

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)¹. 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 providers² 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;
 - developing a dialogue with service providers and other stakeholders outside the council;

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

² 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

- 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 2006-15.
 - 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 legislation³ 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 2012 and the bodies deemed to be 'responsible authorities' under the Police and Justice Act 2006) are required by legislation to attend scrutiny meetings 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.

³ 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 of 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.

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 Democratic Services 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

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).⁴ 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.⁵

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

⁴ More details can be found in the Council's constitution, Part 4B, 'Access to information procedure rules', paragraphs 10.1-10.5.

⁵ http://www.merton.gov.uk/mertoncompact_bookletv3.pdf

- 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 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, Chief Executive's Department, Merton Civic Centre, London Road, Morden SM4 5DX

Telephone: 020 8545 3857

E-mail: scrutiny@merton.gov.uk

Website: 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