

ITEM 14



DERBY CITY COUNCIL

SCRUTINY MANAGEMENT COMMISSION 2 FEBRUARY 2010

Report of the Director of Corporate and Adult Services

A PROTOCOL ON OVERVIEW AND SCRUTINY INVESTIGATIONS

RECOMMENDATION

1. To approve the draft Protocol at Appendix 2.

SUPPORTING INFORMATION

- 2.1 It is many years since the methodology for conducting scrutiny reviews was approved and, since then, things have changed. Scrutiny officers and managers have reflected on experience since 2001 and drawn up an updated and strengthened Protocol for Members' consideration. The draft Protocol is set out in Appendix 2.
- 2.2 The aim is to provide a framework for investigations so that scrutiny review recommendations can be accepted as fair, if not always welcome, by all parties based on the evidence available. The Protocol also seeks to ensure that decision-makers who are being scrutinised are engaged in the process.
- 2.3 In drawing up the Protocol, guidance and good practice have been taken into account.
- 2.4 For Members' information, relevant extracts from the Constitution are attached as Appendix 3.
- 2.5 The Commission is invited to discuss and approve the draft Protocol, subject to any appropriate amendments.

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Background papers:
List of appendices: Appendix 1 – Implications.
Appendix 2 – Draft Protocol on Scrutiny Investigations.
Appendix 3 – Extract from the Constitution.

IMPLICATIONS

Financial

1. None directly arising.

Legal

2. None directly arising.

Personnel

3. None directly arising.

Equalities Impact

4. None directly arising.

Corporate Themes and Priorities

5. This report has the potential to link with all of the Corporate Objectives.

Appendix 2

A PROTOCOL ON OVERVIEW AND SCRUTINY INVESTIGATIONS**Introduction**

1. A primary function of an Overview and Scrutiny Commission is the investigation of matters within the remit of the Commission. Inputs to a Commission may come from a number of different sources. These include:

- Matters referred to the Commission by Council Cabinet
- Matters referred to the Commission by Council
- Key Decision items selected by the Commission from the Forward Plan
- Items selected by the Commission from the Budget and Policy Framework
- Items that Commission members have decided to scrutinise. This includes in depth policy reviews and retrospective scrutiny reviews.
- Items that Council members have referred to scrutiny
- Matters that are the subject of a Call-in
- Councillor Calls for Action
- Issues raised by external bodies.

2. In each case the Commission will need to investigate the matter that has been referred to it or it has selected, and prepare a report on its findings.

3. This Protocol is intended as a good practice guide to show the way in which investigations should be conducted. A summary of the procedure is contained in Appendix 1 of this document.

4. It should be noted that Commission meetings are normally held in public and the public has access to their reports and minutes. The public includes the media.

Skills required for effective Overview and Scrutiny

5. Commissions need to develop ways to work effectively with and to gather views from witnesses who will include: the Council's own officers, members and officers of other local authorities, representatives of external organisations, the Council's partners, and the wider community.

6. To undertake their work Commission members need to be:

Objective – understanding their role and setting targets

Focussed – concentrating on the tasks they have selected

Pragmatic – understanding what is possible and concentrating on the important issues

Aware – of the background to the topics they are reviewing

Committed – to getting results and disseminating them

Realistic – and able to work within resources available

Critical – acting as a critical friend and being critical of the value of the work they carry out themselves, but being willing to probe to get at the real issues

Choosing topics for investigations

7. Commissions can choose which topics they wish to review and they may wish to develop further criteria to decide on the areas of work which are significant and important. These might include:

- Services which are poor performers - these can be identified from performance monitoring information, from inspection or assessment by the Commission, or from issues raised by external auditors.
- Services with high levels of user dissatisfaction – these might be identified from surveys, they may be issues raised by the public, or they could be services about which there are a high level of complaints.
- Central or local priorities for the Council where the Commission can test whether policy implementation matches expectations.
- The level of budgets committed to the services.
- Services which have the potential for development of for the introduction of new ways of working.
- Public interest issues which have been the subject of local media coverage.

Commissions should actively seek the views of Cabinet members and external partners on possible topics for investigations, and look for ways to develop a productive dialogue.

8. Conversely, Commissions may decide not to look at certain issues. This might be because:

- The issue will be referred to the Commission by Cabinet and there will be a chance to comment on reports as part of a scheduled business meeting of the Commission
- The service in question is expected to change in the near future.

9. When choosing topics for review Commissions should aim for ‘SMART’ reviews.

10. A SMART review will be **Specific** in terms of its objectives and the way in which they are structured. It will have **Measurable** outputs which are **Achievable**. The review will be **Realistic** in terms of what the Commission will need to do and there will be a defined **Time** scale for the work.

Planning Scrutiny Investigations

11. When planning scrutiny reviews, Commissions will need to take the following factors into account:

- Commissions can send up to two review reports to Council Cabinet each year.

- There will be a minimum of five scheduled business meetings of each Commission in every year. In addition to the scheduled meetings, extra meetings may be required, for example to deal with Call-ins, Councillor Calls for Action, or items referred to the Commission by Cabinet and Council. These demands on Commission members' time may preclude the undertaking of reviews that require a large number of additional meetings. Experience has shown that in general short duration, closely focussed, reviews are likely to be more productive and offer better value than wide ranging, long duration reviews.
- As the time required to carry out reviews will be in addition to the ordinary business meetings of the Commission it may be necessary to consider:
 - Setting up sub-groups to undertake reviews.
 - Carrying out some evidence gathering meetings, or visits, during the daytime
 - The availability of Commission members, witnesses, and venues.
- Review meetings can and often will be held at the Council House, but the use of other venues, such as other central buildings, local community centres, schools, or libraries should be encouraged. The choice of venue should be linked to the topic under reviews and the witnesses the Commission intends to call.

Outline of Procedure for Investigations

Work Planning

12. Commission agendas and work programmes will be made up of different types of business. It is recommended that Commission Chairs, Vice Chairs, and Co-ordination Officers, meet regularly to plan agendas and the balance of reports, issues, and elements of work to be considered at the business meeting and other meetings of the Commissions. In order to assist in this process the Overview and Scrutiny Co-ordination Officers will track the progress of issues of concern to the Commissions.

13. The aim will always be to focus scrutiny activity on issues that would add value to the Council's decision making processes. It is important, therefore, that the Commission is aware of and monitors and evaluates the "value" that its work has added to the topic under review. To do this the Overview and Scrutiny Commissions should have defined success criteria that will enable them to evaluate the overall impact of the Commissions' work programmes.

Preliminary reports to the Commission

14. When it is considering the possible scrutiny review of a particular issue the Commission may ask for the preparation of a 'Preliminary Report' setting out the background to the matter. This report will help the Commission to decide whether to undertake the review.

15. The preliminary report can be prepared by officers from the relevant service department or by the Commission's Co-ordination Officer. The report should provide the basic information that the Commission needs to understand the issue(s) in question. The Co-ordination Officer will liaise with officers in service departments over what is required for this report. A background research report may also be required, and this will be prepared by the Co-ordination Officer. The preliminary report, and the background report if this has been requested, will usually be presented to the first meeting of the Commission at which the matter is to be considered.

The Scoping Report

16. A 'Scoping Report' will usually be required when the Commission has decided that it wants to conduct a scrutiny review of a particular issue. The purpose of the scoping report is to define the nature and possible extent of any scrutiny investigation, to put forward a possible methodology, and to look at possible outputs.

17. The scoping report will be prepared by the Co-ordination Officer and should outline the proposed investigation. The report will identify possible sources of information for the review and the witnesses that the Commission may wish to call. It will also include a timetable for the investigation that suggests dates on which the Commission might meet to receive evidence, and a description of the matters that will be examined on those dates. The lead decision maker (e.g. Cabinet member or Chief Officer) will always be invited to submit evidence to the Commission and/or to appear as a witness.

18. The scoping report should include the proposed Terms of Reference of the review and also suggest the methodology to be adopted by the investigation. This could include the internal and external processes that will be used to gather evidence, for example:

- Background research or surveys
- Site visits – either in Derby, or to learn from similar issues in other authorities
- Workshop style discussions or forums
- The use of mystery customers
- Commissioning external research
- The use of select committee style questioning of witnesses such as Cabinet Members, Council Officers, partners, representatives of external organisations and members of the public.

19. The Co-ordination Officer should discuss the draft scoping report with the Chair and Vice Chair, and should circulate it to each of the Commission members and seek comments on its contents within a defined time period. Comments should also be invited from the lead decision maker (e.g. Cabinet member or Chief Officer). At the end of the defined period, the Co-ordination Officer will make any necessary amendments to the scoping report and will send the amended final version of the report to each of the Commission members. If there is a dispute over the scope of the review the matter will be referred to a formal meeting of the Commission.

The Investigation

20. The purpose of the investigation is to enable the Commission to obtain information about the topic that it has decided to investigate. The investigation may involve meetings with witnesses and/or visits to relevant sites. The number and the nature of the meetings/visits will depend upon the topic under investigation and the scale of that investigation. However, as a general rule it is envisaged that investigatory meetings will have three distinct parts as follows:

- A short briefing session at which members will be reminded of the outcome of any previous meetings and at which the objectives of the current meeting/visit will be defined. If more appropriate this briefing can be provided in a written form.
- The meeting/visit proper at which members will seek to obtain information, either, in the case of a visit, by observation and questions, or, in the case of a meeting, by questions of, or discussions with, witnesses.
- A debriefing session at which the members will share any relevant information that they have gleaned in the course of the meeting/visit. Debriefing may be delayed until after the Co-ordination Officer has prepared the notes of the meeting.

21. After the meeting/visit, the Co-ordination Officer will circulate draft notes of the meeting/visit to the members of the Commission and the witnesses. The final version of these notes, which will incorporate any relevant amendments that members and witnesses may have made, will subsequently form the record of the meeting/visit.

22. In addition to obtaining information from witnesses or from visits, Members may also ask the Co-ordination Officer to prepare and circulate an information report on particular aspects of the topic under investigation.

23. More detail on the taking of oral or written evidence from witnesses during reviews can be found in Appendix 2 of this document.

The Concluding Meeting

24. The purpose of the concluding meeting is to enable the Commission to review the information that it has obtained in the course of its review, to assess that information in its entirety, to agree on the form that the report will take, and to confirm the recommendations that it wishes to make.

Preparation and circulation of the draft report

25. The Co-ordination Officer will prepare the draft report and recommendations and will circulate it for comment to all the Members of the Commission.

26. A confidential copy of the draft report will be sent to the lead decision maker (e.g. Cabinet member and Chief Officer) before the Commission agenda is issued. The purpose of this is to allow the decision maker to check the report for factual accuracy and to comment if he or she believes a conclusion or recommendation is illogical or inappropriate in the light of the evidence. If necessary, a meeting will be arranged between the lead decision-maker and the chair/vice chair to try to resolve any disagreement. The lead decision-maker should respond within five working days.

27. Any relevant comments or amendments by Commission members or the lead decision maker will be incorporated into the final draft report that will be submitted to the Commission for their approval. Longer reports should include an Executive Summary.

28. Once approved the final draft report will become the review report of the Commission

Issue of the final report

29. The final report, containing all the relevant amendments approved by the Commission Members and agreed by the Chair and Vice Chair, will be sent to:

- The Commission members,
- The witnesses who provided evidence to the review
- The lead decision maker
- Any other relevant persons.

Timescales for Investigations

30. Due to the differing nature of the investigations in which the Overview and Scrutiny Commissions will be involved, there can be no single timescale for investigations.

31. Commissions should however aim to avoid topic reviews which are so large or are of such duration that members may lose sight of the original objectives. This is especially true of reviews which cannot be completed in a single municipal year and where, in consequence, the membership of the Commission may change.

32. There is a requirement that topics referred to the Commissions by the Cabinet, or from Call-In, or as a consequence of a Councillor Call for Action must be dealt within the time limits defined in the Council's Constitution. Time limits also apply to the responses to Commission reports.

Summary of Procedure for Investigation

The Preliminary Report and the Scoping Report

Between them these reports will provide the background to the matter that the Commission is considering for review. The reports will set out proposals for::

- the objectives/terms of reference of the review
- the outline of the proposed investigation, including the suggested methodology
- a preliminary timetable for the investigation.



The Review Investigation

This will comprise a series of meetings and/or visits which should enable the Commission to obtain information it needs to develop its recommendations. The notes taken during the meetings and the visits will be used to prepare the report of the Investigation and the draft recommendations of the Commission.



The Concluding Meeting

At this meeting the Commission will analyse the information that it has received. It will agree the form that it wants its report to take and the recommendations it wishes to make.



Issue of the Draft Report

The Co-ordination Officer will prepare and issue the draft report and recommendations to all Members of the Commission, and to the lead decision-maker, for their comments.

The draft report will be submitted to the Commission for approval.

Any relevant comments and amendments of the Commission will be incorporated into the final draft version of the report that will be sent to the Chair and Vice Chair for final approval.



Issue of the final report

The final report of the Review will incorporate all the relevant amendments. It will be agreed by the Chair and Vice Chair and will be issued and circulated to key recipients.

APPENDIX 2

A General Guide to the taking of written or oral evidence to an Overview and Scrutiny Commission meeting of Derby City Council**Introduction**

1. This Appendix is intended as a general guide to the taking of written or oral evidence by an Overview and Scrutiny Commission of Derby City Council.
2. When a Commission has decided to look at an issue in depth, terms of reference will be agreed and possible witnesses identified. Written invitations to the witnesses to attend the review meetings should be issued with final details about convenient dates and times being agreed by the telephone or e-mail.
3. As a Commission's time for taking oral evidence is limited, witnesses may be asked to submit written evidence in advance of the review meeting. This makes oral evidence hearings more productive, as members have witnesses' statements/information in front of them. Sometimes a Commission may ask for written evidence from a wide range of individuals or bodies and then choose a smaller number from the total to give oral evidence.

Written evidence

4. There are no rules about the way in which written evidence should be presented to Commissions. The most important requirement is for the information to be in a form which can readily be understood by the Commission members. A simple note or memorandum can be appropriate, but if a submission covers several points or complex issues, it will be helpful if the paragraphs are numbered.
5. It is usual for information provided to the Commissions to be available to the public. If witnesses wish the whole or part, of their evidence to remain confidential to the Commission they should state this clearly at the beginning of the review and should give their reasons. The Commission will then decide whether they wish to accept the evidence on a confidential basis.
6. Written evidence is ideally required at least 10 days before the date fixed for a related oral evidence session and the witness should be informed of this requirement.
7. Once written evidence has been received, it is for the Commission to decide the manner and timing of its subsequent publication.
8. A Commission is not bound to accept or consider unsolicited material.

Oral Evidence

9. Oral evidence sessions will usually take place either in one of the meeting rooms at the Council House or other public building in the City of Derby.
10. Sometimes Commissions take evidence from more than one set of witnesses successively at a single meeting. If this is the case indicative times should be given to the witnesses but these will only be approximate as interviews may be longer or shorter than expected.
11. If the witness represents an organisation the Commission will often leave it to the organisation to decide which of its members or staff should speak on behalf of the organisation. Commissions may, however, request the attendance of specific individuals or post holders.
12. In order to assist witnesses to prepare for the session, and with the agreement of the Commission, the Co-ordination Officer will normally give some advanced indication of possible lines of inquiry. However witnesses should not expect members to restrict themselves to these lines of enquiry.
13. Commissions nearly always take evidence in public and representatives of the media may be present. If a witness wants to give some or all of their evidence in private they should inform the Co-ordination Officer of this at an early stage. It will usually be possible to structure the meeting to enable any necessary, confidential information to be provided.
14. If a witness is unable to immediately answer a question of the Commission, a written answer can be provided after the meeting.
15. Evidence-taking before Commissions is conducted with a degree of informality. If a witness considers that a particular question is unfair, that they are not the appropriate person to answer it, or that they would like time to consider the answer or seek advice, they should say so at the meeting. If answering the question requires facts or records to be checked or detailed technical information to be sought the answer can be provided after the meeting.
16. A verbatim report of a meeting will not normally be prepared. However in appropriate circumstances a meeting may be webcast. If this is proposed witnesses must be warned in advance.
17. Witnesses may apply to recover travel and subsistence and other expenses necessarily incurred in attending the Commission's meeting. A claim form for this purpose will be provided to the witnesses.
18. When the resultant report is being drafted permission may be sought from witnesses to include quotes from the evidence given.

SJD/DRR 18 December 2009.

Appendix 3Extract from Constitution**Policy review and development**

- OS18 The role of the overview and scrutiny commissions 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.
- OS19 In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, overview and scrutiny commissions or sub-commissions may make proposals to the Council Cabinet for developments in so far as they relate to matters within their terms of reference.
- OS20 Overview and scrutiny commissions 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.

Reports from overview and scrutiny commissions

- OS21 Once it has formed recommendations on proposals for development, the overview and scrutiny commission will prepare a formal report and submit it to the proper officer for consideration by the Council Cabinet (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- OS22 If an overview and scrutiny commission cannot agree on one single final report to the Council or Council Cabinet as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Council Cabinet with the majority report.
- OS23 The Council or Council Cabinet shall consider the report of the overview and scrutiny commission within one month of it being submitted to the proper officer.

Making sure that overview and scrutiny reports are considered by the Council Cabinet

- OS24 Once an overview and scrutiny report on any matter which is the responsibility of the Council Cabinet has been completed, the commission may by notice require the Council Cabinet:
- (a) to consider the report and/or recommendations,

- (b) to respond to the commission indicating what, if any, action the Council Cabinet proposes, to take, and
- (c) if the commission published its report or recommendations, to publish its response

and the Council Cabinet must do so within two months of receipt of the report or, if later, the notice.

Where a commission copied its report to a member in connection with a Call for Action, the Council Cabinet shall also provide a copy of its response to that member.

If for any reason the Council Cabinet does not consider and respond to the overview and scrutiny report within two months then the matter will be referred to Council for review, and the proper officer will call a Council meeting to consider the report and make a recommendation to the Council Cabinet.

OS25 Only one major report every six months may be submitted by each overview and scrutiny commission to the Council Cabinet, other than reports on matters i) referred to the commissions by the Council Cabinet, or ii) resulting from a Call for Action.

OS26 Overview and scrutiny commissions will in any event have access to the Council Cabinet's forward plan and timetable for decisions and intentions for consultation. Where an item is not the subject of detailed proposals from an overview and scrutiny commission following a consideration of possible policy/service developments, the commission will be able to respond in the course of the Council Cabinet's consultation process in relation to any key decision.

Making sure that overview and scrutiny reports are considered by the partner organisations

OS26a Where an overview and scrutiny commission report or recommendations:

- a) relate to a target specified in the Local Area Agreement, the commission may in writing by notice require a relevant partner authority to have regard to the report and recommendations;
- b) are made by the designated crime and disorder commission, the commission shall provide a copy to each of the appropriate responsible authorities and/or co-operating persons and bodies. Each such recipient shall provide a written response to the crime and disorder commission within a period of one month from the date of the report or recommendations or, if not reasonably possible, as soon as possible thereafter.

The commission shall review responses and monitor the action, if any, taken by the relevant organisation.