

## Part 4 – E

### **OVERVIEW AND SCRUTINY PROCEDURE RULES**

#### **1. THE ROLE OF OVERVIEW AND SCRUTINY**

Without prejudice to any role prescribed by statute, the role of Overview and Scrutiny is to hold the Cabinet to account, to review and develop policy and to scrutinise the work and impact of external agencies on the local community

#### **2. DISTRIBUTION OF OVERVIEW AND SCRUTINY FUNCTIONS**

**The responsibilities for the overview and scrutiny functions identified in Articles 6 of this Constitution will be distributed as follows:**

- (a) The Overview and Scrutiny Commission shall be responsible for:
  - (i) Co-ordinating of the annual input of the overview and scrutiny panels to the Council's business plan and budget formulation processes;
  - (ii) Identifying issues for in-depth study by the commission and to set up task-and-finish groups for cross-cutting and/or strategic issues which fall outside the remit of a single panel (or which the panel does not regard as a priority);
  - (iii) Hearing call-ins of decision;
  - (iv) Putting forward suggestions for review topics to the scrutiny panels for consideration when panels set their work programmes;
  - (v) Keeping under review the effectiveness of the overview and scrutiny function and to recommend where appropriate changes in structure, processes or ways of working; and
  - (vi) Acting as a co-ordination mechanism with the Cabinet, to facilitate Overview and Scrutiny's contribution to Merton's strategic priorities
  - (vii) Receiving and considering references from councillors under the statutory Councillor's Call for Action, considering whether such matters should be the subject of formal scrutiny, and carrying out such scrutiny or referring appropriate matters to relevant scrutiny panels.
- (b) Within their terms of reference, the overview and scrutiny panels will be responsible for the following;
  - (i) Pre-decision scrutiny within their terms of reference;

- (ii) Performance monitoring and review within their terms of reference;
- (iii) Hearing call-ins of decisions that fall within their remit and have not been subject to pre-decision scrutiny;
- (iv) Review of the borough's draft business plan and budget, within a framework set by the scrutiny commission; and
- (v) To identify and carry out selectively, through task-and-finish groups, in-depth policy development or review projects, using agreed criteria, and within the framework of an overall programme of such projects
- (vi) Undertaking scrutiny activity in relation to any matter referred to it by the Overview and Scrutiny Commission following the consideration by the Commission of any Councillor Call for Action

### 3 TERMS OF REFERENCE

The Overview and Scrutiny Commission and panels will carry out the above functions within the following terms of reference:

<i>Title</i>	<i>Scope</i>
Overview & Scrutiny Commission	<ul style="list-style-type: none"> <li>• Cross-cutting &amp; strategic matters</li> <li>• Overall responsibility for scrutiny of the development of the budget and business plan</li> <li>• The overall approach to partnership arrangements</li> <li>• Responsibility for keeping scrutiny under review, including structures, processes, the Scrutiny Handbook and the Overview &amp; Scrutiny Annual Report</li> <li>• Scrutiny of issues relating to Safer and Stronger Communities, including:               <ul style="list-style-type: none"> <li>• Formal crime and disorder scrutiny, including discharging the Council's responsibilities in respect of the Police &amp; Justice Act 2006</li> <li>• Safer communities, including the role of the crime and disorder reduction partnership, safer neighbourhood teams, antisocial behaviour, drugs and alcohol treatment, domestic violence and road safety</li> <li>• Stronger communities, including community leadership and community empowerment</li> <li>• Supporting the voluntary and community sector, including the Compact and capacity building</li> <li>• Community engagement, including active citizenship, involvement and consultation</li> <li>• Community cohesion</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Diversity &amp; equalities, as related to service delivery</li> <li>Scrutiny of issues relating to corporate capacity, including: <ul style="list-style-type: none"> <li>• Financial monitoring</li> <li>• Communications</li> <li>• Legal</li> <li>• Human resources</li> <li>• IT</li> <li>• Customer service and</li> <li>• The performance monitoring framework</li> </ul> </li> </ul>
Sustainable Communities Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Sustainable Communities, including:</p> <ul style="list-style-type: none"> <li>• Housing, including housing need, affordable housing and private sector housing</li> <li>• Environmental sustainability, including energy, waste management, parks &amp; open spaces and the built environment</li> <li>• Culture, including tourism, museums, arts, sports &amp; leisure</li> <li>• Enterprise and skills, including regeneration, employment, adult education &amp; libraries</li> <li>• Transport</li> </ul>
Healthier Communities and Older People Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Healthier Communities and Older People, including:</p> <ul style="list-style-type: none"> <li>• Formal health scrutiny, including discharging the Council's responsibilities in respect of the Health and Social Care Act 2001</li> <li>• Health, including promoting good health and healthy lifestyles, mental health and reducing health inequalities</li> <li>• Community care (adult social care and older people's social care)</li> <li>• Active aging</li> <li>• Access to care and health services</li> </ul>
Children and Young People Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Children and Young People, including:</p> <ul style="list-style-type: none"> <li>• Children's social care, including child protection</li> <li>• Education, including school standards, special educational needs, the extended schools programme and the healthy schools initiative</li> <li>• Youth services and youth engagement, including the, young people 'Not in Education, Employment or Training' (NEET), and the Youth offending</li> <li>• Children's Centres</li> </ul>

#### **4. MEMBERSHIP**

The Council will appoint members to the Overview & Scrutiny Commission and panels at its Annual Council meeting. All councillors except members of the Cabinet may be members of the Overview and Scrutiny Commission or panels. However, no councillor may be involved in scrutinising a decision in which he/she has been directly involved.

#### **5. CO-OPTEEES**

The Overview and Scrutiny Commission may appoint a number of people to participate as non-voting co-optees.

Co-optees appointed to the Commission or any panel shall undertake to be bound by the Council's Code of Conduct for Members.

#### **6. EDUCATION REPRESENTATIVES**

The Overview and Scrutiny Commission and the Children and Young People Overview and Scrutiny Panel shall include in its membership the following voting representatives when dealing with education matters:

- (a) one Church of England diocesan representative;
- (b) one Roman Catholic diocesan representative; and
- (c) two parent governors.

These representatives have automatic rights of co-option and voting powers in connection with matters concerning the duties and functions of the Council as a Local Education Authority. When the Commission and/or relevant Panel deals with other matters, these representatives may be present and may speak but will have no right to vote.

#### **7. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMISSION AND PANELS**

There will be at least five ordinary meetings of the Overview and Scrutiny Commission each year. In addition, extraordinary meetings may be called from time to time, as and when appropriate. The Chair of the Commission has the power to convene additional meetings to consider business or to cancel a meeting for lack of business or to reschedule a meeting, having first consulted with the designated representatives of all groups recognised by the Council. In addition, extraordinary meetings of the Commission may be called by the proper officer if he/she considers it necessary.

The calendar of meetings for the Commission and Panels is set annually by full Council following consultation with their chair. In exceptional circumstances the Chief Executive may vary the date, time or place of any scheduled meeting or call-in meeting or cancel such a meeting with the consent of the Chair of the Commission or Panel and after consultation with the members of the body. The reasons for the variation shall be recorded at the rearranged or, in the case of cancellation, the next meeting.

## 8. QUORUM

The quorum for the Overview and Scrutiny Commission and panels will be one quarter of the whole number of members or a minimum of three members as prescribed by Rule 5.4 of the Council Procedure Rules in Part 4-A of this Constitution.

## 9. CHAIRING OVERVIEW AND SCRUTINY COMMISSION AND PANELS MEETINGS

- (a) **Selection.** The Council will appoint the Chair and Vice Chair of the Overview and Scrutiny Commission and any of its scrutiny panels at its Annual Council meeting. In each case the Chair and Vice Chair for each body will not be from the same political party. In the event of a vacancy during the council year, the Council will appoint a new Chair at the first meeting following the resignation of the Chair. All panel chairs are to be members of the Overview and Scrutiny Commission.
- (b) **Powers of the Chair.** The Chair of the Overview and Scrutiny Commission will have the powers:
- (i) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
  - (ii) To preside over meetings of the Commission/Panels so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
  - (iii) To ensure that the Commission/panel meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not in the Cabinet are able to hold the Cabinet to account; and
  - (iv) To promote public involvement in the Commission/Panel's activities.

In addition, the Commission may confer powers for chairs of the Commission/ Panels that are

- (i) Designed to uphold the purposes of the constitution;
  - (ii) Designed to ensure that business can be carried out efficiently with regards to the rights of councillors and the interests of the community;
  - (iii) Designed to ensure that the meeting is a place for debate; and
  - (iv) Designed to promote public involvement in the Commission/Panel activities.
- (c) **Work Programme.** Subject to the coordination role of the Overview and Scrutiny Commission, the Overview and Scrutiny Commission and the panels will be responsible for setting their own work programme and in doing so shall take into account wishes of all members on that scrutiny body.

## 10. AGENDA ITEMS

- (a) Any member of the Overview and Scrutiny Commission or panel shall be entitled to give notice to the Proper Officer that he/she wishes an item relevant to the functions of the Commission or panel to be included on the agenda for the next available meeting of the Commission or panel. On receipt of such a request the Proper Officer will ensure that it is included on the agenda for the next available meeting, having due regard to the Access to Information provisions.
- (b) Any member of the Council wishing to include an item on the agenda of the Overview & Scrutiny Commission or a panel when they do not sit on the body concerned, may give written notice to the Proper Officer that they wish an item, other than an item for call-in, to be included on the agenda of the Commission or relevant panel. This item may be identified as a result of a 'Councillor Call for Action'. If the Proper Officer receives such a notification, then he/she will include the item for consideration by the Commission or panel on its first available agenda having due regard to the Access to Information Provisions.
- (c) For call-in requests, see Rule 17, below,
- (d) The Overview and Scrutiny Commission/panel will also respond, as soon as its work programme permits, to requests from the Council and or the Cabinet to review particular areas of Council activity.

## 11. PRE-DECISION POLICY DEVELOPMENT AND REVIEW OF THE FORWARD PLAN

- (a) The Overview and Scrutiny Panels will contribute to the development of Council policy by identifying and prioritising areas for policy development input, subject to work programme decisions of the Overview and Scrutiny Commission. In so doing, the panels will:
  - (i) examine and anticipate issues relevant to the Council's Policy Framework as set out in Article 4;
  - (ii) review the forward plan and consider which issues / reports / proposals they wish to examine in detail before a decision is made;
  - (iii) undertake a detailed examination of any proposal in (ii) above, investigating alternatives, timeframes, costings, consultation processes, seeking background or any other relevant information and formulating recommendations which may be passed to the decision-maker as is appropriate, before the formal decision is made;
  - (viii) consult with Cabinet members, Chief Officers, Heads of Service or their nominees.
- (b) The Overview and Scrutiny Commission and/or panels may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary, to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.
- (c) The role of the Overview and Scrutiny Commission in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules Part 4-C.

## **12. PRE-DECISION POLICY REPORTS FROM OVERVIEW AND SCRUTINY COMMISSION**

- (a) Once it has formed recommendations on proposals for policy development, the Overview and Scrutiny Commission will prepare a formal report and submit it to the Proper Officer for consideration by the Cabinet and/or the Council as appropriate.
- (b) The agenda for Cabinet meetings shall include a standing item for pre-decision policy matters referred to it by the Overview and Scrutiny Commission in accordance with Cabinet Procedure Rule 2.5(a).

- (c) The Cabinet and/or the Council as appropriate shall respond to the report of the Overview and Scrutiny Commission/panel within 2 months of it being considered at the meeting of Cabinet/ Council.
- (d) In preparing reports for Cabinet Meetings, Cabinet members and officers will have regard to the comments and issues raised by the overview and scrutiny pre-decision review process.

### **13. REVIEW AND SCRUTINY OF DECISIONS**

- (a) The Overview and Scrutiny Commission or panel may review and scrutinise decisions made or actions taken in connection with the discharge of any Council functions. These reviews may take one of two forms:
  - (i) after the decision is made and implemented; or
  - (ii) after the decision is made but before it is implemented in accordance with Rules 16 and 17 governing 'call-in'.
- (b) In addition to reviewing relevant documentation for these reviews, the Commission or relevant panel may wish to question Cabinet members, Chairs of non-executive committees, Chief Officers, Heads of Service, or their nominees. In particular the Commission or panel may seek explanations about the following in relation to matters within their remit:
  - (i) any particular decision or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy; and/or
  - (iii) their performance.
- (c) Members of the Cabinet, Chief Officers, Heads of Service or their nominees will be required to attend; where:
  - (i) the Chair of the Commission or panel informs the Proper Officer of the request in writing or electronically
  - (ii) the Proper Officer informs the member or officer in writing giving at least 5 working days notice of the meeting at which he/she is to attend;
  - (iii) the notice will state the nature of the item on which he/she is to attend and whether any papers should be produced. Where the Commission or panel seeks the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation;



- (iv) Any member of the Cabinet , or any officer formally required to attend a meeting to answer questions is subject to a duty to do so. Where, in exceptional circumstances, an officer, or his or her nominee, is unable to attend on the specified date, then the Commission or panel will arrange an alternative date in consultation with the officer, or his or her nominee. Chief officers and heads of service should ensure that officers nominated to appear have the appropriate knowledge and responsibilities;
- (v) those appearing before the Commission or panel shall not be required to answer any questions which, in the opinion of the Monitoring Officer , could render the Council liable to legal proceedings in any court or tribunal;
- (vi) appearances before the Commission or panel will always be conducted in accordance with the member/officer protocol; and
- (vii) Any person required to attend a meeting to answer questions is not obliged to answer any question which he/she would be entitled to refuse to answer in court proceedings.

#### **14. OVERVIEW AND SCRUTINY COMMISSION MEMBERS' RIGHTS TO DOCUMENTS**

In addition to their rights as councillors, members of the Overview and Scrutiny Commission and panels have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 –B of this Constitution.

#### **15. ATTENDANCE BY OTHERS AT POLICY DEVELOPMENT OR REVIEW MEETINGS**

The Overview and Scrutiny Commission or panel may invite people other than those referred to in paragraph 13 above to address it, discuss issues and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may invite such people to attend.

#### **16. CALL-IN**

- (a) **General.** Key decisions and Executive Non Key decisions (as defined by Articles 13(3)(b) and (c) of this constitution are subject to call in for consideration by the Overview and Scrutiny Commission before the decision is implemented. Call in should only be used in exceptional circumstances and a request for call in should only be agreed if either:

- a) there are reasons to consider that the decision concerned was contrary to the policy framework or contrary to or not wholly in accordance with the budget; or
- (b) There is evidence which suggests that the decision taken did not accord with the principles of decision making set out in Article 13.2 and repeated at paragraph d below; and
- (c) a proper and timely request for call-in has been made.
- (d) **Principles of Decision-Making.** All decisions of the Council will be made in accordance with the following principles:
- (i) proportionality (i.e. the action must be proportionate to the desired outcome);
  - (ii) due consultation and the taking of professional advice from officers;
  - (iii) respect for human rights and equalities;
  - (iv) a presumption in favour of openness;
  - (v) clarity of aims and desired outcomes;
  - (vi) consideration and evaluation of alternatives;
  - (vii) irrelevant matters must be ignored.
- (e) **Requirements for Call-In Consideration**

In order to ensure that call-in is not abused, nor causes unreasonable delay, the following requirements must be fully satisfied before a matter will be considered for call-in:

- (i) at least three members of the Council must request call-in of the decision;
- (ii) the request for call-in must specify the reason for the call-in in sufficient detail to allow the Monitoring Officer to decide whether it is a valid call in
- (iii) the request for call-in must be received by the Chief Executive by 12 noon on the third working day following publication of the decision. The request for call-in should either be a signed paper copy or an electronic copy sent from the councillors own e-mail account;

- (iv) the decision for which call in consideration is requested must not have been subject to a prior call-in request.
- (f) **Publication of Decision.** When a decision is made by the Cabinet, a Cabinet Committee or an individual Cabinet member, or a key decision or a non-key executive decision (as defined in Article 13.3 (c) (i)) is made by an officer with delegated authority from the Cabinet or under joint arrangements, the decision will be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made.

That notice will bear the date on which it is published and will specify when the decision will come into force, and may then be implemented, unless a proper and timely call in request has been made in accordance with this Rule

- (g) **Consideration of Call-In Requests.** Upon receipt of any call-in requests, the Monitoring Officer will assess the call-in form(s) and the specified evidence of the alleged breach or breaches of the principles of decision making to determine whether the requirements set out above have been met.

The Monitoring Officer will forward all call-in requests that comply with the above to the Chair of the relevant Overview and Scrutiny Commission/ panel for consideration by the Commission/ panel at the next scheduled meeting. If in the view of the Monitoring Officer, any delay in considering the call in would be likely to be prejudicial, s/he may arrange for a special meeting of the Commission or Panel to be called, having first consulted the Chair of that body.

- (h) **Outcomes of Call-In.** Having considered the called-in decision, and subject to paragraph (g) below, the Overview and Scrutiny Commission or Panel may:
  - (i) refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If it is referred back to an individual Cabinet Member or an officer exercising delegated authority, he/she shall then reconsider within a further 5 working days. If it is referred back to the Cabinet, the Chief Executive shall either call a meeting of the Cabinet on such date as he/she may determine, or place the matter on the agenda for the next scheduled meeting if, in his/her judgment, any resulting delay would not be prejudicial. The decision maker may amend the decision or not, before adopting a final decision which will be explained in writing or

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- (iii) decide not to refer the matter back to the decision making person or body, in which case the decision shall take effect immediately.
- (i) Where the Commission considers that that the decision is or would be contrary to the Policy and Framework or contrary to or nor wholly in accordance with the Budget, the provisions of paragraph 5 of the Budget and Policy Framework Procedure Rules set out in Part 4 C of this constitution shall apply
- (j) held.

## **17. CALL-IN AND URGENCY**

- (a) The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.
- (b) The decision taker (if an individual) or the Chair of the body making the decision shall obtain the agreement of the Chair, or in their absence the Vice Chair, of the Overview & Scrutiny Commission that the taking of the decision cannot be reasonably deferred. If the Chair or Vice-Chair of the Overview and Scrutiny Commission are unable to act then the agreement of the Mayor or the Deputy Mayor in his or her absence, will suffice.
- (c) The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision-making person or body, the decision is an urgent one, and therefore not subject to call-in. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (d) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary, within the Scrutiny Annual Report.

## **18. PROCEDURE AT OVERVIEW AND SCRUTINY COMMISSION MEETINGS**

- (a) The Overview and Scrutiny Commission and/or panels shall consider the following business:
  - (i) apologies for absence;
  - (ii) minutes of the last meeting;
  - (iii) declarations of interest

- (iv) consideration of matters properly referred to the Commission for a decision in relation to call-in of a decision;
  - (v) responses of the Cabinet to reports of the overview and scrutiny committee;
  - (vi) consideration of matters in the forward plan; and
  - (vii) the business otherwise set out on the agenda for the meeting.
- (b) Where the Overview and Scrutiny Commission or panel conducts investigations (e.g. with a view to policy development), the Commission or panel may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
- (i) that the investigation be conducted fairly and all members of the commission or panel be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (ii) that those assisting the Commission by giving evidence be treated with respect and courtesy; and
  - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Commission shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

## **19. INVOLVEMENT OF STAFFSIDE**

When the Overview & Scrutiny Commission or any of its panels are in public session, representatives of Staffside may attend meetings and will be given the opportunity to present material, discuss issues and answer questions, in accordance with the agenda, to enable the Commission or panels to take account of issues raised and material presented in their reports and recommendations. Representatives of Staffside may only be present or contribute to meetings when confidential or exempt information is discussed with the permission of the Chair of the Commission or panel.

## **20. DEPUTATIONS AT MEETINGS**

- (a) Any group or society likely to be affected by a matter which appears on an Overview and Scrutiny Commission / panel agenda may ask that a deputation should be received by that body. Such request shall be made to

the Chief Executive by telephone, email or letter by 12 noon on the day before the meeting to which it relates. The group or society making the request shall indicate the matter to which the request relates, the number (which shall not exceed 5), and names and addresses of the persons who will form the deputation and the member of the deputation who will speak for them.

- (b) On being called by the Chair, the person speaking for the deputation may speak for up to 5 minutes making such remarks as he / she thinks fit, provided that such shall relate to the matter indicated when the request was made, and that they do not make a personal attack upon any person.
- (c) The Commission / panel may, during a further period not exceeding 5 minutes for each deputation, ask questions of those attending. Such questions shall be asked and answered without discussion.
- (d) Thereafter the deputation shall withdraw, save that by resolution of the Commission / panel these times periods may be extended.
- (e) No deputation shall appear before the Commission or panel within 6 months after a deputation has appeared before the Commission / panel with the same or similar objects.
- (f) Deputations will not be received on subjects that have a general application to all or a substantial portion of the residents of the borough.
- (g) The Chair(s) shall have discretion to agree alternative arrangements to the procedure set out above in exceptional circumstances.
- (h) Political parties and / or political groups shall not be entitled to use this procedure.
- (i) Members of the Cabinet may attend and speak at Overview and Scrutiny Commission and panel meetings

## **21. PROVISIONS IN RESPECT OF HEALTH**

- (a) The Overview and Scrutiny Commission (or the Healthier Communities and Older People Overview and Scrutiny Panel acting on behalf of the Commission) may review and scrutinise any matter relating to the planning, provision and operation of health services within its area and shall in carrying out the review and scrutiny of a particular matter:
  - i) have regard to any guidance issued by the Secretary of State;
  - ii) invite interested parties to comment on the matter;

- iii) take account of relevant information available to it and in particular relevant information provided by the Healthwatch Merton pursuant to a referral;
  - iv) an Overview and Scrutiny Committee when making reports and recommendations to the Council and/or the local NHS bodies shall include:
    - an explanation of the matter reviewed or scrutinised;
    - a summary of the evidence considered;
    - a list of the participants involved in the review or scrutiny;
    - any recommendations on the matter reviewed or scrutinised.
- (b) Where an Overview and Scrutiny Commission requests a response from a local NHS body to whom it has made a report or recommendation, that body shall respond in writing to the Commission within 28 days of the request.
- (c) When considering any proposal (with certain exclusions) for a substantial development or variation in respect of health services, then the local NHS body is required to consult the Overview and Scrutiny Commission. The local NHS body may specify a date for comments on the proposal and depending on the timescales it may be necessary to convene special meetings of the Overview and Scrutiny Commission.
- (d) If the Overview and Scrutiny Commission/ Healthier Communities and Older People Overview and Scrutiny Panel considers that the consultation by the local NHS body referred to above was inadequate in respect of content, time allowed, or reasons given then the Overview and Scrutiny Commission/panel may make a written report to the Secretary of State. The Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny panel may also send a written report to the Secretary of State setting out reasons why the proposal from the local NHS body is not in the interests of the health service within the Council's area.
- (e) The local NHS body is under a duty to provide the Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny Panel with such information (with exceptions) as it may reasonably require in order to discharge its functions.
- (f) The Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny Panel has powers to require officers of a local NHS body to attend before the Commission/Panel to answer such questions as appear to the Commission to be necessary for the discharge of its functions, with certain exceptions.

## Merton External Scrutiny Protocol

### Introduction

1. Under Merton Council's constitution, the role of Overview and Scrutiny is to hold the Executive to account, to review and develop policy and to scrutinise the work and impact of external agencies on the local community. Since the original legislation in 2000 that introduced overview and scrutiny to local authorities, councils have been granted additional powers under the Health and Social Care Act 2001 in order to scrutinise the provision of health services.
2. New legislation (the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007) now grants similar powers to local authorities to enable them to scrutinise effectively both crime and disorder matters and the work of Local Strategic Partnerships (LSPs)<sup>1</sup>. The Councillor Call for Action provision of the Local Government and Public Involvement in Health Act 2007 also provides a 'last resort' mechanism for overview and scrutiny to try to resolve persistent local service delivery issues of genuine community concern, where all efforts by a local councillor to find a solution through local action and discussion have been unsuccessful.
3. These powers are all intended to enable the overview and scrutiny function to hold service providers<sup>2</sup> to account for their performance, including their work with a local authority to meet specific local targets.
4. These are positive developments: if there is to be further devolution of public service delivery to enable residents' needs to be met more effectively, local government needs to strengthen its structures and processes of local accountability.
5. In order for the exercise of these new scrutiny powers to be effective, it is vital that all partners and stakeholders are engaged in the process and share a common understanding of Overview and Scrutiny's aims. This protocol has therefore been developed to embody that understanding and set out the rights and responsibilities that relate to the parties concerned.
6. Scrutiny of other organisations external to the Council – whether in the public, private or voluntary and community sector – is also a key element of Overview and Scrutiny's work and likely to increase in importance as councils and councillors develop their community leadership and place shaping role. For Overview and Scrutiny, this includes:
  - involving local people and community organisations in scrutiny activity;

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<sup>1</sup> In Merton, this involves the work of two partnerships: Safer Merton (the Crime and Disorder Reduction Partnership) and the Merton Partnership (the LSP).

<sup>2</sup> For the purposes of this protocol, the term 'service providers' refers to all local agencies or organisations whose activity affects the people who live, work or learn in the borough of Merton



- developing a dialogue with service providers and other stakeholders outside the council;
  - taking up issues of concern to local people;
  - reviewing whether goals are being achieved; and
  - examining what can be done to solve problems and enhance performance and achievement.
7. This protocol is based on good practice principles for scrutiny and the standards set out below are intended to be applicable to all scrutiny activities involving organisations external to the Council.
8. A list of documents underpinning this protocol is set out at the end of this document.

### **Aims of Scrutiny**

9. The overall aims of scrutiny in Merton are:
- To scrutinise the impact of the Council's own services and those of key partnerships and other service providers on those who live and work in or visit Merton, with a view to improving their well-being, improving services and helping to deliver the aims of Merton's Community Strategy.
  - To undertake the above work in accordance with the relevant legislation governing the operation of overview and scrutiny and with regard to best practice.

### **Underlying Principles of Scrutiny**

10. The following underlying principles of scrutiny have been proved, in Merton and elsewhere, to assist in securing effective outcomes and adding value:

#### Collaboration

- Improvement in service delivery can best be achieved through partnerships between the Council and other service providers. This shared responsibility should be acknowledged in any scrutiny activity undertaken.
- Increasingly services are provided jointly or as the result of partnerships between the local authority and other public sector organisations or other partners. Scrutiny activities should therefore also reflect shared priorities, find shared solutions and be of mutual benefit.
- While scrutiny should be constructive and challenging, it will only be successful if all partners work together considerately, within a climate of mutual respect and good faith.
- Although collaboration is an underlying principle, Merton's Overview and Scrutiny Commission is independent of other service providers and partners.

### Added Value

- It is vital that scrutiny brings something new to reviews of local service provision and does not duplicate the many other forms of performance management and inspection that exist for public service providers.
- Scrutiny activities should make a distinct and positive impact and only be carried out where objective review by elected lay representatives will help progress to be made.
- Scrutiny activities should have a clear purpose. There should be a focus on improving services for and improving the well-being of those who live and work in Merton.
- The scrutiny process should be proactive in seeking out issues to examine that will add most value.
- Scrutiny should be prepared to examine issues that cross service or agency boundaries and make appropriate recommendations to tackle such issues, while being mindful of their potential implications for external organisations.
- Scrutiny should aim to develop feasible recommendations providing value for money by securing benefits that outweigh the costs of implementation.

### Clarity

- Scrutiny should be a transparent process and encourage open and honest discussion.
- Scrutiny activities should be well planned and timely.
- Scrutiny of particular issues should be time-limited.
- Processes and reports should be clear and accessible to the public.

### Knowledge

- Scrutiny reports must be evidence-based in order to provide credible conclusions and recommendations.
- Although members of scrutiny reviews will want to be informed, and training should be provided where appropriate, the scrutiny process is not meant to be an “expert” review.
- The scrutiny process should also be impartial, in the sense that it should be driven by the evidence rather than by a particular standpoint.

### Accessibility

- It is a fundamental role for the scrutiny process to ensure that there is full and equal access to the democratic process through public involvement and engagement.
- The views and ideas of service users (and non-users), service providers and organisations and other agencies with an interest in the subject under review are all valuable in effective scrutiny. Scrutiny should involve all stakeholders

and take account of views of service users and the public, with particular efforts to engage groups that are harder to reach.

- Constructive engagement and clear lines of communication should enable a two-way flow of information between scrutiny and all those involved, including feedback of results.

### **Providing information to scrutiny**

11. Overview and scrutiny will respect the requirements and provisions of the Data Protection Act 1998. The provision of information to scrutiny will be governed by relevant legislation<sup>3</sup> and established protocols for the sharing of data.
12. Requests for information from scrutiny will clearly identify why the information is needed and what it is to be used for to enable the request recipient(s) to identify the appropriate information to be provided.
13. To facilitate the scrutiny process, relevant information will be pro-actively provided and requests for information promptly dealt with.
14. Where information requested is readily available and routinely collected, it will be provided within two weeks of receipt of the request.

### **Notice of required attendance at scrutiny meetings and/or submission of written reports**

15. Forward planning of Overview and Scrutiny Commission and its Scrutiny Panels' work programmes will normally ensure the provision of reasonable notice of requests for information/ the submission of written reports and/or required attendance of partners' personnel at meetings.
16. All requests will contain a clear explanation setting out what is required and will be accompanied by information about the purpose and nature of the scrutiny. Advice from participating organisations will be taken by the Overview and Scrutiny Commission and Scrutiny Panels as to who is best placed to attend on their behalf in view of the issue to be scrutinised.
17. While some organisations (such as local NHS bodies under the Health & Social Care Act 2001 and the bodies deemed to be 'responsible authorities' under the Police and Justice Act 2006) are required by legislation to attend scrutiny meetings

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<sup>3</sup> For example, under the Police and Justice Act 2006 (c. 48), Schedule 9 Amendments to the Crime and Disorder Act 1998, 5 (4), the provision to overview and scrutiny panels personal data (within the meaning of the Data Protection Act 1998) is excluded; and under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, Statutory Instrument No.3048 (2002), so is the provision of confidential information which relates to and identifies a living individual.

if summoned, it is hoped that other organisations not under such obligation will be willing to engage constructively with scrutiny and attend when requested to do so.

### **Format, sign-off and final deadlines for written reports**

18. Merton Council's standard scrutiny report format should be used for all written reports to the Overview and Scrutiny Commission and Scrutiny Panels. An electronic copy of the scrutiny report format, including advice to report authors, will be provided by a Democratic Services officer whenever a report is being requested.
19. All reports to the Overview and Scrutiny Commission/ Scrutiny Panels must be submitted, in the first instance, to the relevant Scrutiny Officer by the deadline stated in the timetable provided by the Democratic Services Officer to meet the requirements of Access to Information legislation.
20. Once received, the Scrutiny Officer will arrange internal sign-off of the covering report. This may include the addition of information on any legal, financial or other significant implications of the report for Merton Council.

## **Availability of meeting papers**

21. Papers for meetings of the Overview and Scrutiny Commission and scrutiny panels will be sent by the Democratic Services Officer to the appropriate partner scrutiny lead and also to those who are providing reports and/or making presentations at each particular meeting. Papers are dispatched so as to allow at least 5 full working days between dispatch and the scrutiny meeting, in order to meet the requirements of Access to Information legislation and enable interested parties to read the documents.
22. Arrangements will be made with partnerships to ensure that participating organisations/member bodies receive agendas and relevant papers. Any other organisations wishing to receive papers on a regular basis can ask the Scrutiny Officer to add them to the distribution list.
23. Meeting papers can also be viewed on the Council's website at [www.merton.gov.uk/committee](http://www.merton.gov.uk/committee)

## **Style and conduct of meetings**

24. Where external organisations are invited to attend scrutiny meetings, the meetings will be conducted in accordance with the principles and procedures set out in the Scrutiny Procedure Rules and Access to Information Procedure Rules of Merton Council's Constitution. In particular:
  - those attending scrutiny meetings will be given an indication of the likely time they will be asked to participate and the duration of their involvement in the meeting: as far as possible, all members of the panel will ensure that this is honoured;
  - those assisting a scrutiny panel by giving evidence will be treated with respect and courtesy;
  - meetings will be conducted fairly and non-aggressively and in a manner that seeks out information, rather than placing blame;
  - all members of the panel will be given the opportunity to ask questions of attendees, and to contribute and speak;
  - attendees are expected to maintain a positive and objective style of discussion and answer questions honestly and openly;
  - everyone who attends meetings is expected to use jargon-free language as far as possible; and
  - every person who attends a meeting to give evidence or answer questions shall identify themselves, state the capacity in which they attend and their authority to speak on behalf of any body or organisation and if required declare any personal interest in the business of the meeting.

25. Most overview and scrutiny panel meetings are ‘open’ and held in public in order to be as transparent as possible. But there is provision for meetings or parts of meetings to be held in private, with the press and public excluded, in order to consider exempt or confidential information (as defined by the Local Government Act 1972).<sup>4</sup> Advice is available from the Scrutiny Team if all or some of evidence to be submitted to a panel might fall into either of these categories.

### **The involvement of other organisations/groups and members of the public**

26. The input of other organisations and groups is recognised as being essential to the success of scrutiny.
27. Where organisations or groups are formally invited, in advance of the relevant Panel meeting, to make a presentation to - or ask questions at - the Panel on a scrutiny matter, the appropriate partner lead(s) will normally be notified at the earliest opportunity. In any event, formal presentations should normally be indicated on the agenda.
28. Organisations/groups and any other members of the public attending meetings (as either representatives of organisations/groups or as individuals) will not be required to provide their questions in advance of the meeting.
29. Where scrutiny seeks to engage with the third sector (voluntary and community groups), it will respect the principles of the Merton Compact.<sup>5</sup>

### **Reports and recommendations**

30. Where the Overview and Scrutiny Commission or a Scrutiny Panel makes a written report, including any recommendations, to a partner organisation, the report shall include:
- an explanation of the matter reviewed or scrutinised;
  - a summary of the evidence considered;
  - a list of the participants involved in the review or scrutiny exercise; and
  - any recommendations on the matter reviewed or scrutinised, including an indication of the costs associated with implementing the recommendations.
31. The written report provided to a relevant partner authority must exclude any confidential information, and may exclude any relevant exempt information (as defined in the Local Government Act 1972). The Overview and Scrutiny Commission or Scrutiny Panel may replace so much of the document as discloses the information with a summary which does not disclose that information. The Overview and Scrutiny Commission or Scrutiny Panel must do so if, in

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<sup>4</sup> More details can be found in the Council’s constitution, Part 4B, ‘Access to information procedure rules’, paragraphs 10.1-10.5.

<sup>5</sup> [http://www.merton.gov.uk/mertoncompact\\_bookletv3.pdf](http://www.merton.gov.uk/mertoncompact_bookletv3.pdf)

consequence of excluding the information, the published document or the copy provided to the partner authority would be misleading or not reasonably comprehensible.

32. Where appropriate and possible, draft reports will be circulated to the relevant body/bodies with an invitation to comment, in writing and to a deadline, on the report's factual accuracy.
33. Final reports and recommendations may also be forwarded to other Council committees, organisations and to the media, as the Overview and Scrutiny Commission/Scrutiny Panel may determine.
34. Partner organisations receiving reports and recommendations from the Overview and Scrutiny Commission/Scrutiny Panels are expected to respond within a period of two months (except for statutory health bodies which are obliged by legislation to respond within four weeks). Arrangements will be made to ensure that relevant bodies receive copies of such reports or recommendations directly, in advance of their appearing on the next available partnership agenda.

How partners will 'have regard to' and/or consider and respond to Overview and Scrutiny reports and recommendations

35. The Local Government and Public Involvement in Health Act 2007 gives the Council's overview and scrutiny function specific new powers to require relevant partners to have regard to a scrutiny report or any of its recommendations that relate to a local improvement target which a) is specified in Merton's Local Area Agreement; and b) relates to a relevant partner authority. These powers are in addition to powers (under the Health and Social Care Act 2001 and the Police and Justice Act 2006) that already exist requiring consideration of reports and recommendations and a response from health service bodies and the authorities responsible for crime and disorder strategies.
36. However, it is expected that all organisations will, in support of the aims of scrutiny and in the spirit of the principles set out in paragraph 10, consider and respond to all Overview and Scrutiny reports and recommendations addressed to them, irrespective of whether they are legally obliged to do so.

### **Resolving disputes about the protocol**

37. If a partner or external organisation believes that this protocol is not being adhered to, the issue should be referred to the Overview and Scrutiny Commission for consideration and decision.

### **Review of protocol**

38. This protocol will be reviewed jointly on an annual basis or more frequently if experience and circumstances highlight that amendments may need to be made.

## Availability of support

39. Further advice or information on any aspect of this protocol or on overview and scrutiny at Merton Council is available from the Scrutiny Team, Corporate Governance, Merton Civic Centre, London Road, Morden SM4 5DX.

Telephone: 020 8545 3864  
E-mail: [scrutiny@merton.gov.uk](mailto:scrutiny@merton.gov.uk)  
Website: [www.merton.gov.uk/scrutiny](http://www.merton.gov.uk/scrutiny)

## Background documents

40. The following documents underpin this protocol:
- Local Government Act 2000
  - Health and Social Care Act 2001
  - Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, Statutory Instrument No.3048 (2002)
  - Health and Social Care Act 2001 – Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) (2003)
  - Local Government Act 2003
  - Police and Justice Act 2006
  - Local Government and Public Involvement in Health Act 2007
  - Overview and Scrutiny of Health – Guidance (2003)
  - Merton Council's Constitution
  - Overview and Scrutiny Handbook, London Borough of Merton
  - Data Protection Act 1998