



OVERVIEW & SCRUTINY COMMITTEE

MINUTES of the OPEN section of the Call-in meeting of the OVERVIEW & SCRUTINY COMMITTEE held on 29TH MARCH 2005 at the Town Hall, Peckham Road, London SE5 8UB

PRESENT: Councillor Kim HUMPHREYS (Chair)
Councillors Eliza MANN, Fiona COLLEY, Barrie HARGROVE, Andy SIMMONS and Anne YATES.

OFFICER Shelley Burke – Head of Overview & Scrutiny
SUPPORT: Phil Davies – Head of Waste and Transport
Stephanie Fleck – Legal Officer
Will Gardiner – Programme Manager, Integrated Waste Management Solutions Programme
Deborah Holmes – Borough Solicitor & Secretary
Lucas Lundgren – Scrutiny Project Manager

2. SCRUTINY: SOUTHWARK ALLIANCE [see pages 22-28]

The Head of Overview & Scrutiny introduced the draft report, previously considered by OSC on 2 March 2005, and since developed in line with Member proposals at that meeting. All party whips had been given the opportunity to comment on the document. Councillor Moise and Lee Bartlett [Southwark Chamber of Commerce] had submitted comments, and in addition Sue Charteris [Shared Intelligence] had offered her thoughts on the broad accountability framework.

Four main areas of focus for recommendations had emerged, i.e: the accountability framework; communication; political representation; and links with the democratic infrastructure. Each of these sections within the draft report were discussed in turn by the Sub-Committee, and comments made.

The accountability framework

The Head of Overview & Scrutiny stated that the technical evidence suggested that performance management arrangements were generally working, but indicated live debates around how these linked to elected Members and the wider public.

She suggested that the LSP might be asked to clarify the different types of accountability of its membership bodies, to make a statement about how the LSP representatives should report back between bodies, and an expenditure statement.

- Annual debate on the work of the LSP at Council. Can OSC have the report for this before it interviews the Leader at OSC ?
- The current arrangements for LSP working do not allow members of the public to make representations, deputations or petitions as they can to the Council;
- The LSP had conceded that communications were one area of weakness. Members felt that perhaps the LSP did not feel it needed to notify Ward Members of issues coming up, and such a process was necessary;
- Local governance arrangements need to fully reflect the existence of the LSP, the number of Member places on the LSP needs to be reviewed, and discussion is needed in respect of whether resident representatives should be appointed to the LSP by Community Councils;

RESOLVED:

1. That the draft officer notes arising from the scrutiny of the LSP be agreed as this Committee's final report to the Executive subject to development in line with the following points and subsequent circulation to OSC for final comments.

- (a) First paragraph, final sentence to be amended to end “..responsive to the concerns of ward councillors *and residents*”..
- (b) That an annual debate on the Local Strategic Partnership should be held at Council Assembly, as an opportunity for the Leader of the Council to receive comments from Members on the Alliance's activity and operation.
- (c) That the report should reflect that Southwark's elected Member representatives on the LSP are not adequately reporting back to all Members on LSP activity and operation

The accountability framework

(d) The report should include an additional, discrete section “*Accountability to the public*”, which section should include a recommendation that “*The LSP must develop procedures such as those that would allow for public deputations, to facilitate engagement with the public at its meetings*”.

Communication

- (e) The report text should include acknowledgement that residents expect Members to act fully in their community representative roles and not simply deal with the Council apparatus. It is important therefore for the LSP to have dialogue with these Members, and in particular to develop an early warning system for issues of local concern.
- (f) The LSP needs to recognise that the LSP

newsletter, although currently working well, is not sufficient means to disseminate information to the wider community about its work and OSC recommends that a more user-friendly digest of their activities be provided.

- (g) The LSP should recognise that communication is a two-way process which benefits both the Alliance and elected Members.

Links to democratic infrastructure

- (h) There needs to be LSP recognition of the role of Councillors as community advocates, and secondly of the role of Community Councils as a forum for democratic accountability. In addition, the LSP should seek to utilise Community Councils to discharge its duties, which is considered particularly pertinent with regard to Neighbourhood Renewal Funding. Given this, the LSP should look to streamline the number of action teams and groups it establishes and ensure its structure is transparent and accountable to the public.
- (i) The current system for appointment of resident representatives was recognised as being in all likelihood not the first choice of the LSP itself. The LSP needs to recognise the diversity of the borough, and is therefore asked to review the process for such appointments. This review should include consideration of how such representatives will be held accountable, and the review should include input from Community Councils.
- (j) Overview & Scrutiny Committee recognises that there is antipathy by some LSP members to having an increased number of Councillor representatives on the LSP, and believes that Councillors of all political affiliations have work to do to overcome this perception. OSC believes however, that there is a need for the LSP to include representation from all political groups on the Council.
- (k) That the LSP be asked to consider whether the LSP Executive Group is fulfilling its statutory role in respect of [ensuring Neighbourhood Renewal Funding is discretely spent ??](#), and report back to this Committee.

2. That the Head of Overview & Scrutiny ensure that the final report is given proper publicity.

3. **LONDON BUS SERVICE LIMITED CONSULTATION: VERBAL UPDATE**

The Head of Overview & Scrutiny explained that Transport for London was reviewing its consultation processes. Councillor Thomas had been approached for feedback via his Transport Consultative Forum, which group would next meet with TfL on 14 April 2005. Simon Bevan [Planning and Transport Policy Manager] suggested that OSC might provide feedback to the Forum to be fed into TfL's review process.

The meeting agreed that, as previously discussed by this Committee, Ward Councillors should be informed of proposed or actual changes to services affecting their Wards. Members discussed whether this might best be done through Community Councils.

It was felt that Transport Group communications were not particularly user friendly and Members suggested that it might produce an annual report to each Community Council, detailing proposed changes as part of the 18 month consultation process for [route change ?].

Councillor Hargrove was happy about the way in which consultation was recently undertaken, and that the nature of Wards differed through the borough, with some being "split". This needed to be taken into account in consultation, therefore.

The Chair suggested that discussions about the geographical basis of consultation might also usefully be taken up on the basis of parliamentary constituency area.

RESOLVED:

That the following points be fed into the Executive Member for Environment & Transport' Transport Consultative Group meeting scheduled for 14 April 2005, i.e.

- (a) Overview & Scrutiny Committee recommends that officers of the Transport Group should supply all Members with additional detailed and explanatory information on proposed bus service changes pertaining to the Member's particular Ward, and include specific detail about which routes are affected and in what way.
- (b) That consultation with Members on bus service changes, specifically route change proposals, should be undertaken electronically.
- (c) That the Head of Transport Group should advise Ward Councillors of proposed and agreed changes to bus route frequencies as a matter of course.
- (d) Overview & Scrutiny Committee recommends the use of bus routes and buses themselves to communicate information about route change or development proposals.

1. **CALL IN OF EXECUTIVE DECISION [8 March 2005] in respect of [Open] Item 15 "Gateway 1 – Procurement Strategy Approval Integrated Waste Management Solutions Programme – Waste PFI Contract Procurement"**

The Chair invited all present to introduce themselves and reminded Members of the stated reason for the call-in request having been made, i.e.

“Reason for call-in – so that the Draft Output Specification, Performance Framework, Payment Mechanism and Contract Agreement can be considered before the contract is advertised. In meeting this task OSC will require reference to the Outline Business Case

Alternative course of action – dependent upon evidence heard at the call-in, but scrutiny will need to be satisfied the contractual process is sound before it goes outside, as future delays could be costly to this authority”.

On 8 March 2005 the Executive approved a procurement strategy and necessary processes for an integrated waste management contract, having previously approved a bid for Private Finance Initiative credits to help fund such a contract. Members were advised that the tender management protocol proposed for procurement is the Council’s Strategic Procurement Protocol, in line with PFI procurement guidance.

Phil Davies [Head of Waste and Transport] gave a presentation to Members a copy of which has been placed on the Minute File. The presentation clarified the four main elements of the contract, i.e. the Output Specification, Performance Management System, the payment mechanism and the proposed contractual remedies. The Output Specification was presented to Members in closed session.

The IWM procurement pack had been written by BABTE and Ernst & Young and produced by [4Ps check title of org ???](#) and represented good practice rather than being statutory guidance. It included the H.M Treasury document entitled “The Standardisation of Procurement Contracts (version 3)” from which any proposed deviation must be negotiated.

In response to the Chair’s question as to how the criticism of the old cleaning contract’s standards for being insufficiently prescriptive had been overcome, Phil Davies explained that the Service Delivery Plan formed part of all contracts and was annually updated. If contractors failed to deliver on the SDP the authority could impose financial penalties. In addition, a five-year fundamental review was part of the contractual relationship.

There existed 198 performance criteria in respect of the contract, and four service deduction criteria ranging from the highest, A, representing such incidences as health and safety breaches or failures with significant impact on a range of people or services, or a knock-on effect on other parts of the service chain, to the lowest, D. These were, as required, fair and proportionate. Points were given for failures, but opportunity to rectify these were given, after which financial penalties were imposed, according to Service Rectification Categories 1-5. The monitoring frequency indicates the interval by which any financial penalty would be increased.

It was possible to assess how the contractor was performing against annual targets indicating progress towards those for 2020, and a structure extant for penalising the contractor for not meeting these. The diversion target represented percentage of landfill allocations, and the recycling target was measured as a percentage of total domestic waste volume.

In respect of persistent performance failure, the escalation procedures ensure this does not continue, and thresholds trigger warning notices ultimately leading to contractual penalties. It was important to seek to avoid breach of contract by setting up both arbitration and resolution processes. It was not in a bank's interest for the contract to fail, and such institutions will step in before this point is reached.

No payment mechanism yet existed, although the proposed payment mechanism equation was explained to Members. Each element of this equation was tailored to the Southwark situation, following legal and technical guidance.

T	=	tonnage processed
V	=	payment for any surplus volume produced over the threshold
L	=	not within the control of the contractor [paid by the authority on the contractor's behalf]
R	=	standard DEFRA incentive in such contracts, which target is challenging for Southwark
W	=	set incentives to minimise waste growth in the borough. N.B. no contractor will accept responsibility for matters outside their control
D	=	performance deductions
EP	=	unforeseeable legislation may be passed that results in contractors exceeding their stipulated profits such as that which required manufacturers to take back responsibility for fridge disposal – this element is ploughed back into the contract

Officers were currently consulting on the Outline Specification, which would feed into the other three interrelated processes. Phil Davies would shortly consult with the private sector to gather its views on the OS, which it was hoped would be ready in the next few months.

Councillor Hargrove stated that the initial impression had been that the authority was simply planning a waste facility, but clearly a comprehensive service was now being procured. He asked whether the contractor would therefore be collecting waste as part of this contract. Phil Davies responded that as an integrated contract, the aim was to get one entity to sign up to the targets, and control the entire process from start to finish. There are currently four Private Finance Initiatives elsewhere in the U.K. at this stage, including Manchester and Wakefield.

The DSO may be part of this overall consortium, but at the Invitation to Submit Outline Proposals [ISOPs] stage it would be clearer who would be bidding for the contract, and those bidding would be given information about the DSO at this stage. The relevant Trade Unions had been communicated with in respect of options and solutions, and reportedly understood the reasons for the decisions taken to date [page 10, paragraph 53 refers]. However, no communication with DSO operatives had been made, a matter on which Councillor Simmons expressed concern. Phil Davies acknowledged that DSO operatives would likely seek no reduction in their terms and conditions of employment.

Councillor Simmons asked how the authority might protect itself from an individual who was both leading on the externalisation project and managing operations, which traditionally was not allowed. Phil Davies responded that there was currently clear separation of roles between himself overseeing, directing and co-ordinating, and Will Gardiner [Programme Manager, Integrated Waste Management Solutions Programme] leading on the externalisation. To date there had been no expressions of interest, but at the point of submission of proposals there would be a splitting of roles. The Borough Solicitor and Secretary advised that the old demarcation lines of Compulsory Competitive Tendering [CCT] had now gone, and in governmental terms there was no reason why the Head of Service could not also be client.

EXCLUSION OF PRESS AND PUBLIC

At 8:29 p.m. it was proposed, seconded and

RESOLVED: That the public be excluded from the meeting for consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information that falls within categories 8 & 9 as defined in paragraph 10.4 of the Council's Access to Information Procedure Rules.

Members discussed the Resource Programme Waste PFI Project draft Output Specification on the Closed Agenda, and officers responded to Member questions thereon.

At 9:00 p.m. the meeting returned to open session.

The Chair thanked officers for attending and acknowledged the tight timetable for contract procurement. He advised officers to factor the possibility of call-ins into any future project plans.

RESOLVED: That the decision of the Executive Committee of 8 March 2005 in respect of Item 15 "Gateway 1 – Procurement Strategy Approval Integrated Waste Management Solutions Programme – Waste PFI Contract Procurement" shall not be referred back to the Executive, but shall remain and take effect from the date of its consideration by Overview & Scrutiny Committee, i.e. 29 March 2005.

That the Chair of Overview & Scrutiny Committee write to the Head of Waste and Transport asking:

- (a) That the need to undertake full consultation with staff be taken fully into account;
- (b) That the Executive be made fully aware of the risks of the 25 year contract;
- (c) That a statement to OSC in respect of the position of the DSO in relation to the procurement process be requested from the Chief Executive.

The meeting ended at 9.05 p.m.

CHAIR:

DATED: