

SCRUTINY PROTOCOL FOR SELECT COMMITTEES

REPORT OF THE DIRECTOR OF LAW AND PROPERTY

1. PURPOSE

- 1.1. To consider a Scrutiny Protocol for Select Committees.

2. BACKGROUND

- 2.1. The scrutiny of decisions taken by or on behalf of the Cabinet and the power of call-in are important elements of the work of the Select Committees because they make decision-makers accountable.
- 2.2. Our experience of scrutiny and call-in over the last few years has demonstrated that there are gaps in the processes and procedures laid down in the Select Committee Procedure Rules regarding the route to be followed in challenging a decision.
- 2.3. The attached draft Scrutiny Protocol (Appendix 1) seeks to address these gaps and is largely based on our practical experience of undertaking scrutiny inquiries over the last four years or so.
- 2.4. The draft attempts to help the process of scrutiny by:-
- setting out a number of principles;
 - clarifying the procedure that should normally be followed before a decision to scrutinise is taken;
 - identifying a process that should be followed at the meeting of the Select Committee;
 - setting out what should happen afterwards.
- 2.5. The draft has been considered by the Select Committee Chairmen and by the Lead Officers for all Select Committees who have given it their full support.
- 2.6. During January each Select Committee was also consulted. The draft was endorsed without amendment by the Select Committees for the Environment, Culture and Recreation, and Good Health. The remaining Select Committees submitted the following comments.

2.7. Select Committee on Economic Regeneration

- 2.7.1 Reference was made to a previous scrutiny which involved delay in obtaining the necessary information from officers.
- 2.7.2 It was also commented that detailed consideration could not be given to the scrutiny of a particular decision because members had been informed that the review was restricted to a single hearing.
- 2.7.3 One member referred to the conditions of exercising a call-in and felt that the requirement for the call-in to be by two or more political groups was too restrictive.

2.8. Comment

- 2.8.1 It is accepted that delays in providing information should be avoided wherever possible. However, the time limits for the call-in process are tight and, depending upon the amount of information required, it may not always be viable to produce information within the timescale requested. However, this is addressed within the draft at paragraphs 15 and 40.
- 2.8.2 The call-in process is designed to be non-party political, which is why the Council decided that, apart from a decision by the Chairman, a call-in should only be exercised by members from two or more political groups.

2.9. Select Committee on Community Safety

- 2.9.1 A similar comment was made with regard to the exercise of call-in by two or more political groups.

2.10. Select Committee on Education and Lifelong Learning

- 2.10.1 The Select Committee paid particular attention to paragraph 15 of the draft regarding the submission of written responses to written questions in advance of the meeting.
- 2.10.2 The view of the Select Committee is that the written responses should be provided to the Lead Officer at least five (and not two) days before the meeting, and that no written responses should be circulated at the meeting.

2.11. Comment

- 2.11.1 I have some sympathy with the views expressed by the Select Committee, particularly when the written responses are lengthy. However, if the questions are only submitted seven working days before the meeting it is not realistic to expect the written responses to be given at least five working days before the meeting. Furthermore, there will be times when the tabling of information at the meeting is simply unavoidable.

2.11.2 There are two ways in which this issue may be addressed. First, the Select Committee should try to give more than the minimum notice of seven working days for questions to a decision-maker. This in turn will allow written responses to be given more than two working days before the meeting. Secondly, if the information is provided late or it is too voluminous for members to assimilate within the time provided, the scrutiny could be deferred to a future, or a special, meeting.

3. PROPOSAL

3.1. It is proposed that the Cabinet consider the above comments from the Select Committees and make a recommendation to the Council on the draft Scrutiny Protocol for Select Committees for inclusion in Part 6 of the Constitution.

4. FINANCE

4.1. There are no financial implications arising from this report.

5. LAW

5.1. The Council's Constitution and the scrutiny role of Select Committees is governed by Part II of the Local Government Act 2000.

6. EQUAL OPPORTUNITIES

6.1. This report complies fully with the Council's policies with regard to equal opportunities and diversity.

7. RECOMMENDATION

7.1. It is recommended that the Cabinet consider the above comments from the Select Committees and make a recommendation to the Council on the draft Scrutiny Protocol for Select Committees for inclusion in Part 6 of the Constitution.

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LIST OF BACKGROUND PAPERS

1. Report to Corporate Board on the 27th July 2004 and the 5th April 2004.
2. Report to the meeting of Select Committee Chairmen on the 9th December 2004.

DUDLEY MBC

DRAFT SCRUTINY PROTOCOL FOR SELECT COMMITTEES

INTRODUCTION

1. This protocol must be read in conjunction with the Select Committee Procedure Rules (the Rules). The protocol has been approved by the Council for inclusion in the Constitution following consultation with the Chairmen of Select Committees and the Cabinet.
2. Under the Rules, Select Committees have the power to: -
 - scrutinise decisions of the Cabinet (either collectively or individually) or any other decisions made or actions taken in connection with the discharge of any of the Council's functions
 - call-in decisions i.e. delay their implementation until they have been scrutinised
 - scrutinise existing Council policies and strategies
 - develop new Council policies and strategies to be recommended to the Cabinet (either collectively or individually).
3. This protocol is primarily concerned with the **scrutiny of decisions** and the power of **call-in**, though the principles set out in paragraphs 7 - 10 apply equally to other scrutiny functions.
4. The power to challenge a decision maker to explain and justify a decision is an essential part of the Constitution. Decision makers must be accountable and be prepared to substantiate their actions.
5. This protocol is designed to assist Select Committees in the exercise of their scrutiny powers and to help to make the process of scrutiny as effective as possible.
6. The Government issued specific guidance in respect of Health Scrutiny in 2003. These give more specific guidance which is related in style and content to the broader principles contained in this document.

PRINCIPLES

7. Members of Select Committees should take care that the scrutiny process is seen to be a genuine attempt to understand the circumstances in which a decision has been reached and the reasons for that decision. The process should never be used to intimidate or put unnecessary personal pressure on those members, officers or other persons who are invited to appear before the Select Committee. Respect and courtesy should be shown at all times.
8. The Select Committee is not a court of law and those invited to attend before the Committee should not be treated as though they are parties to, or witnesses in, legal proceedings. The Select Committee should conduct its

proceedings in an open and transparent manner designed to gain the cooperation of all concerned, rather than create a polarisation of views or entrenched positions.

9. Select Committees should seek to use scrutiny to support and develop the priorities set out in the Council Plan. Scrutiny should never be used for party political purposes and should always be in the public or the Council's interest.
10. Likewise, in relation to Health Scrutiny, scrutiny should look beyond health care services to wider determinants of health. It should also be positive and constructive in style with a focus on improvement.

DECIDING WHICH ISSUES TO SCRUTINISE

11. Scrutiny of decisions is different from the call-in process in one material respect, in that it takes place after a decision has been made and put into effect so that it does not delay its implementation.
12. Before deciding to scrutinise, the Chairman of the relevant Select Committee and the lead officer should discuss the matter with the decision maker, i.e. the Leader of the Council, appropriate Cabinet Member, Chairman of the relevant Committee or Director. Such an approach will help the Chairman to understand the background to the decision and the reasons for taking it. The Chairman will then be able to discuss the decision in an informed way with other members of the Select Committee and the lead officer for the Committee before a decision to scrutinise is made by the Committee.
13. If a scrutiny is agreed, the lead officer should ensure that there is a written record of the reason(s) why the decision is being scrutinised. The reason(s) should then be communicated in writing to the decision maker and any other person asked to attend the Select Committee. The latter may include external invitees such as representatives of the police or a health trust, or an expert on the issue being scrutinised.
14. The lead officer for the Select Committee will have prime responsibility, under the direction of the Chairman, for collating any relevant documentation (including reports, minutes, decision sheets and background papers) to be included in the agenda for the meeting of the Select Committee.
15. At least seven working days before the meeting of the Select Committee the lead officer should supply those members, senior officers or other invitees asked to attend the meeting with a written list of questions that will be put to them at the meeting. Where possible the written responses to those questions should be provided to the lead officer at least two working days before the meeting but in any event the written responses will be circulated at the meeting.
16. Under the Rules "senior officers" may be asked to attend the meeting. For the purposes of this protocol it is agreed that "senior officer" means Chief Executive, Director or Assistant Director. Where other more junior officers

have been involved in the decision to be scrutinised, the Chief Executive, Director or Assistant Director may at their discretion invite such officers to the meeting to assist them in responding to any questions of detail.

17. If invited, a member or senior officer must attend the meeting but, if in exceptional circumstances they are unable to do so, the Select Committee will consult with them on arranging an alternative date for attendance.
18. In view of the likely time required to undertake scrutiny, a special meeting of the Select Committee will normally be necessary. The decision being scrutinised will usually be the first or sole main item of business on the agenda.

HEALTH SCRUTINY

19. A Scrutiny Plan should be produced annually and should be discussed and shared with National Health Service (NHS) bodies. This may identify priorities for a given period and health inequalities should be given equal weight in determining those priorities. Guidance suggests the following criteria for deciding on scrutiny topics:
 - That it will make a distinct and positive impact through scrutiny
 - That topics are timely and relevant and not under review elsewhere.
20. This last criteria is important because health scrutiny is not meant to be another form of performance management of the NHS and committee review may not always be the best way to respond to specific local issues. Health scrutiny approaches, therefore, may be reactive; proactive; “trust-facing”, i.e. scrutinising the work of a particular health trust; or thematic.
21. Health scrutiny may also be achieved through a variety of routes such as small working groups, commissioning research, or calling for evidence as detailed elsewhere in this report in a formal “select committee” style.
22. Deciding which issues to address will also be made in the context of law and guidance, allowing for the scrutiny of health on a joint basis with other local authorities where health issues affect more than one area. Delegation to another Authority can also occur. Protocols are being created to support this.
23. NHS bodies must provide such information about the planning, select provision and operation of health services in the area with some exemptions and the Committee on Good Health has the power in certain circumstances where the NHS refuse to do so to refer this to the body responsible for performance managing the NHS body. In particular, NHS bodies must consult the Select Committee on Good Health on any proposals where “substantial variation”, e.g. changes in accessibility to services, impact on wider community, etc. of local health services is concerned. The terms of reference of the Select Committee on Good Health reflects the above Guidance and a protocol has been developed and implemented locally with the Council’s health partners.

THE MEETING OF THE SELECT COMMITTEE

24. Before meeting those members and/or senior officers invited to attend will have been informed by the lead officer of the reason(s) for the scrutiny and of the questions that will be put to them.
25. Invitees should be present at the start of the meeting and should not be required to wait outside.
26. When the initial formalities (approval of minutes etc) have been completed, the Chairman should carefully explain the procedure to be followed.
27. The Cabinet Member or senior officer will be asked by the Chairman to make an introductory statement to provide an overview of the decision under scrutiny. In turn each invitee should normally be asked to read out their written responses to the questions and deal with any supplementary questions posed by any member of the Committee.
28. There may be exceptional circumstances where the Select Committee considers that an invitee should not be questioned in the presence of other invitees who will then be asked by the Chairman to leave the room.
29. If the meeting is open to the public, it is possible that an invitee may not be able to answer a question without disclosing information which is either exempt or confidential under the rules of access to information. In such a situation the invitee should draw this to the attention of the Chairman and the Committee will decide whether to go into private session to enable that question to be answered.
30. When the invitees have answered all questions the Chairman should ask them whether they wish to make a final statement to the Committee. Such statement should not exceed five minutes. At this stage the invitees should be thanked by the Chairman for their contribution and be asked to leave whilst the Committee deliberates.

THE DECISION

31. The Committee should carefully review all of the facts, opinions and comments submitted to members. Any matter that has not been raised or dealt with at the meeting should not be allowed to influence the decision of the Committee.
32. The Chairman should ask all members of the Committee to express a view and must allow for a "minority report" under the Rules if some members do not agree with the conclusions reached by the majority.
33. If the view of the Committee is that a report should be submitted to the Cabinet or Council, such report must explain the issue addressed; summarise the evidence considered; list participants; and clearly set out the findings of the Committee and the reasons therefor. A draft of the report should be sent to each invitee by the lead officer to enable them to indicate within five working days any factual inaccuracy in the report but not to dispute any finding. Any written response by an invitee shall be circulated

by the lead officer to every member of the Committee before the report is finalised and signed by the Chairman.

34. Reports should refer to individuals by title and not by name.
35. Invitees should be given advance notice of the publication of the report.

CALL-IN

36. The power of call-in is a particular form of scrutiny. When call-in is used it has the effect of delaying the implementation of the decision. Under the Rules, only decisions of the Cabinet (either collectively or individually) or key decisions taken by officers or Area Committees can be called-in.
37. The process of call-in is subject to certain limitations and time constraints which are set out in the Rules.
38. The power of call-in may be exercised by the Chairman of the relevant Select Committee or at least 5 members of the Committee from 2 or more political groups (with the exception of the Select Committee for Lifelong Learning where any 5 members or voting co-opted members may exercise the power). In the case of these Select Committees who only have a membership of 9, the Council has decided that the power of call-in may be exercised by 4 members from at least 2 political groups.
39. The Director of Law and Property will send written notification to the decision maker of the decision of the Select Committee within two working days of the meeting. If there is a reference back to the decision maker either by the Select Committee or the Council, the decision maker will send written notification of the final decision to the Director of Law and Property who will forward it to each member of the Select Committee. The notification will include the reasons for the reference back and the decision maker's response. If the decision maker alters the original decision, this will be recorded in a fresh Decision Sheet that will refer to the outcome of the call-in and the reasons for altering the original decision. If the decision maker confirms the original decision without amendment, the decision will become effective immediately.
40. The principles and procedures contained in this protocol apply equally to call-in with the exceptions of paragraphs 15 (seven working days notice of questions) and 33 (consulting invitees on factual accuracy of the draft report). In view of the time constraints on the exercise of call-in it will not normally be possible to give seven days written notice of questions but the Chairman and lead officer should endeavour to give as much notice as possible. Similarly, time constraints may not make it possible for invitees to have a draft copy of the report and, therefore, the Committee has the discretion to drop this requirement as it considers appropriate.