> Indeed Alex Marsh a Co-Investigator at the Centre and a Professor of Housing Policy at the University of Bristol had an almost tangible presence at the Scrutiny Inquiry. 610 615 620

### **Object of scrutiny**

SCC's Scrutiny Inquiry primarily targeted the Executive, but also questioned the administrative departments of SCC that implement the Executive's regulatory function and policy in relation to the private rented sector. Although the inquiry never appeared to be in the driving seat with regards to enforcement policy, evidence presented at the inquiry emphasised the importance of regular stock condition surveys and pointed out how SCC had not carried out a survey since 2008. The final report took this on board, recommending that SCC commission a private sector housing conditions survey. If this recommendation is accepted by the Executive it will ensure that a significant investment is made into private rented regulation, directly as a result of the scrutiny inquiry. 625 630

Overall though what went on may be better understood as a complex mediation (Bourdin 2024). For Bourdin, mediation is a critical role carried out by elected politicians, who can ensure that the interests of local citizens and key stakeholders are 635

considered in policy development, building the trust that is necessary for success. The Inquiry provided, for example, a unique opportunity for those attending to learn about local authority enforcement and to pose questions to senior housing officers about their functions. One useful outcome was that the inquiry identified the limits of SCC's reactive complaint-driven enforcement policy and the need for a more proactive systematic approach to enforcement. 640

Bourdin recognises another role for local councillors, that of orchestration of more effective policy outcomes. Orchestration seems to us to be more subtle than a straightforward holding to account. At various points in the Inquiry, novel policies developed in other parts of the UK were brought to the attention of SCC. For instance, the meeting on housing conditions provided an opportunity for discussing how NHS hospital admissions data and indices of multiple deprivation could be mapped onto housing stock condition survey data as a way of targeting enforcement action and welfare interventions. In this way the Scrutiny orchestrated policy making in the city. By choosing to hear evidence from Bristol City Council and LB Newham about their proactive regulatory approaches something else was orchestrated. The presentations included councillors who had led on these initiatives demonstrating not only that better outcome for tenants is dependent upon significant political support at Executive level, but also illustrating the consequences of an absence of political will in SCC for improving private rented sector conditions. If mediation and orchestration are important roles for elected politicians, then the Scrutiny Inquiry extended those roles beyond the Executive to those backbench councillors involved in the Inquiry. What facilitated this was the skills and expertise of the Scrutiny Officer. 645 650 655

Considering the institutional and policy context of the Scrutiny Inquiry, the actors involved, and the object of the scrutiny inquiry, it is clear that SCC scrutiny of the private rented sector was a more political and disruptive exercise than a technical evaluation of its impact might suggest. Local governance of the private rented sector is very much shaped by the external political environment, by local political will, and by the relative strengths of activists and their interface with local authority officers. The final report provided a template for action if, as seems likely, any of these elements of the scrutiny loop changes soon. 660 665

## Conclusion

Scrutiny Inquiries are a relatively new democratic initiative designed to empower back-bench local councillors, and to a lesser extent promote community engagement in local government decision making. We engaged in SCC's Scrutiny Inquiry with considerable ignorance about the way in which scrutiny operates locally and nationally and with limited grasp of the relevant literature. Public administration scholarship suggests scrutiny inquiries have never fully achieved their objectives and our experience confirms these insights. As Coulson puts it, 'this is a form of research, conducted in a political context, with awareness of the constraints of budgets and legislation' (Coulson 2011, p. 105). Nonetheless, drawing on more theoretical research into recent democratic initiatives which involve community participation, we think there is much to be gained from taking scrutiny inquiries seriously. Whilst they 670 675

appear functional and constrained, they operate in the complexities and contradictions of local places and in a wider political environment much of which is beyond the control of local government. 680

Southampton like all urban centres, is not a neutral space. It must be understood through an engagement with the long-term impacts of de-industrialisation intensified by a decade or more of austerity localism which has exacerbated the inequalities that exist between Southampton and other parts of England and within the city. The national housing crisis plays out in particular ways in the city, a large stock of poor-quality council housing and a building safety crisis apparently distracting the Executive from the problems of an expanding and unaffordable private rented sector housing an increasing proportion of vulnerable and marginal populations in poor quality accommodation. The decision to consider what the Council could do to get a better deal for private sector renters in Southampton was more than a technical exercise. The Scrutiny Inquiry, through careful mediations, subtle orchestrations, and direct assertions of the need for change, provided a template for action about private renting, and a reassertion of its importance as a field of action for SCC. It was inevitably a political exercise, provoking the engagement of landlord and tenant activists who mobilised their own understandings of legitimacy in opposition to the Council. Their participation not only impacted upon the final report of the inquiry, it also built their capacity, extending their skills and knowledge and giving them insight into levers of change. 685 690 695

We also think that our involvement demonstrates that more extensive engagement with local government scrutiny may provide opportunities for other social welfare/legal scholars. At a time when the impact of research is particularly valued, and civic engagement encouraged, scrutiny inquiries offer a real opportunity for scholarship to make a difference and contribute to policy development. In terms of research, socio-legal research into scrutiny would provide a very different perspective that than of public administration scholars. We saw evidence of a knowledge gap that legal scholarship could usefully address, little has been written on what scrutiny reveals about inconsistencies between local government behaviour and prevailing legal frameworks. More theoretical work could also be useful, addressing scrutiny inquiries as ‘empirical and practical manifestations of governmentalist agendas’ (Raco and Flint 2001, p. 611). For us it was a very productive experience, an invaluable opportunity to understand the complexity and contingency involved in regulating the private rented sector at a time when there is real volatility in the external environment. 700 705 710

## Notes

1. Ethnicity, language and identity (southampton.gov.uk). 715
2. <https://data.southampton.gov.uk/economy/deprivation-and-poverty/>.
3. <https://data.southampton.gov.uk/economy/deprivation-and-poverty/>.
4. Since 1974, political control of the council has been mainly retained by Labour interspersed with periods where there was no overall control or Conservative control.
5. <https://www.southampton.gov.uk/council-democracy/meetings/scrutiny/completed-inquiries/>. 720
6. <https://committees.parliament.uk/writtenevidence/78729/html/>.
7. <https://www.southampton.gov.uk/media/dgld2pkm/scrutiny-handbook-2021.pdf>.
8. <https://www.southampton.gov.uk/media/dgld2pkm/scrutiny-handbook-2021.pdf>.

9. SCC, Scrutiny Inquiry Panel – How do we get a better deal for private sector renters in Southampton? Public Document Pack, 18 April 2024, para 12. 725
10. <https://www.southampton.gov.uk/moderngov/documents/s26558/Appendix.pdf> para 36.
11. <https://www.ons.gov.uk/visualisations/housingpriceslocal/E06000045/>.
12. SCC, Scrutiny Inquiry Panel – How do we get a better deal for private sector renters in Southampton? Public Document Pack, 18 April 2024, p. 42. 730
13. SCC, Scrutiny Inquiry Terms of Reference – Covering Report, 14 September 2023, para 12.
14. The briefing papers are available on the scrutiny website <https://www.southampton.gov.uk/modernGov/mgCommitteeDetails.aspx?ID=817>.
15. Mark Pirnie SCC Scrutiny Officer is highly respected and experienced. He provided written evidence to the Communities and Local Government Committee in 2017, identifying that the effectiveness of a local government overview and scrutiny function is influenced by factors including the culture of the authority, the political composition of the authority, capability and capacity of elected members and competence of the chair, the scope and view point ie whether it is focused on the councils community leadership role and wider outcomes and influences, relationships and communication and officer support. <https://committees.parliament.uk/writtenevidence/78729/pdf/>. 735
16. <https://www.bbc.co.uk/news/uk-england-hampshire-68406922>.
17. STU, *Statement to Final Inquiry meeting* (18 April 2024).
18. Ibid.
19. <https://housingevidence.ac.uk/>. 740

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