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Dear Member

CABINET SCRUTINY COMMITTEE - WEDNESDAY, 23 SEPTEMBER 2009

I am now able to enclose, for consideration at next Wednesday, 23 September 2009 meeting of the Cabinet Scrutiny Committee, the following report that was unavailable when the agenda was printed.

Agenda No Item

1. Strengthening Local Democracy Consultation Response (Pages 1 - 12)

Mr A J King, Deputy Leader of the Council and Cabinet Member for Localism and Partnerships; Mr Paul Wickenden, Overview, Scrutiny and Localism Manager; and Mr Edward Thomas, Policy Officer, will attend the meeting from 11.00 am and 11.30 am to aid Members' understanding of the consultation response.

Yours sincerely



Peter Sass
Head of Democratic Services & Local Leadership

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Kent County Council response to Strengthening Local Democracy: Consultation

August 2009

Summary

We observe that the theme running through this consultation is that of the central – local Government relationship and succinctly, these are a summary of our views:

- **Greater scrutiny powers are a way forward to hold unelected service providers to account.** However, the real issue is local Government assuming the powers of some of the Non-Departmental Bodies (quangos). At the sub-regional level, it is hard to understand what powers could be scrutinised, when we do not yet know what powers are to be devolved to sub-regions.
- **It is felt that the ‘well-being’ power is not adequate enough** and this has been evidenced by the recent Court of Appeal [LAML] judgement and the potential risk to the independence/autonomy of local authorities to implement changes in service delivery illustrated by the Government intervention into the decision by Wirral Metropolitan District Council to close 50% of its library buildings. The conclusion must be drawn that additional powers are required.
- **With regard to climate change, the theme is similar**, in that Government should take steps to enable local Government to play a greater role, in particular strengthening the role of top-tier authorities for them to drive co-ordinated action and release resources.
- **Leadership most appropriately resides with the sole institutional layer at local level that has a democratic legitimacy: local authorities.** At the local level sub-regional local authorities should be trusted to act as first amongst equals in the desire to improve their areas economic, environmental and social conditions.
- **We feel that having a set of ‘principles’ is fine but that for them to have any worth they, or a UK version of the *European Charter of Local Self Government* which sets out the ‘subsidiarity’ principle i.e. decision making at the lowest appropriate level, needs to be enshrined in legislation.**

Chapter 1 - Local government at the centre of decision making

1. Do you agree that we should extend scrutiny powers in relation to Local Area Agreement (LAA) partners to cover the range of their activities in an area, not just those limited to specific LAA targets?

2. Do we need to make scrutiny powers more explicit in relation to local councils' role in scrutinising expenditure on delivery of local public services in an area? If so, what is the best way of achieving this?

These two questions are best answered together:

It is noted the Calling Cumbria model that influenced the Total Place Initiative (TPI) is used as an example of "how important it is to have one body monitoring this spending to make sure it is being used to best effect". After all the rhetoric, we are heartened there is recognition that power does actually lie with elected representatives ("It is clear this role should fall to councils, with their direct mandate to act on behalf of citizens") and greater scrutiny powers are seen as a way forward to hold unelected service providers to account.

It is our experience that all Local Area Agreement (LAA) targets, agreed at a countywide level, do not always deliver the focus and drive in the areas that could really make a difference - consequently, the next Kent LAA will probably include targets at both sub-county and sub-regional level. As a result, we can see the sense in extending scrutiny powers to all activities in an area and not just focussing on LAA targets.

In conclusion, it is our view that it is imperative for councils' primacy to be exerted and one way to do this is to scrutinise all public money spent and decisions taken by local service providers in the local authority area

**3. Do you agree that we should bring all or some of the local public services as set out in this chapter fully under the local authority scrutiny regime?
Are there other bodies who would benefit from scrutiny by Local Government?**

Scrutiny was initially seen as providing challenge to the Council's own service performance. That remains one aspect of the role, but much of the most effective work of scrutiny bodies has involved engagement with the wider community and public service issues. As such the list of bodies that local authorities could have greater scrutiny over is a welcome step. We would also include Non-Departmental bodies (quangos) in this list, as it is currently not that easy to understand how the existing quangos spend the public money allocated to them each year. The list to scrutinise could also include the:

- Arts Council;
- Environment Agency;
- Equality and Human Rights Commission;
- Health and Safety Executive;
- Highways Agency;
- Homes and Communities Agency;
- Learning and Skills Council;
- Museums Libraries and Archives;
- OFSTED;
- Regional Development Agencies;
- Sport England;
- Tenant Services Authority; and
- Utility companies.

The merits of local Government assuming the powers of some of these quangos could be argued but to gain scrutiny over them is, as we say a move in the right direction.

4. How far do you agree that we should extend scrutiny powers to enable committees to require attendance by officers or board members of external organisations to give evidence at scrutiny hearings, similar to the powers already in existence for health and police?

As part of wider scrutiny powers, this would be an essential component of the scrutiny process.

5. What more could be done to ensure that councils adequately resource and support the local government scrutiny function to carry out its role to full effect?

As the local authority scrutiny function is enshrined in the *Local Government Act 2000* it has to be assumed that a proportionate amount of resources are vested in it, for it to adequately function. However if, as is suggested by this consultation, the scrutiny remit could change and become wider than the statutory [two committees from October 2009] additional resources will be required. Although it is to be noted that no one size fits all and in the current economic climate it is not clear how any increase will be financially serviced.

6. How can council leaders ensure that scrutiny is a core function of how their organisations do business and have a full and proper role in scrutinising the full range of local public services?

We note that the *Local Democracy, Economic Development and Construction* Bill [and this consultation itself] proposes requiring all local authorities to employ a dedicated scrutiny officer. However, we cannot see the logic in an additional appointment given that this responsibility is invested in existing staff, but more than this that the scrutiny function already has a visibly accountable face in its Members. Also of primary importance is engaging all Members in the scrutiny process.

7. What more could be done to better connect and promote the important role of local government scrutiny to local communities, for example, citizens as expert advisers to committees?

There is an emerging view, within Kent County Council, from the Cabinet and the Cabinet Scrutiny Committee that one of the ways of strengthening an Overview and Scrutiny process would be to have a pool of Co-optees (representatives of organisations, voluntary sector or the public) to call upon to assist the Overview and Scrutiny committee for a specific issue. The challenge, if this is decided by the County Council as an appropriate way forward is to establish an independent mechanism for how this can be achieved.

Chapter 2 - Strong local government operating in the local interest

8. How best should any reduction in numbers of LAA targets ensure that services are responsive to the most important local needs and priorities as well as national entitlements?

13. Do you agree that there should be a review of the structure of local partnerships with a view to identifying unhelpful overlap and duplication? Are there particular issues on which such a review should focus?

These two points are best answered together:

The Kent Partnership (KP) is the countywide Local Strategic Partnership (LSP) for Kent that was formed in 2002 as a result of the *Local Government Act 2000*. It is made up of representatives from the private, public and voluntary and community sectors.

Any reduction in LAA targets should not necessarily be an issue. In line with the 'local leadership' and 'place shaping' roles of local services, the priorities should be driven by an assessment of needs by the local partners, through the LSP. This allows local priorities, which may not lend themselves to national indicator definitions or national comparisons, to be included in LAAs. The LSP will look at their aspirations and their performance in selecting priorities and targets.

The number of targets in the LAA needs to be further reduced and the targets must also be more strategic and support / drive a culture of delivering together. This will emphasise the absolute cross cutting priorities across the LSP and will serve to bind partners closer together on a recognisable and manageable number of priorities.

Performance Reward Grant has been significantly reduced in the second round of LAAs and given the financial scenario is unlikely to be restored. Alternative ways to incentivise and reward success are required and one avenue to achieve this could be via a 'Power to Direct'. Another could be through the accelerated devolution of power to local partners. Partners in Kent are ambitious for Kent and time and again we feel that it has been shown that what is holding back transformational improvement is the limited room for manoeuvre that local partners have, being forced to deliver and monitor against national strategies. It can be argued that the best approach to secure improvement is to roll out this devolution of power to all partners. However, recognising the risk adverse nature of central Government the process can be started with a radical shift in favour of the best performers. i.e. 'earned autonomy'.

9. Should councils have a power to engage in mutual insurance arrangements?

10. Are there other powers needed to cover engagement in further complex arrangements of a possibly speculative nature outside of existing powers?

These two questions are best answered together:

To address this single issue of "Should councils have a power to engage in mutual insurance arrangements?" is to misunderstand the crux of the issue surrounding the failure of the 'well-being' power.

It is felt that the well-being power, set out in the *Local Government Act 2000*, is not adequate enough and this has been evidenced by the recent [June 2009] Court of Appeal [LAML] judgement that ruled that it was not within the powers of London Boroughs to set up a mutual insurance company, using the power of well-being.

In addition, there is a potential risk to the independence/autonomy of local authorities to implement cuts/changes in service delivery without Government intervention posed by the intervention of the DCMS Secretary of State into the decision by Wirral Metropolitan District Council to close 50% of its library buildings and this could have significant implications for local authorities as they plan how to reconcile spending over the next three years whilst being seen to meet their statutory duties.

Lord Justice Pill in his conclusions to the LAML case said that “If Parliament had intended to confer such an unlimited power, it would have done so in very different terms”. Consequently the conclusion must be drawn that yes, additional powers are required in the form of a ‘General Power of Competence’ for local Government to be able to carry out efficiency programmes, in the vein of the Total Place Initiative (TPI) programme, without the concern of legal action.

It has to be noted that a ‘Power of General Competence’ is backed by the LGA and the CLG Select Committee and the Local Government Chronicle (LGC) - who have started a campaign called ‘Untie the Ropes’. We also note that during the recent Committee Stage of the *Local Democracy, Economic Development & Construction Bill* an additional (defeated) Clause was tabled that proposed a ‘Power of General Competence’ “on the statute book” and on this point we agree that the central-local Government balance ideally needs to be enshrined in legislation to avoid any further avoidance of doubt and we propose adopting the ‘subsidiarity’ principle i.e. decision making at the lowest appropriate level, needs to be enshrined in legislation.

11. Do you agree that greater powers should be premised on demonstration of local confidence?

How should this be demonstrated? How can council’s best reverse the decline in confidence?

There is a suggestion in this consultation that the advent of the ‘entitlements’ [Government pledges of what to expect from education, health care, policing], referred to in *Building Britain’s Future & the Operational Efficiency Programme* report, coupled with greater scrutiny powers could herald a reduction in inspection and the number of LAA targets.

We feel that this question should be around capability (or more aptly, competence) rather than ‘confidence’. For instance how do you prove ‘confidence’? The *Local Democracy, Economic Development and Construction Bill* is full of similar ideas and much of this has spilled into this paper i.e. that of restoring public trust in democracy and greater public involvement in decision making and we note that local Government is to be tasked with promoting democracy.

If central Government is willing to devolve based on performance, great but ‘earned autonomy’ has been offered and not followed through in the recent past with, for example, the Comprehensive Performance Assessment (CAA). Either it is offered to top-tier authorities or it is not.

This paper acknowledges an important fact i.e. that local authorities “are unique among public service providers in being directly elected... That means they are best placed to provide local leadership and make sure that public services are being fairly and effectively delivered”. It is this visible, strong local leadership that can help generate confidence in the communities served, giving that assurance locally. As the LGA comment “Local elected politicians... have one tremendous advantage over national politicians, which is that they are fundamentally in and of their places in a way that Westminster politicians rarely can be”. But this needs to be backed up with returning more power to locally elected institutions and that way voters will feel that the ballot box has worth. One example would be reducing the number of Non Departmental Bodies (quangos).

However, many authorities are already playing an active part in engaging their communities. Kent County Council has an active Citizens Panel, Youth Council and the County Council is also exploring a project whereby County Councillors promote democracy in some of the schools within their electoral divisions.

Working with our partners the County Council has and is continuing to pilot a range of models of community engagement bringing together the three tiers of Local Government, County, District and Parish and in some of the models the Police, Primary Care Trust and voluntary sector.

The County Council is also exploring a range of initiatives which will enhance the community engagement strategy for the Authority:

- A number of elected Members are piloting events where the community make bids for a contribution from the Members Community Grant;
- A scheme for e petitions is being established, which will allow the community online to petition the County Council on issues of concern;
- New Technology is being explored including:
 - The use of Blogs, Video uploads, social networking;
 - Creation of a virtual County Hall where communities of interest find the CC;
 - The County Council webcasts many of its meetings.

12. Are there core issues that should have greater council control which councils believe they are currently prevented from undertaking?

If so what are they and what is the case for councils to take on these roles?

Succinctly, yes and much of our response is laid out in Chapters 1 (Pt. 3); Chapter 2 (Pt. 10).

Chapter 3 - Local authorities tackling climate change

A point is that while Climate Change is an important subject, it is felt that this is a tack-on to the general thrust of this consultation – if Climate Change, the subject could easily have been worklessness, economic development, the 14-16 agenda...

14. How is the current national indicator system working to incentivise local authorities to take action on climate change? Should Government take new steps to enable local authorities to play a greater role in this agenda?

The current National Indicator system is helping to bring partners together to address climate change issues and galvanises action both within individual authorities and across partners, particularly through inclusion within Local Area Agreements (LAA). However, many authorities have limited staff, revenue and capital resources which limits progress in this area. Government should take new steps to enable local Government to play a greater role, in particular strengthening the role of top-tier authorities, or other authority as appropriate, to enable them to drive co-ordinated action and release resources.

15. Where can local authorities add most value in meeting climate change aims, and what should Government do to help them do so, giving consideration to the proposals set out in this chapter?

Authorities can utilise procurement to drive improvements in the supply chains and create new markets; influence and improve the quality of existing domestic housing stock through retrofitting, and work with local people and businesses to create low carbon communities and economies. In order to maximise these opportunities, greater local influence and powers are needed. Government can enable this through consolidating energy efficiency funding for an area and giving control of how this is allocated to top-tier authorities to drive change and prioritise needs.

Through development of innovative capital finance mechanisms by Government, local authorities can then drive wholesale change through a total place approach. Clear guidance is also needed on the inclusion of carbon budgeting in procurement to ensure consistency and a fairness. A view is also that local carbon budgets are a distraction, trying to develop carbon into a parallel currency - when we already have an effective currency and accounting system which could be used to manage carbon - if it is properly valued/costed. And the way to properly value and cost carbon is through the taxation system. There is also a need for consistency in planning requirements to ensure a level playing field and drive improvement and change.

16. How do we ensure that national policies reinforce local efforts – for example, around transport, renewable energy, and energy efficiency?

By providing broad principles and parameters but leaving flexibility for local interpretation, national policies can enable authorities to drive change and prioritise needs for their area.

Chapter 4 - Sub-regional working

17. Should the activity of sub-regional partnerships be required to be subject to scrutiny arrangements?

18. Should councils' joint overview and scrutiny committees be able to require sub-regional bodies to provide them with information on the full range of their activities and to consider their recommendations on sub-regional matters?

These two questions are best answered together:

Essentially these questions are covered in our response to Chapter 1. We advocate that sub-regional partnerships should be subject to the same scrutiny arrangements as the bodies' we propose that local authorities could have greater scrutiny over.

In the same vein, sub-regional bodies should be compelled to provide all information required by the relevant scrutinising body. However, Joint Overview and Scrutiny Committees have previously been limited only to examining the performance of LAA targets, but legislation in the *Local Democracy Bill* will see this limitation removed in any case.

19. Should the duty to respond to petitions be extended to sub-regional bodies?

In the name of enhancing partnership working and supporting better community engagement – yes, but the issues are more fundamental as petitions are not the only way of communities engaging with local Government and this is a mistake being made in the current *Local Democracy, Economic Development and Construction Bill*. The legislation is also overly prescriptive on the subject of petitions and should leave much of what is already being carried out by local authorities for them to make decisions locally.

20. Do current and planned models for joint working give people a clear enough voice in decisions that are made sub-regionally?

Much of this is dealt with in Chapter 2 (pt. 11). The simple answer is no. There is already a perceived 'democratic deficit' and a lack of public understanding of the different tiers of governance. Regionalism, currently, only adds to this confusion. The Leaders Boards' and Economic Prosperity Boards (EPBs) set out in the *Local Democracy, Economic Development and Construction Bill* are not likely to improve this in the short term either.

The real issues sub-regionally are Regional Development Agencies, whose reason for existence many question and the accretion of power to unelected Non-Departmental Bodies (quangos).

21. How could we go further to make existing and planned city- and sub-regional structures more accountable, in addition to the suggestions in this document?

Over the past quarter of a century central Government has chosen to adopt an unremitting policy of centralisation seeking to cajole, steer and monitor more and more

functions of local Government. This consultation offers a hope as to how this pattern might be reformed principally through greater emphasis on sub-regionalism. Unfortunately, the document does not expand on what local freedoms and powers are promised to be devolved to sub-regions. Accordingly, it remains contested territory as to whether it is possible to achieve an integrated regional strategy in the absence of an integrated organisational context.

We call for clear, democratic and accountable leadership that is accompanied by greater powers and responsibilities for sub-regions. That leadership most appropriately resides with the sole institutional layer at local level that has a democratic legitimacy: local authorities. At the local level sub-regional local authorities should be trusted to act as first amongst equals in the desire to improve their areas economic, environmental and social conditions. The current regional procedures suffer from an absence of democratic legitimacy, governance mandates, funding requirements, structural and abstract boundaries. For sub-regional working to be made more effective it must address these issues.

22. Should we give more powers and responsibilities to city- and sub-regions? If so, what powers or responsibilities should be made available?

We would wish for greater powers to be devolved from central and regional Government to sub-regional conglomerates of local authorities in both City and County-region contexts. In terms of sub-regional powers, a coterie of strategic economic development functions: housing, planning, transport, skills should be devolved to enable local authorities to deliver. Alongside greater responsibilities, better policy, operational and resource scrutiny and oversight of the totality of public services, including health and police, should occur.

Accountabilities of sub-regional structures

Regional strategies combine formerly separate regional spatial and regional economic strategies. Such a change in regional configurations explicitly empowers Regional Development Agencies (RDAs) at the expense of other local organisations. We would like to suggest that there should be the explicit expectation that the formation of such strategies requires the consent and active support of all participating local authorities within the respective regions. At present there is no requirement to consult with specified local authorities. Without this ingredient, single integrated regional strategies effectively further disempowers the role of local authorities and adds to legitimate concerns about associated democratic deficiencies.

Leaders Boards

Leaders Boards are envisaged as working closely with RDAs to prepare the integrated regional strategy. Yet, the current proposals exhibit a high degree of uncertainty as to the nature of the relationship between RDAs and Leaders Boards in the preparation and formulation of single regional strategies. RDAs, not Leaders Boards, will be the only body with statutory responsibility for the production of regional strategies. This potentially leaves the local authorities' role over shaping the strategies being largely RDA directed through the publication of evidence gathering initiatives such as the economic needs assessment duty. Consequently, local government's ability to be regarded as an equal player and actively influence regional developments is likely to remain largely symbolic. Plans for Leaders Boards feel ever so much like streamlined but warmed-up reminiscences of regional assemblies.

Economic Prosperity Boards (EBPs)

We should tentatively acknowledge the potential opportunity of EBPs as a welcome first step in enhancing local accountability and empowering local authorities to address their economic development and regeneration needs. Nonetheless, the current proposals remain unclear as to precisely how EBPs will add value, overcome existing confusion and work with other parts of the burgeoning regional architecture – RDAs, GOs, Leaders Boards, RIEPs, Regional Grand and Select Committees. For example, what actual powers are EPBs likely to be entrusted with beyond "economic development responsibilities"? If they are not to receive direct powers than the question remains; what's their purpose above and beyond the existing conflation of regional bodies?

23. Is there a need for direct democratic accountability at the sub-regional level? What would be the best means of achieving this, giving consideration to the options set out above?

To reiterate, we feel that (as in response to Point 21) - leadership most appropriately resides with the sole institutional layer at local level that has a democratic legitimacy i.e. local authorities.

Chapter 5 - Clear relationships with local government

24. Should central and local government's roles be more formally established?

25. What are your views on the draft principles set out above as away of achieving this ambition?

Questions 24 & 25 really need to be answered together as they are interrelated.

The proposed draft 'principles' have more substance to them than the *Central-Local Concordat*, but overall the idea of the 'principles' is a move in the right direction.

However, what is really required is a power vested in local Government that keeps central Government from dictating the direction of travel. The obvious option here is for the Government to deliver on the 'principles' laid out in the *European Charter of Local Self Government* (ratified in 1998 but never enshrined into British law) which sets out the "subsidiarity principle", i.e. decision making at the lowest appropriate level.

Although the intention of the *European Charter of Local Self Government* is that it be included in the Written Constitution of the said Country the issue could be that the UK does not have a codified Constitution. However, there is an argument, recently articulated by the House of Commons Justice Select Committee (in their report - *Constitutional Reform and Renewal*) that this should not be prohibitive of Local Government powers being enshrined in legislation - "In comparison with many other democracies, local Government in England remains relatively weak in relation to central Government... This raises the question of whether the powers and structures of local Government would or should be recognised in a written constitution, with a specified process for any changes to be made in them." It would be then up to central Government to set the parameters of what local Government cannot undertake, rather than the status quo.

26. Do you agree that an ombudsman-style arrangement and a joint select committee of both Houses of Parliament are the correct approaches to oversee and enforce these principles, if adopted?

It is agreed that a local Government ombudsman and/or a Parliamentary joint Select Committee would be a necessary and effective way of monitoring the central/local Government relationship if the proposed 'principles' are implemented. However, an observation is that none of this type of bodies' decisions will be binding. This is the principle reason why we propose that local Government powers should be enshrined in legislation.