



## AGENDA

### CABINET SCRUTINY COMMITTEE

**Wednesday, 23rd September, 2009, at 10.00 am** Ask for: **Peter Sass**  
**Darent Room, Sessions House, County Hall,** Telephone: **01622 694002**  
**Maidstone**

*Refreshments will be available 15 minutes before the start of the meeting*

*Timing of items as shown below is approximate and subject to change.*

*County Councillors who are not Members of the Committee but who wish to ask questions at the meeting are asked to notify the Chairman of their questions in advance.*

**Please note that this meeting will be webcast**

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

#### **A. COMMITTEE BUSINESS**

- A1 Substitutes
- A2 Declarations of Interests by Members in Items on the Agenda for this Meeting
- A3 Minutes - 21 July 2009 (Pages 1 - 10)
- A4 Minutes of Extraordinary Meeting - 5 August 2009 (Pages 11 - 16)
- A5 Follow-up Items from Cabinet Scrutiny Committee (Pages 17 - 20)
- A6 Informal Member Group on Budgetary Issues - 11 September 2009 (Pages 21 - 24)

#### **B. FOR THE COMMITTEE'S CONSIDERATION**

- B1 Potential to Refocus and Restructure the Overview and Scrutiny Function (Pages 25 - 34)

Mr A J King, Deputy Leader and Cabinet Member for Localism and Partnerships, and Mr P D Wickenden, Overview, Scrutiny and Localism Manager, will attend the meeting from 10.15 am to 11.00 am to answer Members' questions on this item.

#### **C. FOR THE COMMITTEE'S INFORMATION**

- C1 Strengthening Local Democracy Consultation Response (Pages 35 - 96)

Mr A J King, Deputy Leader of the Council and Cabinet Member for Localism and Partnerships; Mr P D 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.

**D. CABINET/CABINET MEMBER DECISIONS AT VARIANCE TO APPROVED BUDGET OR POLICY FRAMEWORK**

No items.

**E. CABINET DECISIONS**

No Cabinet decisions have been proposed for call in but any Member of the Committee is entitled to propose discussion and/or postponement of any decision taken by the Cabinet at its last meeting.

*(Members who wish to exercise their right under this item are asked to notify the Head of Democratic Services and Local Leadership of the decision concerned in advance.)*

**F. CABINET MEMBER DECISIONS**

No items.

**G. OFFICER AND COUNCIL COMMITTEE DECISIONS**

No Officer or Council Committee decisions have been proposed for call in but the Committee may resolve to consider any decisions taken since its last meeting by an Officer or Council Committee exercising functions delegated to it by the Council.

*(Members who wish to propose that the Committee should consider any Officer or Council Committee decision are asked to inform the Head of Democratic Services and Local Leadership of the decision concerned in advance.)*

**EXEMPT ITEMS**

*(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)*

Peter Sass  
Head of Democratic Services and Local Leadership  
(01622) 694002

**Tuesday, 15 September 2009**

*Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.*

**KENT COUNTY COUNCIL**

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**CABINET SCRUTINY COMMITTEE**

MINUTES of a meeting of the Cabinet Scrutiny Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Tuesday, 21 July 2009.

PRESENT: Mrs T Dean (Chairman), Mr R Brookbank, Mr A R Chell, Mr L Christie, Mr B R Cope, Mr E E C Hotson, Mr M J Jarvis, Mr R E King, Mr J A Kite, Mr R J Lees, Mr R F Manning, Mr R J Parry (Substitute for Mrs J Law) and Mr J E Scholes

PARENT GOVERNORS: Mr P Myers and Mr O Poole

ALSO PRESENT: Mr A J King, MBE, Mrs P A V Stockell, Mr P D Wickenden and Mr D Whittle

IN ATTENDANCE: Mr P Sass (Head of Democratic Services and Local Leadership) and Mrs A Taylor (Research Officer to Cabinet Scrutiny Committee)

**UNRESTRICTED ITEMS**

**3. Election of Vice Chairman**  
*(Item. A3)*

The Chairman explained that she hoped that the Cabinet Scrutiny Committee could become less confrontational, more inclusive, more forward looking and more constructive. The Chairman proposed three vice chairmen, one from the Conservative group (Mr Manning), one from the Labour group (Mr Christie) and the Independent Member (Mr Lees). In the absence of the Chairman the Vice Chairmen would chair the meeting in rotation.

This was agreed by the Committee.

**4. Minutes - 29 April 2009**  
*(Item. A4)*

The minutes of the meeting on 29 April 2009 were approved as a correct record.

**5. Follow-up Items from Cabinet Scrutiny Committee**  
*(Item. A5)*

The Chairman highlighted the information that the Director of Personnel and Development had agreed to provide at the Cabinet Scrutiny meeting on 29 April, Mrs Taylor would chase this information on behalf of the Committee.

The Committee noted the follow up report.

**6. Informal Member Group on Budgetary Issues - 14 May 2009**  
(Item. A6)

The notes of the Budget Informal Member Group held on 14 May 2009 were agreed.

**7. Informal Member Group on Budgetary Issues - 9 July 2009 (to follow)**  
(Item. A7)

The Chairman asked the Cabinet Scrutiny spokespeople to confirm which Members would be on the Informal Member group (IMG) on Budgetary Issues Mr Manning agreed to confirm who the Conservative Member would be after the meeting, Mr Christie confirmed that he would serve on the IMG and the Chairman confirmed that she would serve on the IMG. Mr Lees declined the offer to become a Member of the IMG on Budgetary Issues at this stage.

The Committee approved the notes of the IMG on Budgetary Issues held on 9 July 2009.

**8. Options for Overview and Scrutiny**  
(Item. B1)

The Chairman explained that she had asked for a report on options for Overview and Scrutiny and best practice across the country because there was a need to improve scrutiny and its effectiveness. Mr A King explained that it was important to get the views of Members on the options for Overview and Scrutiny, the Leader had agreed to submit a proposal, which would be worked up and shared with the political groups, to the County Council meeting in the Autumn. Transparency was vitally important in local authorities, particularly given the composition of Kent County Council.

Mr Wickenden explained that the paper examined other ways in which Overview and Scrutiny was structured in other authorities.

The KCC model was based on directorate and portfolio responsibilities; there were a number of statutory requirements: a call-in mechanism, a Committee which scrutinised crime and disorder reduction (the Communities POC), a Health Overview and Scrutiny Committee and scrutiny of the Local Area Agreement was emerging through the Government's agenda.

Hertfordshire was quite radical in terms of the ways in which it commissioned and undertook council business. It didn't have any formal standing arrangements apart from an Overview and Scrutiny Committee that had call-in within its remit as well as the responsibilities of the Policy Overview Co-ordinating Committee, in that it co-ordinated and delegated work to Task and Finish Groups. Hertfordshire's Health Overview and Scrutiny Committee has invited a representative from each of the ten district and borough Councils to serve of the Committee.

Essex County Council was based on a Local Area Agreement themed approach – which was arguably more effective for looking at cross cutting issues but it did not necessarily effectively pick up all the business of the County Council. Essex has a joint Health Overview and Scrutiny Committee, and Mr Wickenden explained that

Kent had an arrangement with Medway Council to form a joint Health Overview and Scrutiny Committee if there was a need on a geographical basis. The Scrutiny Board at Essex County Council was effective at commissioning work and even commissioned a piece of work to the area forum to look at an issue at a local level on measles, mumps and rubella, which was an effective way of involving all relevant agencies as close to the community as possible.

Telford and Wrekin's model was based on a Local Area Agreement with limited co-option via open advertisement.

Durham County Council's model was based on a thematic approach and extensive co-option.

There seemed to be a lot of work being done on involving co-optees but at this time it was difficult to judge how effective this was proving to be. The report also looked at rapporteurs, which the POCC had considered but a scheme had not come to fruition. The London Assembly recommended a rapporteur system and in some cases a ballot was used to decide which issues to take forward.

The HOSC would be looking at refocusing and restructuring that Committee to see where it could be improved including the possibility of delegation to borough and district colleagues. In terms of the engagement of back bench Members there were a number of strands, Overview and Scrutiny was one, and the other was the localism agenda. Mr Whittle explained that the options set out in front of Members were all variations on themes there was not a one size fits all option. There was a distinction to be made around whether scrutiny is focused on LAA themes, or whether it focused on more detailed KCC business. There were no mature co-option models available apart from the education co-optees, but it seemed to work well where there were clear roles for each individual. In relation to the rapporteur model, the London Assembly had a significant resource attached to it, and that would have to be taken into account when considering that option, but it was open for discussion.

Mr Kite explained that he hoped that with such a strong majority the Council didn't miss out on the opportunities in front of it, it was necessary to look in a creative way at how we run our big communities. Scrutiny could become the Council looking inwards or outwards, but actually it should be the County and its organisations and representatives looking inwards at what the Council was doing for the County, it would be valuable to bring people with experience into scrutiny. Mr Kite suggested that the Council looked at its main sectors of customers and clients and brought in truly authoritative expertise and voices from those communities into scrutiny. Mr Kite also saw a role for those who communicated with the public, such as the media involved in Scrutiny on a non-voting basis. Mr Kite didn't see a need for a ballot to get an item onto the Scrutiny agenda, but what might be useful was a ballot to get items onto the Cabinet agenda.

Mrs Dean endorsed the involvement of partners in scrutiny and Mr Kite stated that there were two sets of partners, there were those which the Council worked with on a close basis, and also those who were recipients of services and who did not currently have close contact with the local authority.

Mr Christie stated that the concept of the media being involved in scrutiny was intriguing and an interesting concept worth further consideration. Mr Christie was

disappointed that there had been no discussion about pre-decision scrutiny and looking at strategic plans that were yet to be implemented. He hoped that pre-decision scrutiny would be high in the priorities of the County Council, without losing the ability to hold Cabinet Members to account. Mr Christie reminded Members that Kent had separated the scrutiny function from the policy overview function and he asked the witnesses whether there were authorities that had combined the two functions. Mr Wickenden explained that Essex was the other authority that separated the two functions; the other authorities had combined scrutiny of the Executive and the co-ordination role. In response to a question from Mr Christie about pre-decision scrutiny at the other authorities Mr Whittle explained that it hadn't been obvious but the research had not focussed on pre-decision scrutiny so Officers would have to go back and look at the authorities to determine whether they managed pre-decision scrutiny in an effective way. Mrs Dean explained that her understanding was that the Leader was happy that pre-cabinet decision scrutiny should take place, but it hadn't happened. The forward plans listed out those items which were open for the Cabinet Scrutiny Committee to scrutinise, but it needed to be improved.

Mr King explained that it was a process of raising the level of engagement, the key was the opportunity for Members to engage with the Cabinet, to understand the decision making process and the thinking of the administration. The Council was going through some tough economic times, and it would be important to be proactive, engagement was vital, all Members needed to engage with their constituents to ensure that the people of Kent had the opportunity to understand what the Council was doing and why. Meetings such as Cabinet Scrutiny Committee and the Policy Overview Committees were more important than they ever were.

Mr Hotson stated that he believed that the Council had not yet got local forums right, they were a key factor in demonstrating why the Council had made decisions, and for the forums to feed back to the Council on what it should be doing.

Mr R. King explained that he was keen on the idea of outside involvement in the scrutiny process, experts giving advice to Members would be of great benefit to the Committee. Positive back bench involvement was key along with engagement in policy evolution. Informal Member Groups and the rapporteur idea could be linked and report back to the Committee that commissioned the work. Mr King had concerns that coming to a conclusion by October might not give Members enough time to make an informed decision.

In response to a question from Mr Manning about measuring the success of the options for Overview and Scrutiny Mr Whittle explained that some of the options had not been in operation for long enough to make a meaningful analysis of how successful the models were. There were many questions about how it was possible to objectively measure how successful a scrutiny model was. Mrs Dean explained that her view of whether a scrutiny function was successful was whether it made a difference.

Mr Christie stated that Kent wasn't unique in running a Scrutiny Committee and separate Policy Overview Committees, he asked whether Officers took account of Members' experience of scrutiny in Borough Councils and how the local community were involved in borough and district level scrutiny. Councillors often spent too much time explaining why things couldn't be done, rather than how the Council

could move forward. Mr Christie asked whether the authorities looked at within the report had changed their structure following the elections in June 2009.

Mr Wickenden explained that regarding the success of Overview and Scrutiny tangible outcomes could be seen through the Select Committee process, for example the Home to School Transport review started at a local board in Dover featured as a piece of work by a Task and Finish Group and influenced the Cabinet and Council policy. Mr Wickenden explained that most authorities across the country were probably having a similar discussion following the election, whether the structures in place were still the most effective models. In response to a question from Mrs Dean Mr Wickenden explained that to his knowledge there were no borough or district councils that formally involved the County Council in their Overview and Scrutiny process.

Mr Hotson stated that October was perhaps too early for a decision over KCC's Overview and Scrutiny structure. In terms of measuring the success of Overview and Scrutiny the Comprehensive Area Assessment would be based on results and public perception and this should be taken into account when planning Committee agendas. Some authorities based their scrutiny programme on CAA targets, although KCC did not do this it would give an opportunity to include specific LAA items on Committee agendas, although it should not exclude Council business. Regarding rapporteurs, their work was vital and could be fed into the Informal Member Group process. Improving the forward plan was important in pre-decision scrutiny. Mrs Dean asked, within the authorities previously looked at, what support was available for a Member taking on the role of a rapporteur. Mr Whittle explained that he had experience of the London Assembly, each of the Assembly Members had a research officer and Members could also call on the Assembly's corporate research function – further examination would be necessary to determine what resource would be necessary. Mr Hotson explained that Maidstone Borough Council undertook a rapporteur scheme in which Members volunteered to undertake work and report back, it was a Member led process and did not take up a great deal of Officer time. Mr A. King explained that resource was limited and it would be difficult to increase that resource, the process of engagement meant that Members needed to do more for themselves.

Mr Kite explained that he was nervous of pre-decision scrutiny, he considered that the Cabinet needed to be free to make decisions and then have them scrutinised if necessary. Regarding the role of scrutiny, it should be the place where impact statements were produced and the effects of policy should be investigated. Email and website communications could be used to a much greater extent for example they could be used to inform elected Members of responses from members of the public to particular issues. Mr Kite stated that all Members of the Council were consumers of Kent's services and it was important, particularly in the difficult economic times ahead, to explain why the Council was making the decisions that it was and there should be a greater blurring of the boundaries between the borough and districts and the county council. Mrs Dean referred to e-petitioning and the website and it was important to make the website more user friendly for members of the public.

Mrs Dean reported that she had received a letter from the Federation of Small Businesses asking whether they could play a part in the scrutiny process at the Council, this was something that should be considered in making decisions about the Council's structure. Mr Jarvis commented on involving the public and made the

point that the public's perception of local government was low at present, the Council may get a low response to communications and it was important to ensure that the interest was there. Mrs Dean referred to 'Question Time' and the ways in which panel members get put forward to be on the panel. Mr Brookbank stated that it was important to fit in with the localism agenda and that service users would get involved if the issue was of importance to the community.

The views of the Committee would inform the Leader's debate and report to the County Council in October. Mr Christie asked whether the report could come back to the Cabinet Scrutiny Committee before it went to Cabinet in October. Mr A King explained that an appropriate structure would be produced for the October County Council meeting, and input from both the CSC and the POCs would be beneficial before the County Council meeting.

The Cabinet Scrutiny Committee:

- Thanked Mr A King, Mr Whittle and Mr Wickenden for attending the meeting and answering Members' questions.
- Thanked Mr A King for the opportunity in September to input further into the proposal for Overview and Scrutiny

**9. Annual Unit Business Plans 2009/10**  
*(Item. D1)*

The Chairman explained that every year the Cabinet Scrutiny Committee looked in detail at three or four of the Directorate Unit Business Plans. A shortlist had been prepared by the Committee before the elections but it was for the current Committee to decide whether they wanted to add, delete or amend any of the suggestions.

Mr Parry stated that he thought Kent Highways Service would be a good Business Plan to look at in detail, particularly with the arrival of a new Cabinet Member. Each spokesperson was asked to provide Mr Sass with nominations for Informal Member Groups on four or five of the business plans.

The Cabinet Scrutiny Committee noted the report on the Annual Unit Business Plans and each group's spokesperson would provide Mr Sass with a list of priorities and nominations for the Business Plan Informal Member Groups.

**10. KCC Membership of the Kent and Medway Fire and Rescue Authority**  
*(Item. F1)*

Mr Cope declared a personal interest as Chairman of Kent and Medway Fire and Rescue Authority.

Mr Christie had originally requested that this item be called for scrutiny by the Committee.

Mr Sass explained that places were allocated on the Kent and Medway Fire Authority in accordance with the proportionality principles in the Local Government and Housing Act 1989. The places should be allocated to each political group in



proportion to the size of each political group on the Council. A political group is defined in the regulations as two or more Members. Proportionality was largely mathematical but it was impossible to give a part of a seat to a Member so inevitably there would be an element of rounding up or rounding down in order to allocate places. KCC appointed 21 Members to the Fire Authority and the simple method explained that 21 Members was exactly one quarter of 84, one quarter of 74 was 18.5 and a quarter of 2 was a half. At the Selection and Member Services Committee in July there was no agreement about whether the Conservative or Labour group should be given the final seat on the Fire Authority so Mr Sass was asked to take the decision in consultation with the Chairman of the Selection and Member Services Committee. Mr Sass explained that he applied the same proportionality calculations to the Fire Authority appointments as those agreed at the Selection and Member Services Committee and reported to the County Council. Those calculations demonstrated the Conservative group were entitled to that seat by two thousandths of one percent.

Mrs Dean asked whether Mr Sass was aware of any further negotiations at a political level regarding this issue. Mr Sass stated that he was not involved with any such discussions. Mrs Stockell explained that she had asked Mr Sass to check that the proportionality figures were correct, the same proportionality rules had always applied on all Council Committees and Mr Wild also checked that the calculations were accurate. Mr A King explained that his recollection of the meeting was that there had been no opportunity for Members to see the Fire Authority calculations in advance of the meeting and it was therefore suggested that it be delegated to the Head of Democratic Services and Local Leadership in consultation with the Chairman of the Selection and Member Services Committee. Mr A King stated that it was entirely right that the same rules be applied in this instance as were applied for all other Committees.

Members asked Mr Sass for clarification on the figures contained within the report. Mrs Dean confirmed to Members that the same figure was applied in the first tranche of Committee allocations as in the second tranche, which included the allocations to the Fire Authority. Mr Christie asked what other considerations were taken into account when deciding whether the remaining seat should be allocated to the Conservative group or the Labour group. He pointed out that the Liberal Democrat Group had been given a seat on the Kent/Medway Joint Police Authority Appointments Committee when mathematically they were not entitled to a seat. Mrs Stockell stated that the allocations were based on the proportionality calculations agreed at the last County Council meeting.

Mr Kite expressed his concern about the line of questioning that was being put to Mr Sass, Mr Kite asked whether at any point Mr Sass had reached another conclusion about the Membership of the Fire Authority and was then told to overturn it. Mr Sass explained that he was not given any instructions by any Member of the Conservative group to come to a specific conclusion. Mr Parry asked Mr A King whether he was confident that the right decision had been made on this occasion. Mr A. King responded that yes, it was a difficult situation, but that Mr Sass had taken the justifiable solution.

Mr R. King asked whether the appointment to the Fire Authority was paid, Mrs Dean confirmed that there was a basic allowance of £1,300.

In response to a point from Mr Christie, Mr Sass stated that the Committee was perfectly entitled to ask the questions that it had done and hoped that the Committee had received a full explanation of the issue.

At the conclusion of this item the Chairman asked that the witnesses were not present during the Committee's discussions over its recommendations.

Mr Christie stated that at no time had he advocated that he would be the Labour Member, but that the Labour Group was entitled to a seat. Mr Christie proposed that the issue should be referred back to the Cabinet, or the relevant Committee, Mrs Dean seconded.

Mr Parry commented on the amount of time spent on discussing this issue, in his opinion far too much time had been spent on it.

Mr Kite stated that the Council's Committees were still dealing with the fall out from the election. He stated that the maths were right and that had led to Mr Sass making his decision.

Mr Lees stated that the report was clear but there had to be a cut off point and the Committee should move forward with the recommendation made by Mr Sass.

Mr Poole, the Parent Governor Representative, expressed his view as a resident of Kent. It had been acknowledged that the maths were not always the final deciding factor, that there were some political agreements over and above the maths. Mr Poole understood why the Labour group didn't have a seat on the Committee but as an independent person he could see no reason why a Member of the Labour group could not be on the Fire Authority. Mr Poole stated that the Council had come across as not being flexible, and did not come across well.

Mrs Dean agreed that in terms of maths it proved that the Labour group was not entitled to a seat, however it was clear that all the groups had a degree of negotiation to reflect Members expertise. Mr Christie had huge experience of the Fire Service and had connections with the government so in the opinion of the Chairman the decision to exclude him would be to the detriment of the Kent and Medway Fire and Rescue Authority.

Members voted on Mr Christie's proposal but the proposal was not carried.

The Cabinet Scrutiny Committee:

- Thanked Mr A King, Mrs Stockell and Mr Sass for attending the meeting and answering Members' questions.

## **11. Extension to the Kent TV contract** *(Item. F2)*

Concerns were expressed about the decision taken by the Chief Executive to negotiate a new contract for Kent TV with Ten Alps plc for a period of 7 months to a value of £350,000. (This is referred to as a "contract extension" because the new contract has the effect of extending the existing contract with Ten Alps plc). Before it was decided to exercise a formal call-in procedure the Chairman and the Conservative spokesperson met with the Chief Executive, the Director of Strategic

Development and Public Access and the Barrister (Contracts and Procurement) on 15 July. The Barrister subsequently sent an email to the Chief Executive in which he set out the reasons given for his view that the Chief Executive did not have a conflict of interest. Two issues were of concern to the Chairman and the Conservative Spokesperson; the first was whether the decision had been taken properly by an Officer of the County Council (as opposed to it being a Member-level decision) and the second matter was whether Mr Gilroy was the most appropriate person to take that decision.

#### Discussion regarding special circumstances

Because the original contract did not contain an explicit provision for an extension, it was necessary to enter into a new contract on the same terms and conditions as the existing contract, for a period of seven months. Due to the value of the contract, special circumstances had to be deemed to apply to avoid the need to seek competitive tenders for the new contract. Questions were asked about the existence of special circumstances and the issue of perception and sensitivity.

Reference was made to the special circumstances that were deemed by the Chief Executive to exist in relation to the contract extension as set out in the notes of the informal meeting held on 15 July.

#### Discussion in relation to the signing of the contract by the Chief Executive

A large proportion of the discussion on 21 July related to the issue of whether it was proper and appropriate for the Chief Executive to personally sign the new contract, in view of the fact that he was also the Chairman of the Board of Governors of Kent TV.

The Chairman stated that at the informal briefing, Members had come to the conclusion that in terms of the process followed, the Chief Executive was perfectly entitled to exercise an authority that the guidelines of the County Council gave him. This was supplemented in the written advice from the Barrister (Contracts and Procurement), in which it was made clear that the Chief Executive did not have any conflict of interest in this matter. The role of the Board of Governors was clearly set out at points (a) to (e) of the Barrister's note circulated to Committee Members.

Members discussed the public perception of the Chief Executive both authorising the special circumstance and signing the contract extension. In particular, the following views were expressed:

- Mr Manning raised concerns about the sensitivity of the issue and the public perception of Mr Gilroy being both the Chief Executive and the Chairman of the Board of Governors of Kent TV.
- Mr Christie raised concerns whether, perception wise, it was a reasonable decision for the Chief Executive to take, his views were that public perception might be that somehow there was a conflicting interest.
- Mr Hotson suggested that for the future, the Chief Executive should not be in a position to take such decisions and it should be another officer or a Member level decision because there could be the perception of a conflict of interest.

- Mr Hotson stated that it was unforgiveable that there was a period of four of five months when there was no Member involvement or knowledge, and that should not happen in the future.
- Mr Kite stated that this situation failed the public perception test
- Mr Christie remarked that the decision to extend the contract was taken during April, but the contract was only signed on 15 July, the same day as the informal meeting.
- The Chairman explained that neither she nor the spokespersons had exercised an official call in of this issue firstly because they were satisfied that the Chief Executive had the authority to exercise this decision. The issue was whether it was an appropriate decision for him to take and that was a matter of judgement.
- Mr Parry raised concerns about the period of time in which there was no Member involvement. In future Members should be notified at the earliest opportunity of what was going on.
- Mr R King explained that it was a matter of Member involvement and which decisions should be made by the Cabinet.
- Mr Scholes stated that it was inconceivable that the public wouldn't think that there would be a conflict of interest. He also asked whether the matter should not have been brought to the attention of the Cabinet
- In response to a question, the Chairman stated that she had had a discussion with the Leader on this subject and he explained that he did have a discussion with the Chief Executive prior to this decision being taken so it was assumed that the Cabinet were aware

The Cabinet Scrutiny Committee agreed that:

- the minute of the meeting be shared with Mr Carter, Mr Gilroy, Ms Oliver and any other relevant Members and Officers;
- the agenda for the September meeting of the Cabinet Scrutiny Committee contain two items. One on the viability and success of Kent TV and the other to discuss the process behind decisions such as the extension to the Kent TV contract.

## KENT COUNTY COUNCIL

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### CABINET SCRUTINY COMMITTEE

MINUTES of a meeting of the Cabinet Scrutiny Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 5 August 2009.

PRESENT: Mr D L Brazier (Substitute for Mr A R Chell), Mr R Brookbank, Mr I S Chittenden (Substitute for Mrs T Dean), Mr B R Cope, Mr M C Dance (Substitute for Mr J E Scholes), Mr M J Harrison (Substitute for Mrs J Law), Mr R F Manning, Mr M J Jarvis, Mr J A Kite, Mrs E M Tweed (Substitute for Mr R E King) and Mr C T Wells (Substitute for Mr E E C Hotson).

IN ATTENDANCE: Mrs A Taylor (Research Officer to Cabinet Scrutiny Committee) and Mr P D Wickenden (Overview, Scrutiny and Localism Manager).

#### UNRESTRICTED ITEMS

##### **12. Extension to the Kent TV Contract** (Item E1)

*Mr P B Carter, Leader of the Council, Mr A J King MBE, Deputy Leader of the Council, Mr P Gilroy, Chief Executive, Mrs T Oliver, Director of Strategic Development and Public Access and Mr M Banks, Barrister were in attendance for this item to answer questions from Members of the Committee)*

*(Mr R F Manning Vice Chairman of the Committee presiding.)*

(1) Mr Chittenden declared a personal interest as he was a Member of the Board of Kent TV.

(2) The Chairman expressed his embarrassment following the previous Cabinet Scrutiny meeting on 21 July. He explained that as one of the joint Vice Chairmen of the Committee he should have warned the Chairman that the discussions developing around Kent TV were not appropriate particularly as Kent TV was not on the agenda.

(3) The Chairman explained that in early July Mrs Dean had expressed to him concern about the extension to the Kent TV contract and she had discussed her concerns with the Leader. An informal briefing with the Chief Executive, the Director of Strategic Development and Public Access and the Barrister and the Members came to a conclusion that the Chief Executive acted within his delegated powers. Mr Manning and Mrs Dean agreed that the notes of the informal briefing should be issued to the Cabinet Scrutiny Committee for information. However, Mr Manning explained that he did not expect those notes to be debated, as they were an informal note although he raised no objection at the meeting.

(4) Mr Chittenden reminded Members that Mrs Dean was not present at the meeting and so there should be very limited discussion on her actions as she was not able to respond. Mr Chittenden expressed his differing views to much of the correspondence over Kent TV but his understanding was that the 5 August meeting

had been called to discuss the issues that were raised and debated at the last meeting.

(5) In response Mr Manning stated there was one fundamental difference that today it was an agenda item to consider the process behind the extension to Kent TV – at the last meeting it was not.

(6) In response to a question about protocol from the Chairman Mr Wickenden confirmed that, Kent TV had not appeared on the agenda for the meeting on 21 July and the agenda for Cabinet Scrutiny Committee (CSC) meetings are agreed by the Chairman and Vice-Chairmen. With hindsight advice should have been offered to Mrs Dean not to continue with the debate on 21 July because the item was not on the agenda and to deal with it at the meeting would require the item to be urgent business and a reason given for the urgency. The other alternative would have been to have discussed with Members of the Committee, but not as part of the formal meeting, to discuss how the Committee would wish to proceed at a future meeting at which those Member and Officers before the Committee on 5 August would be present. Mr Wickenden quoted Appendix 4 Part 4 rule 4.11 which stated that: “the Committee may not criticise or adversely comment on any individual officer by name”. Mr Manning stated that he wanted to chair a fully informed and open debate recorded by accurate minutes which would then be presented to the next Cabinet Scrutiny Committee meeting.

(7) The Leader stated that he had had two meetings with Mrs Dean in the fortnight leading up to the CSC meeting; they had discussed the change of date, which was agreed on the basis that Members who wanted to attend the start of the Children’s Champions Board at 10am would have the opportunity because CSC would have finished by 10am. Mr Carter stated that Mrs Dean had confirmed to him that the Kent TV decision would not be called in by the Committee and that the notes of the informal briefing would be circulated for noting by the CSC. The Leader had explained to Mrs Dean that the decision to extend the contract had been part of a discussion with Mr Gilroy leading up to a decision being taken. It had been made clear that both the Leader and Cabinet Member, Mr King were fully apprised of the decision which was to be taken.

(8) The Kent TV contract was due to expire after the election, the proposed extension was debated when the budget was agreed in February, there was a three month staff notice period in the contract and had the contract not been extended ‘at risk’ notices would have gone out to all Kent TV staff during the period of purdah. Those issues meant that the Chief Executive had to make a decision either to distribute ‘at risk’ notices to Kent TV staff or to take the decision during purdah. The Leader explained that he was not able to make such decisions in the period of purdah. The Leader stressed that Mr Gilroy, the Cabinet Member and he had had detailed discussions on the extension of the contract, all the protocols had been followed correctly, the Barrister had confirmed that Mr Gilroy had no conflict of interest and a line should now be drawn under the Kent TV process whilst ensuring that the actions at the 21 July CSC did not happen again. There would be a full debate about the possible extension to the contract beyond March 2010 following a proper evaluation of Kent TV in the early autumn.

(9) Mr Chittenden reiterated that statements should not be made about Members who were not present at the meeting.

(10) Mrs Tweed stated that the cost of extending the contract (£350k) was within the 2009/10 approved budget, the decision taken was not a key decision so she did not see the purpose of the meeting, Mr Manning explained that the Committee had met because the process of the previous meeting had been challenged.

(11) Mr Wells asked the Leader why the factual information he had given the Committee in his previous statements had not been made available to Members previously. Mr Carter explained that he had emphasised to Mrs Dean that the Leader and Cabinet Member had been consulted on the decision taken by the Chief Executive, he had been assured that the issue wouldn't be called in and there would not be any debate. The Leader stated that had he been called to give evidence at the previous meeting that information would have been drawn to Members' attention. Mr Carter stated that it was appropriate that the facts were put forward to the CSC with the witnesses present. If Members wished to further debate the issue with Mrs Dean present the Leader would be pleased to attend.

(12) In response to a comment from the Chairman Mr Chittenden stated that Mr Manning should not feel solely responsible for the events on 21 July, there were officers present in the room at the time and no objections were raised.

(13) Mr Kite expressed his view that the issue of public perception had been key. Mr Kite felt that the comments made on 21 July were not a criticism of the political process or the individuals involved, the comments related to public perception. Mr Kite asked the witnesses to explain how the movement of the election from May to June affected the process leading up to the signing of the contract and that there was advice sought about the issue of public perception. The Leader stated that public perception would have been different if Members had been made fully aware that the Chief Executive in consultation with the Leader and Cabinet Member had made that decision through the proper process.

(14) Mr Gilroy explained that consultation had been substantial and started in September 2008 when Cabinet and the County Council had started preparation on the County Council's budget for 2009/10 and there were some contingent discussions which took place. Mr Gilroy informed the Committee of the dates when a range of discussions had taken place on the Kent TV contract. Mr Gilroy stated that the matter was raised at the February County Council meeting when it could be seen that there was provision in the proposed County Council budget to extend the contract. At the end of the ongoing dialogue/discussion it was agreed that a more measured reflective decision needed to be made about Kent TV.

(15) Mr Gilroy explained that he had delegated authority to take decisions up to the value of £1million without referring back to Members which is not unusual. He added that as Chief Executive he sat on at least 5 major executive boards where decisions were being made about county council expenditure. In terms of public perception a judgement with the Leader had to be made about what the right decision was. Members had been caught in the thrust of the discussion on 21 July and had made assumptions that there had been no consultation or discussion with the administration at all – which clearly there had been. Mr Gilroy was concerned that the Committee had not at its meeting on 21 July had the full information.

(16) The Leader explained that the costs were in the public budget and processes were followed in a correct and proper way in extending the contract. This was totally open and transparent.

(17) Mr Gilroy clarified that the Kent TV Board was not a company, it was an association of interests of people who had been brought together to monitor and evaluate the content of Kent TV and the way the service should be run. The decision was made not to compete with local media for income during its first two years.

(18) Mr Brazier explained that he had not been in possession of all the facts, he understood that there had been a failure to realise that there would not be sufficient time to retender the contract, and that negotiation would then cross the purdah period. The note of the informal briefing suggested that Mr Gilroy had not sought advice on the issue of potential conflict of interest. There was a question of public perception and it would have been advisable for Mr Gilroy to have taken advice on that matter. In response Mr Gilroy stated that officers had to declare interests in the same way as Members, he had no pecuniary interests or other interests in Kent TV. The cost of the extension was in the budget, Kent TV was in the Business Plan. Once Members had decided on the Business Plans and the policy it was the job of officers to undertake the work. Mr Gilroy informed the Committee that reference to Kent TV in the Business Plans had not been called in for scrutiny.

(19) Mr Chittenden stated that there had been a failure to communicate; he would have expected a briefing note which may have negated the need for the meetings. He asked why there had been no briefing note. Mr Gilroy explained that he had a chronology of dates on which he had had detailed discussions with the Leader and other Members and in addition the County Council had had the opportunity to comment when the business plans and the budget were approved.

(20) In response to a question from the Chairman the Barrister confirmed that the contract was 'new' rather than an extension, this was for technical reasons relating to the 'spending the Council's money' document.

(21) Mr Dance explained that as a Cabinet Member at the time he had been fully informed about the issues.

(22) Mr Wells referred to the public perception test and the difference in the Member and Officer code regarding determination of what public perception might be. In response to the point about Business Plans Mr Harrison explained that they were often hundreds of pages long and it was probable that not all Members read all of the Business Plans.

(23) Mr Kite stated that he had concerns about the timing of the contract, and the decision being required during purdah. Undoubtedly there was a public perception issue, his view was that Mr Gilroy and the Leader had behaved entirely properly throughout, but in future it was vital that the Council concentrated on the timing of contracts. Mr Carter had a view that the decision would be taken in two stages, one would be a six month extension and following a review and evaluation a decision would have to be taken on the future of the Kent TV contract. Mr Cope stated that public perception depended on which way the issue was addressed.



(24) Mr Jarvis raised his concern about public confusion over 'new' contracts and contract extensions and the Council needed to ensure that it was clear to the public in future. In response Mr Gilroy explained that procurement processes were very clear but it was important that in the public domain a full explanation was given and this would be discussed further.

(25) Mr Brookbank explained that at the previous meeting he had formed a view about public perception; following the facts presented he had come to a different view. He felt that the previous meeting had not been handled well.

(26) Mr Chittenden expressed his view that the extraordinary meeting had not served any purpose; there was an agreement for further discussion in September.

(27) Mr Manning wanted to record that, in his capacity as Joint Vice Chairman, he offered his apologies for not adhering to the protocols and naming officers in the way he had.

(28) Mr Wickenden quoted from an email sent by Mrs Dean to Mr Sass, Mr Manning, Mr Christie and Mr Lee in which she reiterated the conclusions of the previous CSC meeting.

*"The Cabinet Scrutiny Committee agreed that:*

- *the minute of the meeting be shared with Mr Carter, Mr Gilroy, Ms Oliver and any other relevant Members and Officers;*
- *the agenda for the September meeting of the Cabinet Scrutiny Committee contain two items. One on the viability and success of Kent TV and the other to discuss the process behind decisions such as the extension to the Kent TV contract."*

(29) The Leader explained that there would be a proper review of the successes and the weaknesses of Kent TV and at an appropriate time he would discuss the issue with the CSC but September might be too early.

(30) Mr Gilroy explained that the process had been discussed but that perhaps the next stage should relate to the viability and success of Kent TV. Mr Wickenden explained that those decisions were from the record of 21 July meeting. Before the next meeting there would be a discussion between the Chairman and Vice Chairmen of the CSC about the way the issue should be handled, if at all, at the September meeting.

(31) Mr Harrison suggested that an IMG be set up to look at Kent TV to report back to the Committee.

(32) It was agreed that:-

(33) The Committee, having examined the process in extending the Kent TV contract for the seven month period have resolved to take no further action

(34) Mr Chittenden asked that his abstention be recorded.

Post meeting note from the Chairman:

Following the meeting I have sought clarification on the Leader's remarks concerning decisions that may or may not be made during the Purdah period. I have established that whilst the Leader could have taken the decision to extend the contract during this period, the Code of Recommended Practice on Local Authority Publicity issued under the Local Government Act 1986 states that:

*"Particular care should be taken when publicity is issued immediately prior to an election or by-election affecting the authority's area to ensure that this could not be perceived as seeking to influence public opinion, or to promote the public image of a particular candidate, or group of candidates. Between the time of publication of a notice of an election and polling day, publicity should not be issued which deals with controversial issues, or which reports views or policies in a way that identifies them with individual members or groups of members."*

It follows therefore that giving cognisance to all circumstances the Leader acted appropriately.

By: Peter Sass - Head of Democratic Services and Local Leadership

To: Cabinet Scrutiny Committee – 23 September 2009

Subject: Follow up items from Cabinet Scrutiny Committee

Classification: Unrestricted

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Summary: This report sets out the items which the Cabinet Scrutiny Committee has raised previously for follow up

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### **Introduction**

1. This is a rolling schedule of information requested previously by the Cabinet Scrutiny Committee.
2. If the information supplied is satisfactory it will be removed following the meeting, but if the Committee should find the information to be unsatisfactory it will remain on the schedule with a request for further information.

### **Recommendation**

3. That the Cabinet Scrutiny Committee notes the responses to the issues raised previously.

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Background Information: *Nil*

	<b>Issue</b>	<b>Response</b>
<b>10.12.08</b>	<p>Highways Business Plan IMG 02.12.08</p> <ul style="list-style-type: none"> <li>- A list of gully schedules be supplied to all Members after the elections</li> <li>- The informal briefing on EDF given to Members by KHS Technical Services be repeated in the spring.</li> </ul>	Following the elections in June – information has been requested
<b>22.10.08</b>	<p>IMG on Managing Motorways and Trunk Roads in Kent:</p> <ul style="list-style-type: none"> <li>- Further advice be requested from Officers and the Cabinet Member when the results of the bidding process were known</li> <li>- Officers and the Cabinet Member report back to the Cabinet Scrutiny Committee, including information on possible BVPIs, a year after the contract has commenced.</li> </ul>	Document detailing changes to original contract circulated to Members of CSC 13.11.08.
<b>21.01.09</b>	<p>Comms &amp; Media Business Plan</p> <ul style="list-style-type: none"> <li>- Chief Executive's offer to give Members the opportunity to visit the IBM research facility in Hampshire</li> <li>- Chief Executive's offer to hold a seminar for Members on the 'Future of Communication'</li> <li>- Chief Executive's offer that the two pilot schemes in Swale &amp; West Malling should be presented to Members</li> <li>- Further details of translation services and their cost be provided to all Members of the Cabinet Scrutiny Committee</li> <li>- Briefing note on the report on the ways in which we consult with the public being prepared by Robert Hardy</li> <li>- Communications protocol in relation to the promotion of Council Services be circulated to all Members</li> </ul>	<ul style="list-style-type: none"> <li>- Work has begun on organising a visit to IBM, an initial date was arranged but due to a difficulty at IMB it was withdrawn before Members were informed. Another date will be sought after the elections.</li> <li>- A seminar on the 'Future of Communication' will be organised following the elections</li> </ul>

<b>08.04.09</b>	An IMG be set up to feed into the review of the Freedom Pass in September.	Following the elections in June
<b>29.04.09</b>	The figure for the total performance reward paid to the Chief Officer Group be provided to Committee Members.	Information requested
<b>29.04.09</b>	Information on the number of employees who were recommended as 'excellent'. Ms Beer agreed to circulate available information to Committee Members.	Information requested
<b>29.04.09</b>	The form used by the opposition Leaders to evaluate the performance of the Chief Officer Group be reviewed to include the opportunity to provide quantitative feedback on the level of any performance reward grant and the detail of the performance criteria and targets that the Officers were being evaluated on.	Information requested

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Notes of a meeting of the Cabinet Scrutiny Committee Informal Member Group on Budgetary Issues held on Friday, 11 September 2009.

**Present:** Mr R F Manning (Chairman), Mr M Vye (substitute for Mrs Dean)

**Officers:** Mr A Wood, Head of Financial Management, Mr P Sass, Head of Democratic Services and Local Leadership and Mrs A Taylor, Research Officer to the Cabinet Scrutiny Committee.

**Also Present:** Mr J D Simmonds, Cabinet Member for Finance, Ms S J Carey, Deputy Cabinet Member for Finance.

**Apologies:** Mrs T Dean and Mr L Christie

**1. Notes of Previous Meeting held on 9 July 2009.**

*(Item 1)*

- (1) The notes of the meeting held on 9 July 2009 were approved.

**2. Revenue & Capital Budgets, Key Activity and Risk Monitoring Report**

*(Item 2)*

- (1) The forecast revenue position (excluding schools and asylum) was a pressure of £2.564million. Management action was expected to reduce this to a small underspend of £0.097million.
- (2) Asylum costs are resulting in a pressure of £3.6million. Members of the Budget IMG were referred to paragraph 3.4.1.2 of the report which explained that the Home Office grant did not fund 18+ clients once they had exhausted all rights of appeal for residency but the Council had a duty of care under the Leaving Care Act to support those clients until they were deported or reached age 21. It is still assumed that the Council will recover all asylum costs from the Government.
- (3) There was a significant overspend within the fostering service and the Leaving Care/16+ Service in the Children's Families and Education Directorate. This was due to the increased demand for fostering including the service to over 16 year olds.
- (4) Table 2 in paragraph 3.3 highlighted the proposed overspend of £2.1million within Kent Highway Services, which is possible due to the underspend of £2.170million resulting from reduced waste tonnage.

- (5) Kent Adult Social Services (KASS) had a number of significant variances, this was mainly due to the difficulties in predicting the take up of care services and fluctuating demands. The Budget IMG praised KASS for their budget management in dealing with the demands placed on the service.
- (6) There was a pressure of £470k on Special Educational Needs (SEN) transport, work was being undertaken on more effective transport arrangements but it is an ongoing process.
- (7) Mr Manning queried the use of the word 'underspend' in the summary variances table; it was considered that if the underspend resulted from increased efficiency this should be made clear. In response Mr Wood confirmed that the variances were explained in more detail later on in the report and that the annexes of the report were also sent to the relevant POCs for further scrutiny.
- (8) Mr Vye asked where the effect of the underspends, particularly in relation to vacancy savings was examined, i.e. whether they were adversely affecting the service. Mr Simmonds explained that great care was taken not to economise on front line services to make savings. Mr Wood commented that if the vacancies were not adversely affecting the services thought would naturally be given to future resourcing requirements.
- (9) In response to a question from Mr Vye, Mr Wood confirmed that the Governance and Audit Committee were presented with a risk register containing budgetary, operational and reputational risks, which also appeared on the Cabinet agenda.
- (10) Within the capital programme the East Kent Access road project was behind schedule resulting in a re-phasing of £10million. Work was in hand to identify other capital schemes that could be undertaken during the current financial year in order to utilise this projected re-phasing.
- (11) In response to a question from Mr Manning about the money deposited in Icelandic banks Mr Wood confirmed that the Council have not budgeted for any loss, the Council hope to recover the full amount of money deposited and there has been no effect on the provision of front line services.
- (12) In response to a question about Kent History Centre and how the funding gap was to be resolved Mr Wood confirmed that there was an identified gap of £2.6m and over the coming weeks options would be considered for resolving the gap. Any proposal would be detailed in the monitoring reports and the budget process.



- (13) The Budget IMG endorsed the recommendations contained within the report to Cabinet.

**3. Policy Overview Committee's Involvement in the Budget Setting Process**

*(Item 3)*

- (1) The Budget IMG discussed the previous involvement of the POCs in the budget process and it was agreed that the quality of the involvement varied across the POCs.
- (2) Mr Wood explained the SIMALTO methodology which was an online consultation tool that allowed users to consider and prioritise the options available to them. It was suggested that the SIMALTO model be used by the POCs prior to the November POC budget meetings.
- (3) Mr Vye welcomed the idea of the SIMALTO model to increase involvement in the budget setting process.
- (4) Ms Carey raised concerns about the SIMALTO model forcing users to 'choose' between services, however the results would be discussed by each POC in November so any anomalies should be drawn out through that discussion.
- (5) The Budget IMG supported the use of the SIMALTO model but had concerns about the timeframe available before the November POC cycle.

Recommendation:

- (6) The Cabinet Scrutiny Committee recommends that the POCC adopt the SIMALTO methodology for each of the POCs to enhance Member involvement in the budget setting process and also encourages the POCC to ask each POC to set up an IMG to consider the budget proposals in greater detail.

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By: Alex King, Deputy Leader

To: Cabinet Scrutiny Committee – 23 September 2009

Subject: Potential to Refocus and Restructure the Overview and Scrutiny Function

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## **1. Context**

This paper represents current thinking from a variety of sources to develop a recommendation to full Council in October. The paper needs to be seen in the context of:

- a) the emerging Strategy for Localism for the County Council and the various models and Frameworks for Localism being established across the County in conjunction with our Partners;
- b) the development of the Member role(s) and County Council's application for the South East Employers Organisation Member Development Charter;
- (c) implementation of the recommendations arising from the Informal Member Group: Member Information;
- (d) the opportunities, working in partnership with Borough/District colleagues that may exist to pool the resources supporting Overview and Scrutiny across the County and to agree shared work programmes on issues which will add value without duplication to the communities which we all serve;
- (e) the emerging scrutiny roles for which legislation/regulations have been published including Scrutiny of the Crime and Disorder Reduction Partnerships; and
- (f) the scrutiny of the public sector bodies advocated in the consultation document "Strengthening Local Democracy".

## **2. Overview and Scrutiny – the Key Challenges**

(1) As the Strategic Authority for Kent the County Council has a unique community leadership role. The challenge to Members is to:-

- Lead the provision of public services in the area;
- Engage with local communities, tiers of local government and stakeholders;
- Define with them the future of the locality; and
- Achieve the strategies and visions which people agree.

(2) That is what the best Councils are doing and their legitimacy for the future will derive from their role as democratic bodies.

(3) All Members of all parties, not just the Executive, have a role in community leadership.

(4) Scrutiny was initially seen to provide 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 across all public service issues. It is now incumbent upon the County Council to develop imaginative forms of engagement, to involve local people, service users and others in scrutiny. This is a wider conversation that scrutiny can lead across the county.

### **3. Challenges**

(1) The challenges are as follows:-

- Widening the engagement and understanding of elected Members in effective Partnership working;
- Bringing the knowledge of local issues and communities which elected Members have to service providers involved in Partnerships;
- Holding the leadership of Strategic Partnerships across the public sector including local authorities to account.

(2) Effective Overview and Scrutiny must contribute to effective Partnership working. This can be done through:-

- Using scrutiny projects to bring Partner organisations together to find new ways of working jointly to tackle important local problems (*a good example of this was the work of the Health Overview and Scrutiny Committee in the summer of 2008 which facilitated a discussion between the Acute Hospital Trust, the Primary Care Trust, Dover District Council and the County Council to look at what could be the best outcome for Dover residents in terms of future healthcare provision*);
- Raising the profile of scrutiny and its work priorities to enhance public understanding, and recognition – which has been described as 'championing the people of Kent'; and
- Building alliances with the Executive and other stakeholders to gain support for recommendations (*another good example is the work of the previous Council, the Select Committees on Autism Spectrum Disorder and Alcohol Misuse where all the Partners that had contributed to the recommendations which were not wholly in the gift of the County Council's Executive to deliver, were brought together before the Select Committee report was published to support the recommendations and take ownership for their delivery*).

(3) It is important that the overview and scrutiny process adds value working towards positive recommendations and improvements and ensuring that it concentrates on what only scrutiny can do. It is not about duplicating the work of

Regulators and Inspectorates. It is also about identifying the key issues behind the statistics – *e.g. widening the conversation to engage local people, service providers, neighbourhood users, communities, and the elected Members, verify problems, and develop ideas on how problems can be solved.*

#### **4. Statutory Requirements**

The County Council must have:-

- (a) one scrutiny committee responsible for the scrutiny of Cabinet decisions and operating a “call in “ procedure;
- (b) a statutory Health Overview and Scrutiny Committee which encompasses Adult Social Care as well as NHS matters (*in the autumn it is understood that statutory guidance for local authorities and the NHS will be published setting out how overview and scrutiny of health services can be improved*);
- (c) at least one Committee must be designated as the Crime and Disorder Scrutiny on Committee (*these new powers which came into force on 1 April 2009 currently sit with the Communities Policy Overview Committee and are shortly to be the subject of some discussions on how it will operate with the Kent and Medway Police Authority*); and
- (d) statutory co-optees as required, primarily Church Diocesan representatives and Parent Governors who serve on the Cabinet Scrutiny Committee and the education related Policy Overview Committees.

#### **5. Emerging Scrutiny - Scrutiny of the Crime and Disorder Partnerships**

- (1) Cabinet Members will be aware that the County Council’s role in the scrutiny of the Crime and Disorder Reduction Partnership is currently in the Communities Policy Overview Committee.
- (2) Ongoing discussions are taking place with partner organisations to identify how this might be delivered effectively across the democratically elected sector.

#### **6. Consultation - “Strengthening Local Democracy”**

- (1) The first draft of a response to the consultation launched by Local Government Minister John Denham, on Strengthening Local Democracy has been considered earlier in the meeting.
- (2) When launching the consultation, Local Government Minister John Denham, made reference to the proposal to give authorities greater scrutiny over:-
  - Police strategies in Local Authority areas
  - Fire and Rescue Authorities
  - Local Authorities’ delivery of high quality education provision
  - Probation Authorities
  - Job Centres Plus
  - Utility companies
  - Young People’s education and skills issues

(3) As a consequence, bodies external to the scrutiny authority could be compelled to have regard to the recommendations of the scrutiny committee.

(4) This does present the real opportunity to pool all Overview and Scrutiny resources across the public sector and establish an independent body to scrutinise the decision makers of all these public sector bodies.

(5) The public will have the right to appeal to a scrutiny committee if they do not like the response to a petition

(6) A report on a process for written petitions and electronic petitions is to be the subject of a report to the Selection and Member Services Committee on 13 October and to the County Council on 15 October 2009. Every local authority is required to have a process for e-petitions. It will be important that the Cabinet, Chief Officer Group and the Head of Communications and Media Centre are fully aware of the petitions which have been logged and their closing dates and the mechanisms for responding to the petitioner(s).

(7) There is in a two tier area an opportunity for a petitioner to a Borough/District Council who remains dissatisfied with the response to refer the matter to the County Council. How this can best be organised is to be discussed with Borough and District Council colleagues at a meeting later on this month.

(8) The Strengthening Local Democracy consultation document also suggested:

(a) duty could be placed on local authority Chief Executives to ensure that Committee have adequate resources to carry out their work;

(b) that the Chairman of an Overview and Scrutiny Committee might be given the authority commensurate with a Cabinet post - *for example Essex County Council have created a lead role for one of their Scrutiny Chairman who chairs not only a Scrutiny Committee but also the Scrutiny Board (which comprises all the Scrutiny Chairmen and Area Forum Chairmen). The Scrutiny Chairmen have a designated room and the culture in Essex County Council has shifted to one of parity of esteem for scrutiny with the Executive. It was also evident from a discussion I have had with the Chairman of the Scrutiny Board that the culture of Essex County Council has changed and scrutiny is seen as an effective mechanism by the Council and Executive in adding value and outcomes for the residents of the County. Members may wish to consider whether the new model for Kent's Overview and Scrutiny function should strengthen the role of the Policy Overview Co-ordinating Committee to 'gate keep' and commission work for the Scrutiny Committees; and*

(c) there is also a suggestion that as part of the support required, Committees may call on expert advice from the public.

## **7. Cabinet Scrutiny Committee**

(1) At the meeting of the Cabinet Scrutiny Committee on 21 July the Committee asked for a report back at its 23 September meeting on a range of issues including:-

- (a) exploring how many authorities undertake pre-scrutiny;
- (b) greater use of the media in helping to inform scrutiny;
- (c) co-opting representatives to add rigour and robustness to the Overview and Scrutiny process; and
- (d) the potential to strengthen the information made available to Members through the Forward Plan of Key Decisions.

(2) A number of local authorities responded to our request for information on pre-scrutiny. The responses indicated that the process we have for operating the existing Overview and Scrutiny structure of Committees is not dissimilar to the process described by other authorities as pre-scrutiny.

### *Forward Plan of Key Decisions*

(4) One issue which may warrant attention is the possibility of strengthening the information in the Forward Plan of Key Decision and ensuring that the agenda setting process for each of the Council's Overview and Scrutiny Committees takes this into account.

### *Co-optees*

(5) One view from Cabinet and the Cabinet Scrutiny Committee is that one of the ways of strengthening an Overview and Scrutiny process might be to have a pool of experts, advisors, representatives of organisations, voluntary sector or the public to call upon to assist the Overview and Scrutiny Committee for a specific issue. If this is decided by the County Council as an appropriate way forward the challenge will be to establish an independent/impartial mechanism on how this can be achieved. Discussions have taken place with the Appointments Commission, Improvement and Development Agency (IDeA) and the South East Employers Organisation to see if they can assist but it seems unlikely. It has also been suggested that other South East county authorities who are also exploring this role to strengthen Overview and Scrutiny may be willing to establish a mechanism to support our respective overview and scrutiny processes.

(6) Members will be aware that the County Council process for establishing a Select Committee already includes consideration of the appointment of a co-opted expert/advisor who will be able to assist the Select Committee.

(7) Members will also be aware that Durham County Council have established from 1 April 2009 an Overview and Scrutiny structure which includes a scheme of co-option. Ongoing discussions will continue with Durham to assess how successful this scheme of co-optees has been.

### *Rapporteurs*

(8) Members have expressed a wish in developing a rapporteur scheme whereby an elected Member(s) with a specific interest takes ownership for a piece of work, undertakes the research themselves and prepares a report. The Health Overview and Scrutiny Committee have expressed a wish to pilot a rapporteur scheme.

### *Involvement of the Media/Press in Scrutiny*

(9) Members will be aware that the County Council has agreed a protocol for publicising and launching Select Committee reports (attached as an Appendix to this report).

(10) However, one of the issues which arose at the Cabinet Scrutiny Committee on 21 July 2009 was utilising the media and press more effectively. Having spoken to the Member who raised the issue the suggestion made is that when the Overview and Scrutiny Committees have identified their work programme then working with the Communication and Media Centre the views of the public should be sought through a formal process.

(11) Taking this one stage further it should be possible for the public to email in questions they would like asked as the meeting is progressing. This is an exciting proposal and would need careful consideration on how it is implemented/moderated. Members views are sought.

## **8. Policy Overview Committees**

Members are reminded that the County Councils current Overview and Scrutiny process gives non executive Members the ability to assist the Cabinet with Policy Development. At agenda setting meeting Members can make use of the Forward Plan to put an item on the POC agenda, also there is the opportunity for Cabinet Members to make the POC aware of developing policy areas which the POC could have an input into. Any Member may give notice that they wish an item to be considered at a POC meeting. It is important that Members make effective use of these powers to add value to the work of the County Council for the benefit of all Kent residents.

## **9. Duty to Involve**

There is a correlation between the legislative framework around the “Duty to Involve” with the “Place Shaping Agenda”, the development of the website, the concept of a “Virtual County Hall”,(Kent Space- making Kent Work for You) ( a concept whereby communities of interest through Social Networking find the County Council), the Citizens Panel, the Consultation Strategy, petitions and e-petitions, the emerging localism strategy which are all mechanisms, sources of information and evidence which can help to inform the Overview and Scrutiny function.



## **10. Timetable**

(1) To meet the timetable for a report on the structure of the Overview and Scrutiny function to the County Council on 15 October 2009 I set out below a list of meetings which would give the opportunity to the majority of Members to contribute to this discussion.

Environment, Highways & Waste POC - **15 September**

Communities POC - **17 September**

C, F & E POCs - **18 September**

Adult Social Services POC - **22 September**

Cabinet Scrutiny Committee - **23 September**

Regeneration & Economic Development POC - **24 September**

Corporate POC - **25 September**

Health Overview and Scrutiny Committee - **2 October**

County Council - **15 October**

## **11. Recommendation**

Members' views are requested before Cabinet Members make a recommendation to County Council.

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## Kent County Council

### **PUBLIC RELATIONS PROTOCOL FOR SELECT COMMITTEE REVIEWS AND REPORTS**

This protocol has been written as a basis for all communications between Select Committee Members and the media. It will ensure that the corporate communications team is able to maximise opportunities for scrutiny to publicise its work and promote the transparency of the Council's decision-making process.

- All actions should be in accordance with the letter and spirit of the DCLG Code of recommended practice on local authority publicity.
- Media activity should be co-ordinated through the corporate communications team who will make arrangements and ensure that the appropriate Members are put forward, rather than Select Committee Members approaching the media direct to discuss the topic review.
- The Select Committee Chairman should be the official spokesperson for the review report, unless another more suitable spokesperson has been identified by the Chairman.
- Chairmen of Select Committees will be expected to attend or have attended media training.
- There is potential, on rare occasions, for conflict between scrutiny and cabinet on issues. Maintaining the professional reputation of the council in the eyes of the public is paramount and conflicting statements may make the council appear inept or divided. Care should be taken, on all sides, to avoid this situation from arising. But in such circumstances Corporate Communications would present factual information to the media fairly representing both the Scrutiny and Cabinet viewpoints.
- The corporate communications team should be advised of any media enquiries received by Select Committee Members to offer guidance and help if required and to monitor responses.
- Press releases for Select Committees will be drafted by a member of the corporate communications team, in consultation with the Research Officer for the review and approved by Select Committee Chairman, in consultation with the Overview, Scrutiny and Localism Manager.
- Press releases will be fair and representative of the views of the Select Committee. They may include the views expressed in minority reports if those views differ from the main report.

- The media are invited to attend all formal meetings of Select Committee unless matters of an exempt nature are to be discussed.
- When the report of the Select Committee is ready to go into the public domain a member of the corporate communications team, in consultation with the Research Officer to the Select Committee drafts a press release. Where possible the press release should include input from a third party who has been involved with the review. The Press release should be approved by the Select Committee Chairman (with the nominated official spokesman, where appropriate) in consultation with the Overview, Scrutiny and Localism Manager. An embargoed copy of the press release should be sent out with an electronic copy of the report, to the media a day before the public domain with an embargo on it. There may or may not be a press conference but the Chairman, relevant members make sure they are available for interviews.
- Corporate Communications officers are permitted to refuse to prepare press releases, deal with media enquiries or arrange media interviews in the following cases:
  - (i) If the press release or enquiry is political in any way.
  - (ii) If the information in the press release is deemed libellous or malicious
- Corporate Communications officers will not organise interviews between media and individual members of the Select Committee unless there is explicit agreement by the Select Committee Chairman.
- Press releases will not be issued as a matter of course after Select Committee meetings simply to record the proceedings. Post-meeting publicity will, however, be given where there is good reasons for doing so e.g. to promote opportunities for public consultation.

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**By: Peter Sass: Head of Democratic Services and Local Leadership**

**To: Cabinet Scrutiny Committee – 23 September 2009**

**Subject: Strengthening Local Democracy: Consultation**

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**FOR INFORMATION:**

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**1. Background**

- (1) This consultation document has been brought to the Committee at the request of the Chairman and two of the Vice Chairmen of the Cabinet Scrutiny Committee.
- (2) A draft response was discussed at the Policy Overview Co-ordinating Committee on 9 September 2009 and the response was due to be signed off on behalf of the County Council on 21 September 2009 following consultation with Cabinet Members.
- (3) The Cabinet Member and Officers have been invited to guide Members through the consultation document. The consultation response will be circulated separately to Members.

**2. Purpose of consideration**

- (1) This document is for Members' information.

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**Contact:**

Anna Taylor

Tel: 01622 694764

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# Strengthening local democracy

## Consultation

July 2009





# Strengthening local democracy

## **Consultation**

July 2009

July 2009

Department for Communities and Local Government



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## Scope of the consultation

<b>Topic of this consultation:</b>	This consultation is focused on promoting local democratic renewal by strengthening the capacity of local government to serve citizens. This forms part of the wider constitutional reform package and builds upon a number of the themes that were presented in <i>Building Britain's Future</i> .
<b>Scope of this consultation:</b>	This consultation explores whether local government has the powers it needs to meet today's challenges, as part of the Government's drive to renew Britain's democracy and build trust in the political system at all levels. It seeks views from interested parties on the proposals being made.
<b>Geographical scope:</b>	This consultation applies to England only.
<b>Impact assessment:</b>	An impact assessment is in the process of being prepared for this consultation which will be published shortly.

## Basic Information

<b>To:</b>	The public, local authorities, public and private sector organisations, voluntary and third sector organisations.
<b>Body/bodies responsible for the consultation:</b>	Local Government Policy and Performance Directorate – Communities and Local Government
<b>Duration:</b>	21 July 2009 – 2 October 2009
<b>Enquiries:</b>	Via e-mail: <a href="mailto:localdemocracyconsul@communities.gsi.gov.uk">localdemocracyconsul@communities.gsi.gov.uk</a> Or by post to: Local Democratic Renewal Consultation Zone 4/G6 Department for Communities and Local Government Eland House Bressenden Place London SW1E 5DU

<b>How to respond:</b>	Via e-mail: <a href="mailto:localdemocracyconsul@communities.gsi.gov.uk">localdemocracyconsul@communities.gsi.gov.uk</a> Or by post to: Local Democratic Renewal Consultation Zone 4/G6 Department for Communities and Local Government Eland House Bressenden Place London SW1E 5DU
<b>Additional ways to become involved:</b>	Hard copies of the consultation can be made available by writing to the address above. The consultation will be a written exercise.
<b>After the consultation:</b>	A response to the consultation setting out proposed next steps will be published in Winter 2009.
<b>Compliance with the Code of Practice on Consultation:</b>	This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation issued by the then Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria. The period of consultation will be 10.5 weeks. This is shorter than the standard 12 week period so as to maximise time for the possibility of taking forward proposals following the consultation.

## Background

<b>Getting to this stage:</b>	Local Democratic Renewal policy and the associated consultation build upon the developments from the <i>Building Britain's Future</i> programme.
<b>Previous engagement:</b>	The Communities and Local Government Select Committee has recently issued its report into the balance of power between central and local government. Parliament has debated similar issues recently as well as the overall role of local government. There has not been any consultation on this issue previously, although key stakeholders such as the Local Government Association, local authorities and other government departments have been closely involved in the co-design of associated local government policy.

## Contents

<b>Chapter 1</b>	<b>Local government at the centre of decision making</b>	<b>13</b>
<b>Chapter 2</b>	<b>Strong local government operating in the local interest</b>	<b>23</b>
<b>Chapter 3</b>	<b>Local authorities tackling climate change</b>	<b>33</b>
<b>Chapter 4</b>	<b>Sub-regional working</b>	<b>38</b>
<b>Chapter 5</b>	<b>Clear relationships with local government</b>	<b>45</b>
<b>Chapter 6</b>	<b>Consultation arrangements</b>	<b>50</b>
<b>Annex A</b>	<b>Local government scrutiny committee powers</b>	<b>54</b>

## Strengthening local democracy

1. *Building Britain's Future*<sup>1</sup> set out how government wants to work with the people of this country to reform our democracy, overcome the recession and build the next generation of public services. It makes clear that this will involve a radical dispersal of power both to the citizen and to their local elected representatives.
2. The founding principle of local government is that citizens have the right to influence the decisions that affect their lives and their communities. Sometimes they may exercise this right through personalised services and sometimes by influencing local services – for example, by having a direct say over how their neighbourhood is policed. And sometimes it will be through lobbying their council.
3. **But a key way in which local citizens are able to exercise that right is their ability to elect a strong local council which can lead and shape their area.**
4. There is a large and untapped pool of people who would like more say in what happens in their area. It is right that both central and local government do more to give them greater direct control over the decisions that affect their lives and their community and councils are doing much to help them explore the opportunities available to engage and participate. But we must also recognise that in today's time poor society, citizens only have limited time to give.
5. That is why the role of councillors and councils, with their unique democratic mandate is critical to making sure that local services are responsive to the needs of their local communities. Citizens have a right to have their voices heard, and to expect those delivering services to care what they think.
6. **So councils must be fully equipped with the powers they need to act decisively and effectively on behalf of their citizens: the powers and ability to scrutinise, influence and shape other services. This is a much stronger role for local government, placing it firmly at the centre of decision making in their community.**
7. There are other imperatives driving the need for stronger local government.
  - First, **strengthening democracy**. Councils are unique among public service providers in being directly elected, but also in the range of services which they directly provide or indirectly secure, their role in leading and contributing to local partnerships, and their oversight of the well-being of their citizens and communities. That means they are best placed to provide local leadership and make sure that public services are being fairly and effectively delivered.

<sup>1</sup> <http://www.hmg.gov.uk/buildingbritainsfuture.aspx>

- Second, **promoting greater value for money**. Since 2004, councils have saved £4.5bn through efficiency measures – a significant achievement. The recent work by Sir Michael Bichard<sup>2</sup> shows that there is scope to go further: not simply achieving value for money in councils own spending, but by giving councils greater oversight of all the money being spent in their area. This will reduce overlap and duplication, making sure that all money is being spent effectively and efficiently: fostering innovation and improvement and driving up standards of service.
  - Third, **promoting economic development**. The current economic situation has reinforced the crucial role that councils can play in supporting their communities. The best have taken active steps to mitigate the worst impacts of the downturn through, for example, offering debt services, supporting new apprenticeships, or looking to create new jobs through the Future Jobs Fund. Councils are uniquely positioned not just to work with other partners, but to lead them, in preparing for recovery and future growth.
  - Fourth, **delivering personalised services**. As the drive continues to deliver personalised services and enforceable entitlements it will become ever more important to ensure that local services are delivered flexibly and in response to local needs.
8. Finally, as *Building Britain's Future* makes clear, there are major global and national challenges facing this country, including rising expectations of public services; the need to restore public trust in politics and democracy; the need to promote economic recovery; and the need to adapt to the threat of climate change. Local government has a crucial part to play in addressing these challenges as their citizens' elected representative. We want citizens to have a real say in how these challenges are tackled, and on what happens in their communities<sup>3</sup>. This could include getting involved in local budgeting decisions, having a say in how local public services are run, taking part in petitions, or by taking over facilities for their community. Local government is the point at which citizens can get involved in the decisions which affect them and a way of reconnecting citizens to the public domain by empowering them to influence decisions that affect them.
9. As a result of recent decisions we have taken, councils have greater financial stability, greater powers and more responsibilities. The three year finance settlement offers councils much greater financial certainty and the prudential system for borrowing and investments removed the need for local authorities to get central government consent to borrow for capital purposes. They also have powers to promote the economic, social, and environmental wellbeing of their area. Councils also now have some powers of scrutiny to challenge other service providers and hold them to account. In short, they now have a much greater capacity to make a difference.

<sup>2</sup> [http://www.hm-treasury.gov.uk/vfm\\_operational\\_efficiency.htm](http://www.hm-treasury.gov.uk/vfm_operational_efficiency.htm)

<sup>3</sup> These issues are set out in *Communities in control: real people, real power*, Communities and Local Government, July 2008

10. We now need to go further, making sure that local government has the powers it needs to respond to these emerging challenges and act decisively on behalf of their citizens to drive improvements in local public services.
11. We envision a powerful new role for local authorities where they:
  - play a central role for citizens in delivering their entitlements, and have flexibility and autonomy in meeting local needs
  - take on the responsibility for responding to emerging local challenges – particularly climate change and housing
- take greater responsibility for scrutinising and oversight of public money spent on local service delivery in an area, in order to drive improvements in services and increase value for money.
12. The combination of the new measures proposed in this consultation, together with recent reforms, amounts to the biggest transfer of power to elected councillors for a generation. But it is not designed to strengthen councils for their own sake – rather to strengthen the rights of citizens through their elected representatives.

## Scope of consultation

13. This consultation sets out a range of measures to promote democratic renewal and strengthen the power and responsibility of local government by:
  - strengthening councils' ability to lead and coordinate services in their area. We propose to give councils more scope to scrutinise the spending and decisions of local service providers
  - exploring whether there are barriers to using existing powers and whether there are other powers which councils should have
  - ensuring councils have the powers and responsibilities they need to tackle climate change
  - exploring how the powers and responsibilities of sub-regional structures should be matched by clear and accountable leadership
- exploring how to articulate, develop and support the relationship between central and local government so that our respective functions are clear and transparent to citizens.
14. Given the range and depth of recent debate – notably in the context of the Lyons Inquiry – we are not consulting on the local government finance system here. We keep this system constantly under review and will continue to introduce reforms where appropriate. For example, we have given councils a new power to raise a local business



rate supplement. We have recently published a green paper on reform of the care and support system<sup>4</sup>, which could have important implications for local government. We have also stated in the Budget that we would explore with interested partners how to accelerate new development through innovative financing arrangements.

## Local government at the centre of decision making

15. Local government already plays a crucial role in improving their citizens' lives and their areas' prospects. Councillors are recognised and respected as community leaders. Councils are directly responsible for a broad range of services: both directly delivering some, and commissioning organisations to deliver others. They also have an important role in shaping and monitoring services in their area, for example in relation to local environmental standards. And they are a major player in local strategic partnerships and other groupings which bring service providers together.
16. As such, councils are best placed to understand and respond to issue of local concern, and to bring all agencies – public, private, third sector – to tackle cross-cutting issues which affect their residents and their community.
17. We propose to strengthen their capacity to do this: specifically by giving them greater powers to scrutinise other services and how they spend their money. When they go to vote, citizens should be electing someone who can act on their behalf in relation to every aspect of local public service spending in their area. Our aspiration is that councillors should become a local point of accountability: the place where citizens can go to question how public money is being spent, how decisions are being made and how services are being delivered. This will be particularly important as public services and local councils begin to introduce entitlements to public services as set out in *Building Britain's Future*.
18. This would complement, but not replace, the direct relationships individuals already have with a range of service providers. It would mean that citizens have an easy way to make sure their voice is heard in local decision-making. Elected councillors would have a clear remit to sort out general problems and failures, maximise the value for money of local services, and reduce the burden on the concerned resident who is trying to raise concerns.
19. Councils already have powers to coordinate and scrutinise some local services. But we need to make sure those powers are being properly used, and extend them much more widely. We do not propose to introduce new powers to benefit councils and councillors themselves: but to increase their capacity to act more decisively, over a broader range of local issues and services, in the interests of their residents. This is a natural extension of their existing leadership role.

<sup>4</sup> *Shaping the Future of Care Together green paper*, HM Government 2009

20. In practice this should mean that:

- the council takes greater responsibility for co-ordinating service delivery, making sure that services are properly joined up and respond to local need
- councillors are able to scrutinise and hold other services to account: other service providers would need to explain and justify their policies and spending.

21. The importance of putting the customer first and providing joined-up, more effective and efficient services, lies behind the 'Total Place' initiative announced in Budget 2009. This is designed to analyse where public money is spent and how services are delivered across a whole area, in order to see how this can be improved. The idea is that public services work together, rather than individually, in the next phase of reform, delivering better services, and reducing costs.

22. This initiative will help public services reduce complexity, bureaucracy and duplication by bringing together the evidence on customer needs, and on what is being spent, by which agencies, and on what services, to address those needs. Each of the pilots will pick at least one particular theme, such as early years, ageing or offenders to explore in more detail how the money flows and how the delivery system can be made more effective and efficient. These pilots can help identify how all areas should develop in the future, and the role that the local authority should play in driving change.

## Strong local government operating in the local interest

23. *Building Britain's Future* described how Government will be introducing entitlements for citizens. Wherever they live, citizens must have confidence that key public services will deliver a certain level of service. Local authorities will have greater autonomy to decide how to deliver those entitlements, in turn offering greater freedom to innovate.

24. So a future question being posed for consultation is whether councils have the right powers to address the challenges their areas face today and deliver improved and more efficient services for citizens; or whether there are areas in which they need greater control or influence.

25. We also ask whether there is further scope to reduce the burden of inspection on local authorities.

26. We also need to consider how best to support councils to reverse the decline in satisfaction shown by recent surveys<sup>5</sup>, despite increasing performance on key public

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<sup>5</sup> The latest Citizenship Survey (April to September 2008) results show that 81 per cent of the population are satisfied with their areas as a place to live; the 2008 Place Survey shows that 48 per cent of the population are very or fairly satisfied with the way their council runs things. <http://www.communities.gov.uk/publications/corporate/statistics/placesurvey2008>; <http://www.communities.gov.uk/publications/corporate/statistics/citizenshipsurveyq2200809>

services<sup>6</sup>. We ask whether granting further powers to local councils should depend on rising public confidence in the local council.

## Local authorities tackling climate change

27. A number of councils are already at the forefront of action to tackle climate change. This consultation asks how we can help them to take the next natural step, and contribute to meeting national carbon emissions targets perhaps through developing their own local carbon budgets.

## Sub-regional working

28. Partnership working is vital to tackle those problems which cross local authority boundaries – especially to promote economic growth across a wider area. Some of these partnerships formalised these relationships through Multi-Area Agreements (MAAs). The Government has also announced two city-region pilots. These will test how greater freedom and responsibilities for the partnerships in these areas can help them to deliver greater economic prosperity. This consultation document asks how the powers of city- and sub-regions could be further strengthened.
29. But we also need to ensure that greater powers and responsibilities are matched by clear, democratic and accountable leadership, so that citizens are aware of, and can influence, their decision-making.

## Clear relationships with local government

30. All these developments raise the question of the nature of the relationship between central and local government. We ask whether and how we should articulate that relationship in order to make these respective roles and responsibilities clearer to citizens. We suggest a series of principles on which central-local relations should operate in the future.
31. We need to consider how this could work in practice: specifically, how to monitor how each of us is fulfilling our responsibilities without overstepping the boundary. This may include scrutiny from a joint Parliamentary select committee with a standing mandate to regularly review the state of central-local relations, as proposed by the Communities and Local Government Select Committee and/or an ombudsman style body. In time, more effective local scrutiny by councils, coupled with entitlements for citizens, could reduce the volume of central prescription and inspection by central Government.

<sup>6</sup> For example, the number of single-tier and county authorities rated as top performers by comprehensive performance assessment in 2002 was 22; by 2008 this had risen to 62

## Notes

32. Some of the changes proposed in this paper could be achieved rapidly but it also sets the parameters for the debate over the next five to ten years.
33. The Impact Assessment relating to proposals in this consultation paper and their potential impact across a range of sectors is expected to be issued within two weeks and will be published on the Communities and Local Government website alongside this consultation paper.<sup>7</sup> An equality impact assessment initial screening has been completed and full assessment will follow. Some of the options mentioned in this consultation would require new primary legislation.
34. The proposals set out in this paper will impose costs on local authorities and will also deliver significant savings. In line with the Government's new burdens doctrine, any net additional cost to local authorities will be fully and properly funded by the Department for Communities and Local Government so that no additional pressure is placed on council tax bills.

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<sup>7</sup> The Impact Assessment will be linked to from: [www.communities.gov.uk/publications/localgovernment/localdemocracyconsultation](http://www.communities.gov.uk/publications/localgovernment/localdemocracyconsultation)

# Chapter 1

## Local government at the centre of decision making

35. Local government plays a crucial role in delivering better outcomes for their citizens and in shaping the local area. They are themselves responsible for a broad range of services – either directly or through commissioning and for monitoring how services are delivered. They lead or act as one of the major players in many partnerships. They also regulate issues such as environmental health.
36. Beyond this, however, councillors are community leaders – taking a broad view of the well-being of local people and communities in a way which is not expected of other public service providers. So they are best placed to understand and respond to local concerns, bringing all the relevant agencies together – public, private, third sector – to tackle cross-cutting issues.
37. In each local authority area, billions of pounds are spent every year by a wide range of service providers, including the National Health Service, the local police service and the local authority itself. For example, a recent analysis in Cumbria demonstrated that £7.1bn of public money was spent in the county in 2008.<sup>8</sup>
38. This consultation proposes that councils should have greater scrutiny and oversight of this spending. This will give citizens, working with their councillors, greater influence over how public money is spent. We propose to broaden local authority scrutiny powers and extend them to a wider range of organisations, so that they can better influence local decision making.
39. This would go beyond simply monitoring spending by other bodies and put councils at the centre of local decision making, challenging other services to improve. This stronger role for councils acting on behalf of citizens should be part of their contribution to coordinating frontline delivery across service providers.

### The challenge

40. Local residents should be able to influence the shape of their area and the services they receive. We want citizens to have a real say in how these challenges are tackled, and on what happens in their communities. This could include getting involved in local budgeting decisions, having a say in how local public services are run, taking part in petitions, or by taking over facilities for their community.<sup>9</sup>

<sup>8</sup> Nuclear decommissioning, a national benefit with a large local impact, accounts for a quarter of total expenditure in Cumbria

<sup>9</sup> These issues are set out in *Communities in control: real people, real power*, Communities & Local Government, July 2008

41. However, most people only have limited time or opportunity to become directly involved in decisions which affect them. So alongside the right to directly shape and influence services must go the right to elect a local authority with real power to champion the needs of their local area – one that is clear about its responsibilities to local citizens. Citizens also need to be confident that when decisions are made about things that affect them, it is informed by their concerns and not just by the interests of those running the service. That is why we believe that elected councillors, selected by voters to represent their interests, should have greater influence over unelected service providers.
42. Our aspiration is for councils to become a local point of accountability for services across their area. The clearest and most effective way to do that is to give councillors greater oversight and responsibility for public spending in their area. Councillors, on behalf of their citizens, should be able to scrutinise public spending provision, influence decision making and hold other service providers to account. Councils also represent the interests of local organisations, including business and third sector.
43. This has the potential to better deliver the personalised services people want and expect, while at the same time ensuring that every taxpayer's pound is used to maximum effect. By giving councils the capacity to look more coherently at public money spent delivering local public services in an area; people will be able to see more clearly how and by whom their money is being spent. Understanding and overseeing expenditure on local service delivery will be a priority for the whole council – its leaders and all members.
44. The Calling and Counting Cumbria project<sup>10</sup> which inspired the current Total Place initiative showed that £7.1bn of public money was spent in 2008 in the county. £1.9bn was controlled or directed by local bodies of which:
- forty-two per cent was from the county council
  - thirty-seven per cent from NHS bodies and
  - fourteen per cent from district councils
- six per cent from the police authority.
45. The sums involved show how important it is to have one body monitoring this spending to make sure it is being used to best effect. It is clear this role should fall to councils, with their direct mandate to act on behalf of citizens.
46. Expenditure – while hugely important – is not the only issue on which councils should be able to call other agencies and services to account. We see councils as central to delivery of the minimum entitlements set out in *Building Britain's Future* which citizens must expect. So councils should:

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<sup>10</sup> <http://www.cumbria.gov.uk/communications/countingcumbria.asp>

- be able to make other service providers explain and justify their policies, in order to make sure they are properly responding to local need
  - co-ordinate front-line service delivery, so that citizens receive the properly joined-up, personalised services that they are entitled to.
47. The best way to support councils take on this stronger role is to increase their powers of scrutiny. Councils do currently have some well-established powers of scrutiny over health and police services. But these have not yet had the impact which we believe is necessary. We therefore set out proposals to:
- broaden the scope of powers which councils can use to carry out their scrutiny function
  - widen the range of organisations over which these powers can be used
- ensure that local people and their needs are the driving force behind these enhanced powers.

## The current picture

### Local expenditure

48. A great deal of work has gone into making public money in local areas go as far as possible, and making sure it is used to best effect. Since 2004 councils have achieved £4.5bn of efficiency savings – a significant achievement.
49. The Total Place initiative will show what more it is possible to achieve. In pilot areas, all public spending is being assessed, in order to make sure that it is best, and most efficiently, used to deliver what the local communities need. We have also consulted on how to develop local spending reports further and will be publishing an account of responses shortly. We will make decisions on how best to take forward these reports in the light of the total place pilots.

### Total Place

Big efficiency savings have already been delivered while services have improved. But more services can and should be designed around the needs of individuals, rather than around the convenience of institutions. This should both improve the standard of service people receive, and encourage the innovation and efficiency, that are vital to delivering the high standards and value for money that people quite rightly demand from their services. This means finding new ways of doing things, sharing best practice and acting jointly for the common good.

To deliver the improvements needed in public services, we need a deeper understanding of the needs of the community, space for local responsiveness and innovation, and effective co-operation – between public services locally and between central and local government. The Total Place pilots aim to demonstrate the clear benefits of service providers working together effectively to improve services by removing inefficiency and duplication between organisations and putting the needs of users first. They will seek to highlight where central Government can remove unintended barriers which prevent services working effectively together, so creating stronger incentives for co-operation and joint improvement

### How does scrutiny currently work?

50. Scrutiny powers are a potentially powerful tool which enables councillors to represent the views of citizens on services which the council is not directly responsible for. Councils use scrutiny committees in a similar way to select committees in Parliament. These committees of non-executive councillors are able to challenge the council leadership on the issues they are responsible for. They also carry out reviews into local issues of importance and make reports and recommendations for change to those taking the decisions.
51. Overview and scrutiny has a different scope for different services – with health, and crime and disorder being the most advanced. For other bodies, the requirements relate to the LAA targets. The bodies that are currently required to engage in overview and scrutiny in relation to LAA targets include Environment Agency, Fire and Rescue Authorities, JobCentre Plus, Youth Offending Teams, Police Authorities, Primary Care Trusts, Regional Development Agencies, Learning and Skills Council, and the Homes and Communities Agency<sup>11</sup>.
52. There are, however, no formal limits on what local government scrutiny can look at – committees can examine any issue of importance to the community. Many committees look at the work of a range of public and private service providers and they can request information from these bodies. They work in partnership with health bodies and police forces to scrutinise local health and crime and disorder issues, meaning that elected members can already have a voice over how these services are delivered. This autumn we will publish statutory guidance for local authorities, people working in the NHS and interested people that will set out how overview and scrutiny can be improved in the health services.

<sup>11</sup> A full list of duty to co-operate bodies is included at Annex A.



53. We are also strengthening the scrutiny function<sup>12</sup> so that:
- councils will also be able to scrutinise other public bodies working with the council on the priority targets set out in the local area agreement
  - councils will be required to designate a dedicated scrutiny officer
- residents will be able to appeal to the scrutiny committee if they are not satisfied with their council's response to a public petition.

### Scope of scrutiny arrangements

54. Scrutiny powers have come a long way since their introduction in the constitutional changes brought into force in 2000. However, scrutiny too often relies on the voluntary cooperation of service providers.
55. For scrutiny to really punch its weight, there needs to be a strong connection between scrutiny committees and local people. In many authorities, members of the public can, and do already get involved in scrutiny in a range of ways, including suggesting topics for review, or by being a co-opted member of a committee. There are good examples of this working in practice – for example, when Tower Hamlets carried out a review of young people's participation in sports leading up to the Olympics, an extensive consultation informed by the views of around 300 young people helped to shape the recommendations made by the scrutiny committee. However, as yet this level of involvement remains relatively limited<sup>13</sup>.
56. The duty on councils to promote democracy, requiring them to explain the opportunities for people to influence decisions affecting public services and how they can get involved, should go some way to address this. But we are seeking views on how we could go further still and make sure that citizens have a stronger connection to their scrutiny committees.
57. We know that democracy is stronger when it is fully representative, and as such, we have been working to increase diversity amongst councillors. This will help to ensure that both executive and scrutiny functions of local authorities are fully representative and able to take proper account of the diverse communities that they serve. There are, also, wider related issues around councillor recognition and conduct, however, these do not form part of this consultation.

<sup>12</sup> Including through provisions in the Local Democracy, Economic Development and Construction Bill currently before Parliament.

<sup>13</sup> A recent survey by Centre for Public Scrutiny for example showed that public engagement in scrutiny is low with 51 per cent of authorities reporting that they had not received any suggestions from the public for scrutiny reviews in 2007.

## Future options

58. Increasing the power and range of scrutiny is absolutely central to our vision of independent, strong and effective local government. It is a major route through which the voice and interests of local people, through their elected representatives, can be brought to bear on the national and local institutions which provide the local services which are vital to all of our lives. Of course, councils are not the only point of accountability, since people will still have a direct relationship with individual services, but they are an important place where residents can raise their concerns and expect that their elected representative will take appropriate action. In addition, services have other points of accountability, such as the national or regional level.
59. We should not expect people to have a detailed knowledge about the intricacies of local service provision – funding streams, management structures or spheres of responsibility – in order to raise a concern or complaint. Nor should they be expected to do so at the administrative convenience of those bodies. And co-operation between these bodies should not be left to chance. Scrutiny committees have a vital role to play in making sure that these services work as effectively as possible.
60. The extensions of scrutiny proposed in this document may raise issues of relevance to policing. It is intended that where consultation responses relate to this important local service they will be considered through the White Paper on policing which is planned for the autumn<sup>14</sup>. For practical reasons Regional Development Agencies are not considered to be part of this consultation in relation to proposed extensions to scrutiny, beyond current arrangements and those in the Local Democracy, Economic Development and Construction Bill currently before Parliament.

### Extending the scope of formal scrutiny arrangements

61. We want to examine whether the scope of scrutiny powers should be increased so that they cover all of the issues that matter to the local community. Other than for health, and crime and disorder matters<sup>15</sup>, formal scrutiny powers are currently limited to those bodies that are under a duty to co-operate with a local authority in setting and delivering the priorities established in the Local Area Agreement (LAA)<sup>16</sup>. Other than on crime and disorder, and on health, scrutiny committees can only use these powers when the issue at hand falls under the scope of priorities set out in the LAA.
62. But the issues which matter to local people often go beyond the scope of LAAs. And they relate to many other organisations than just those who are responsible for delivering the priorities set out in this agreement. Although in some places, other local

<sup>14</sup> The recent report *A People's Police Force: Police Accountability in the Modern Era*, Rt Hon David Blunkett MP, 2009 will also be an important piece of work to consider in thinking about the accountability of local bodies going forward, including the police.

<sup>15</sup> Separate provision is made for the scrutiny of health and crime and disorder matters through the NHS Act 2006, and Police & Justice Act 2006.

<sup>16</sup> The duty to co-operate applies to named public sector agencies working in partnership with local authorities through local area agreements. A list of these agencies appears at Annex A.

service providers who have not formally signed up to the LAA – for example utility companies – voluntarily co-operate with council scrutiny reviews, this is not always the case. Whilst they each have their own accountability arrangements and standards to uphold (for example Ofgem’s role for gas and electricity companies), there are currently no requirements to respond to issues raised by council scrutiny committees despite the impact that the activities of these bodies can sometimes have on the local area. In too many cases, in order to address issues of concern, scrutiny committees have to come up with ways to persuade or shame other agencies into attending their meetings or co-operating with reviews. In some cases, their requests are flatly refused.

63. If they are to act effectively on citizen’s behalf, on all the issues which matter to them, we need to further strengthen the scrutiny powers which councils have. This would mean:

- **broadening** the number of bodies which can be subject to scrutiny committees: not limited to those responsible for health, crime and disorder or council functions, nor just those responsible for priority targets set out in the LAA
- **enhancing** the powers which these committees have. Officers and board members could be required to appear in front of the committee
- **enabling** scrutiny committees to make reports and recommendations to a wider range of bodies for their consideration, and these bodies could be required to have regard to the recommendations and formally respond to scrutiny committees

64. This consultation will seek views on the issues which should be subject to this enhanced scrutiny.<sup>17</sup> Subject to views, we propose to offer councils greater scrutiny over:

- **police strategies in local authority areas**, plans for which will be developed for consultation by the Home Office in the autumn
- **fire and rescue authorities**, to make sure their plans<sup>18</sup> fully reflect the right balance of protection, prevention and response for different communities; and to examine performance of individual fire and rescue authorities against their published equality and diversity plans
- **local authorities’ delivery of high-quality educational provision** to meet local demands and aspirations as well as for supporting and challenging schools to

<sup>17</sup> These proposals build on the issues considered in the ‘Improving Local Accountability Consultation’ (published 7 August 2008) which sought views on the approach to the legislative framework underpinning the extension of council scrutiny powers to LAA partner authorities in the *Local Government and Public Involvement in Health Act, 2007* and the further proposals for strengthening scrutiny announced in the *Communities in Control White Paper, 2008*.

<sup>18</sup> Each fire and rescue authority is required to consult and publish its integrated risk management planning (IRMP). IRMP is about improving public safety, reducing the number of fire incidents and saving lives. Integrated risk management has shifted the focus in planning to put people first, looking at the risks arising from all fires and other emergency incidents, and at the options for reducing and managing them.

improve. These issues as set out in the Department for Children, Schools and Families' White Paper on 21st Century Schools would ensure further support to these issues that are of great importance to parents and more widely to local communities

- **probation authorities** over issues such as release of ex-offenders into an area, or making sure that they have timely access to local services that may be critical to prevent further offending. Councillors could also have a role in scrutinising the other partners involved in supporting reducing offending
- **provision of public transport and transport infrastructure**
- **Jobcentre Plus** and other employment related services in the local area
- **utility companies:** for example, where repairs which are badly organised and co-ordinated, causing unreasonable inconvenience, the overview and scrutiny committee would be able to look into the matter and make recommendations which the utility company would be required to have regard to, on future improvement programmes
- **young people's education and skills issues**, while recognising the independence of colleges and other learning providers. These services have a high degree of relevance for local communities, as shown by 84% of areas having at least one of the skills indicators in their Local Area Agreement and this has been recognised by the Government's decision to transfer funding to local authorities for education and training for 16–18-year-olds, supported by the creation of the Young Person's Learning Agency. Ensuring that these broader scrutiny powers apply to this issue and the range of partners involved will enable the ambition to put the young learner at the heart of a system to be fully realised. The Learning and Skills Council and its adult skills successor body, the Skills Funding Agency, will continue to be subject to the duty to co-operate through the LAA process.

### Making scrutiny work more effectively for citizens

65. Those scrutiny committees which are really effective are those which are well supported by their local authority. We are already requiring lead councils to designate an officer to support the scrutiny committee, which will help raise the profile and visibility of scrutiny.
66. The proposals in this consultation will further increase the status of scrutiny as one of the council's central roles. As the democratically accountable leaders of their areas, it will be a priority for every council leader to ensure that their council's scrutiny activities are effective. This will involve leaders and council executives considering carefully the resources that are devoted to scrutiny and the status accorded to those leading the scrutiny work.

67. One option is to place a duty on council chief executives to ensure that committees have adequate resources to carry out their work. While recognising the importance of scrutiny, this would also mean that final decisions on how best to organise resources are left with those who are best-placed to make them.
68. We also believe that scrutiny should take greater visibility and recognition as befits its vital role. A visible commitment by a local authority to the importance of overview of scrutiny would be ranking the position of chair of certain overview and scrutiny committees in the authority on a par with a cabinet post. This might include the special responsibility allowance for this post being equal to that of a cabinet member in the authority.
69. There is also the question of whether, and how, in extending scrutiny, executive members could be further involved in these activities in relation to the full range of local public services. This would have to be consistent with the need to avoid conflicts of interest between the executive's decision making role and the ability of the non-executive councillors to scrutinise those decisions.
70. There are also more open questions about the support that councils and those individuals charged with carrying out this function may need. As well as fully understanding how their council operates, councillors will need to fully appreciate the complexities of partnership working, and the context and legal framework in which those partners operate. They may well benefit from
- expert advice from citizens or interest groups
  - more training and support
  - wider opportunities for sharing best practice
71. This consultation asks how best, in addition to any statutory measures, the local government scrutiny function can best be supported, possibly through measures identified above.

## Summary

72. Building on the current arrangements in place, we propose to strengthen the existing scrutiny powers as follows (a summary of the relationship between current and potential future local government scrutiny powers is included at Annex A including a list of duty to co-operate bodies):
- making the description of scrutiny powers more explicit about local councils' role in scrutinising expenditure on delivery of local public services in an area
  - bringing a range of local public services fully under the scrutiny powers of local authorities with a focus on what matters for local people and local communities

- extending scrutiny powers in relation to LAA partners by removing the current limitations to scrutiny of specific LAA targets, and extending scrutiny powers more generally to a wider range of bodies whose activities may be crucial to the development of the area
  - extending scrutiny powers to enable committees to require attendance by officers or board members from partner bodies to give evidence at scrutiny hearings (similar to the powers already in existence for health and police)
73. At their most developed, the proposals in this consultation paper could mean a total of almost £250 billion public money would be subject to council scrutiny. This includes councils' own spending plus potentially more than £100 billion of public money a year spent on key local public services that were delivered locally but not by local government<sup>19</sup>.
74. In all these proposals it will be important to strike the right balance to ensure that the operational independence of external bodies is not compromised. These proposals are not about scrutinising the day to day actions of police officers, or clinical decisions, for example, but rather to enable councils to scrutinise the way in which services are delivered. We have a duty to citizens to ensure that bodies spending public money and delivering public services in local areas are open to appropriate, proper challenge and effective scrutiny by the democratically elected councillors for that area. We are also clear that local scrutiny must keep to those issues which affect local service delivery.
75. These proposals are not intended to add additional layers of bureaucratic process. On the contrary, they are intended to simplify the existing arrangements by removing certain limitations and restrictions that exist within the current legislative framework. Nor do we see these proposals leading to a free for all investigation of external bodies, or multiple requests for information from individual councillors. Many scrutiny committees will continue to operate as they do now; investigating issues of concern to local people as part of an agreed programme of work for the year and most of those issues are likely to relate to priorities already identified in the local area agreement. For those issues that do not, scrutiny committees would be able to use their enhanced powers in order to fully investigate on behalf of local people. In using their powers, scrutiny committees would be expected to consider the potential burdens of their requests on external bodies (in the same way as they will for LAA scrutiny under the current arrangements). This is an important issue, generally, but is more so when a body that will be scrutinised has a relationship with a number of individual councils. In these instances we would expect the individual councils to consider the impact of this 'many to one' situation in when and how they approach other bodies, for instance in issues of common interests joining up of requests with others. We will consider how best manage this issue In taking forward any proposals from this consultation.

<sup>19</sup> Estimated cost of public services delivered locally but not by local government in 2007-08 is based on a subjective analysis of Table 10.1 from Public Expenditure Statistical Analyses 2009, Cm 7630, published by HM Treasury.

### **Consultation questions**

***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?***

***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?***

***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?***

***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?***

***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?***

***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?***

***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?***

# Chapter 2

## Strong local government operating in the local interest

76. A critical question for this consultation is whether councils have the right powers to (a) address the challenges their communities face today and (b) to deliver improved and more efficient services for citizens.
77. This is particularly important given the introduction of entitlements as set out in *Building Britain's Future*. As local authorities start to respond, and as they become responsible for greater scrutiny and oversight, it is right that we ask whether they have the capacity they need to deliver for their local citizens.
78. The Government also wants to reduce bureaucracy and the burdens associated with inspection. This consultation considers how we can build upon the introduction of the new system of comprehensive area assessment.

### The challenge

79. Councils have a clear and direct mandate from local people to govern their areas. Councils, therefore, need to have the necessary power and responsibility to meet the legitimate expectations of local people. This is at the heart of strong local government.
80. There are three important issues under consideration here.
  - **First, do councils require strategic functions to meet the needs of local people?** If so, do they need additional powers to do so? For example, some authorities – or even groups of authorities – wish to have a more visible, active, and tangible role in dealing with climate change (this is addressed later in this consultation). There are likely, however, to be other similar areas where local authorities could play a bigger role.
  - **Second, are there barriers to councils exercising the powers they already have?**



- **Third, can we lighten the central Government inspection regime?** Government has already done much to free councils from unnecessary performance management. However, the introduction of entitlements and the effective use of scrutiny may allow councils to identify and resolve performance issues earlier, and therefore reduce the need for central government intervention. This is not to say that intervention will never happen. It is right that Government should intervene where there is critical or sustained underperformance, especially in the case of services that safeguard the most vulnerable. However the aim is for such underperformance to be rarer, and as a consequence for intervention to be limited to the most serious concerns.
81. These changes would need to be matched by growing public confidence in local authorities' ability to shape services or their area. As such, the continuing transfer of power depends on citizens' demonstrable and growing confidence in councils.
  82. Councils need governance models that readily deliver (a) strategic leadership, (b) sharp accountability, and (c) effective and efficient decision taking. It is recognised that this can be achieved through a range of models, including with a mayor. The Local Government and Public Involvement in Health Act 2007 builds on the experience of the 12 English local authorities who adopted directly elected mayoral forms of governance, and relaxed the procedure for changing council governance arrangements. Where a council wishes to move to the mayoral model it can either hold a referendum or, following consultation and the drawing up of proposals for change, to resolve to make the move to a directed elected mayor. Government believes this is the right approach for the current time.
  83. Government is looking at issues on councillor recognition and conduct separately and they do not form part of this consultation.

## The current picture

### Current levels of devolution

84. Since 1997 local authorities have gained significant powers, responsibilities and financial freedoms from central government. This has included the three year finance settlement, a new prudential borrowing regime, and powers to promote the economic, social, and environmental well-being of their area. Through Local Area Agreements (LAAs), councils work with their partners to target local priorities and meet local needs.
85. Local councils have also taken a direct leadership role in supporting their communities through difficult times. Many have been offering practical help to those experiencing trouble with debt or at risk of repossession; others have been supporting new apprenticeships or looking to create new jobs through the Future Jobs Fund.

86. Parliament has recently agreed to give a discretionary power for councils to raise and retain a supplement on the national business rate and to use those funds to support additional projects aimed at the economic development of their local area.
87. Following the Review of Council Housing Finance, the Minister for Housing has announced a consultation on plans to dismantle the housing revenue account subsidy system and replace it with a devolved system of responsibility and funding for local authorities – self-financing. This will allow local authorities to keep the receipts from the sale and rent of council homes to reinvest in new housing. We are also passing the leadership of over £0.5 billion of skills spending, dedicated to English for Speakers of Other Languages and informal adult learning is currently being passed from the Learning and Skills Council to local authorities.
88. The measures proposed in this consultation, together with recent reforms, represent the most substantial and radical transfer of power to councils for a generation.

### Entitlements

89. *Building Britain's Future* sets out the Government's programme for further reform of public services, based on moving from a system based primarily on targets and central direction to one where individuals have enforceable entitlements over the service they receive. Wherever they live, citizens will be able to have confidence that public services will deliver a certain level of service.
90. For local authorities, this will bring greater autonomy to decide how these entitlements will be met and generate greater freedom to innovate.
91. The Government's green paper on Rights and Responsibilities<sup>20</sup> recognises that a broad range of related entitlements are already embedded in UK legislation and reflected in the institutions which oversee their implementation. Many of these entitlements are enforceable, either because mechanisms to ensure their delivery (such as tribunals) are explicitly provided for in legislation or because they are susceptible to judicial review by the courts. Legally enforceable entitlements to a variety of social and economic welfare provisions are not a new concept in the UK. But in considering ways to set out new entitlements, including in relation to local government, there is a range of possible options which lie across a continuum. As explored in the green paper the options range from a set of legally enforceable provisions, to duties and responsibilities placed on public authorities, to statements of principle which would not be justiciable in the courts but would be enforceable through non legal means. Some of these issues are explored further in chapter 5 on clear relationships with local government.

<sup>20</sup> *Rights and responsibilities: delivering our constitutional framework*, Ministry of Justice, 2009

### Current powers

92. Councils already enjoy wide ranging powers – most significantly, the ‘well-being power’ introduced in the Local Government Act 2000, which gives councils a general power of first resort to promote and improve the economic, social and environmental well-being of their areas.
93. Councils have used this to adopt a number of innovations. One local authority has taken quick and effective action to purchase houses on an estate in rapid decline with anti-social behaviour and drug-related problems. A London borough used the well-being power to support involvement in a new form of partnership arrangement with the primary care trust, purchasing a holding in the company that will be the basis of future partnership arrangements. This has given the council an ongoing stake in the activities of the company, even though it involves interests beyond the council’s boundaries<sup>21</sup>.
94. However, evidence suggests that this power is not as widely used as it might be<sup>22</sup>, there is an on-going debate about the need for a general power of competence and a recent court case<sup>23</sup> has established that the well-being power is not available to enable councils to set up a mutual insurance company. These issues are addressed later in this chapter.

### Wide-ranging local government responsibilities

95. Through LAAs, councils and other local agencies are working in partnership to identify and focus their efforts on the things that matter most to local people and which will make the most difference to the quality of life in their area.
96. This focus on local need and ambition drives innovation in other areas. Partners are increasingly recognising the links between their work – for example, planning policy has been influenced by the recognition that a well-designed built environment can promote health and well-being and help develop sustainable communities, providing opportunities for people to build physical activity into their lives. Planning also helps ensure the provision of high-quality health and social care facilities.
97. A growing number of primary care trusts and local authorities are working closely together to deliver their commitments to health and social care in the local area. This has been encouraged by the joint approach to issues set out in the joint strategic needs assessment and includes pooling/aligning of budgets, joint appointments and shared oversight.

<sup>21</sup> See *Practical Use of the Well-Being Power*, Communities and Local Government 2008, for details of these and further examples

<sup>22</sup> The 2006 survey of English Local Strategic Partnerships (LSPs) found that 92 per cent of responding LSPs were aware of the well-being power and 19 per cent had considered using it, but only 8 per cent had actually done so.

<sup>23</sup> *Brent London Borough Council; Risk Management Partners Limited; London Authorities Mutual Limited & Harrow London Borough Council*: 2009 EWCA Civ 490

## Reducing bureaucracy and inspection

98. Effective performance is an important part of building trust between citizens and local government. Central government is committed to safeguarding citizens' interests whilst reducing the burden of bureaucracy and inspection. As a result, since 2003-04 we have reduced the cost of public service inspection by a third.
99. Government has improved and refined the system of inspection for councils and has agreed an improvement and efficiency strategy published jointly with the Local Government Association<sup>24</sup> which deals with the issue of when government should intervene. These reforms should further reduce inspection and bureaucracy for local councils. With these changes comes responsibility for councils to ensure that they exercise all their functions transparently, fairly, efficiently and in the best interests of the people they serve.
100. Through the new comprehensive area assessment (CAA), Government has committed to proportionate, integrated assessment of local public service. All councils will be assessed, but stronger performers can expect to be inspected less often. CAA will bring together assessments of performance across each local area and focus more on the delivery of outcomes, on citizens' experiences and perspectives, and on places and partnerships rather than just individual institutions. This new system will also be much more open and visible for citizens – for example, the inspectorates are developing a user friendly web-based reporting tool for their assessments which are due to be published by the end of the year.
101. The six inspectorates of local services are working together more closely than ever before. Inspectorates are working along 'Collect Once, Use Numerous Times' (COUNT) principles. And we are committed to further reducing the burden of inspection by making best use of local performance management arrangements and existing data to inform judgements, rather than requiring further evidence.
102. The effect of CAA will mean that inspection is targeted where it can have the greatest impact or where the risks of failure are most significant. Over time, we expect that other performance frameworks will become closely aligned with CAA so that it becomes the main assessment of public services. We will monitor progress to make sure that CAA brings the expected benefits.
103. Even in well run organisations, things will go wrong from time to time. When they do it is essential the council puts things right quickly and wrongs are righted. Elected councillors have a crucial part to play in ensuring this happens – that high standards are set and maintained and that services are responsive to the needs of their residents.
104. But in some cases specialist support will be needed from outside the authority. The improvement and efficiency strategy makes it clear that this support should come first from others working in local government.

105. Central government retains the ability to intervene where there is critical or sustained underperformance, for example where entitlements are not met. In such instances, the required action by government may range from: an improvement notice (issued by the appropriate Secretary of State); use of statutory powers to direct the organisation to take specific action to secure recovery or improvement; or in the most serious cases, the relevant Secretary of State may appoint a nominee to exercise certain specified functions of the authority.

## Future options

106. A strong, revitalised local democracy needs the appropriate powers and freedoms to drive forward results for local people. In addressing the challenges facing our country there are important questions about the nature of local government's role. This is given separate consideration in chapter 3 with relation to local authorities' role tackling climate change.

## Entitlements

107. *Building Britain's Future* advanced a new agenda for our public services and local government. It outlined how the next stage of public service reform will be characterised by moving from a system based primarily on targets and central direction to one where individuals and communities will have enforceable entitlements over the services they receive.

108. **The introduction of new entitlements will require public services to ensure that residents' rights to these are met. Local government will have a key role in ensuring these entitlements are delivered and the proposals for enhanced scrutiny in this document will help councillors deliver this.**

109. As entitlements to public services are introduced we shall review the possibility of reducing the number of LAA targets agreed with government. This builds on the recommendation in the Treasury's report on the Operational Efficiency Programme<sup>25</sup> and will give local areas and services greater autonomy in delivering improved outcomes. However, as the experience of LAAs has demonstrated, there is great value in important local needs and priorities being formally recognised between central government and local agencies. We will, therefore, consider how a reduction in LAA targets may work in practice, for example by being accompanied by proposals to ensure that public services in an area pledge to meet the most important priorities of their citizens.

## Formal powers

110. The well-being power is vital for local authorities to act in the interest of their local communities and we want to support local authorities to make use of it.

<sup>25</sup> *Operational Efficiency Programme*, HM Treasury, 2009

111. However, the recent court case on mutual insurance has dented confidence in the ability of councils to use this power to take forward complex arrangements.
112. Changing the well-being power or introducing another form of general power would not be certain to ensure local authorities could engage in mutual insurance arrangements.
113. **Government is not opposed to local authorities developing this and similar types of arrangement. Subject to this consultation we are therefore proposing to introduce, at the first legislative opportunity possible, a specific power to enable councils to engage in mutual insurance arrangements.**
114. We also ask whether there are other similar arrangements – beyond mutual insurance – which councils believe could be beneficial but which are potentially out of scope of existing powers. We will use the evidence gathered here to decide whether further action should be taken.

### Building confidence in councils

115. As established above, a continuing transfer of power needs to be clearly linked to citizens' demonstrable and growing confidence in councils. A key issue is therefore how councils can build confidence amongst local people in their ability to deliver for the area. This is important to begin to reverse the decline in confidence shown by recent surveys.
116. We are asking how that can best be achieved, including how central government can support local government in their efforts to rebuild declining confidence.

### Health and social care functions

117. There are already many strong links between local government and Primary Care Trusts, reflecting the importance of joint working in this area and reflecting the community leadership role of local government.
118. This can be seen in relation to:
- issues of public health – such as teenage pregnancy and obesity – where local government already plays a direct role
  - recognising the links between a good local environment, local service provision and general good health and
  - an increasing sense that local primary care health services play an important community role – whether supporting people back into work or enabling people to access broader ranges of advice and support beyond direct health intervention.

This is reflected in:

- the importance of health indicators in LAAs
  - government's further commitments to allow commissioning and provision for health to be locally led
- strengthening the overview and scrutiny function of local authorities so that they can make a pro-active contribution to local decision making across the NHS.
119. Many Primary Care Trusts and local authorities are already working together on joint appointments with the ambition to improve joint working between health and local government. Joint appointments are being explored in a number of local areas around: joint commissioning managers of children's services; joint heads for integrated commissioning for adult services; older people commissioners and mental health services.
120. Local authorities are also responsible for provision of social care for their communities. Again, there has been concern to ensure strong links between health, social care and wider services to enable high quality services for local people.
121. Within the current statutory framework, our approach is permissive not prescriptive. Our aim is to give local organisations the space to innovate, not to impose organisational change upon them. In the NHS we maintain there will be no top down reorganisation of Primary Care Trusts or Strategic Health Authorities. We believe that there are considerable benefits to be gained from developing further closer relationships between local authorities and Primary Care Trusts. We would support local initiatives to share staff and to further develop joint accountability and scrutiny arrangements.

### Ensuring effective integrated transport

122. The Local Transport Act 2008 allows cities and other places to make proposals to improve the way transport is planned and delivered in their area. Integrated Transport Authorities, with powers specifically tailored to the place in question, can then be created through secondary legislation. The Local Democracy, Economic Development and Construction Bill, currently before Parliament, would pave the way for a similar arrangement covering wider functions as well, such as like land-use planning and economic development.
123. The developments of scrutiny proposed in this document will support good local engagement within cities, as elsewhere. It will be important to ensure that whilst city-wide bodies are responsive to the needs of local communities, they act in the best interests of the city as a whole, as discussed later in this document.



124. However, there remain questions of what more can be done to ensure ITAs and councils support each other in developing effective transport for local communities and also whether ITAs, that cross council boundaries, have sufficient powers, incentives and levers to meet their ambition. These are issues that this consultation would welcome comment on.

### Reducing bureaucracy and inspection

125. The improvement and efficiency strategy<sup>26</sup> published jointly with the Local Government Association sets out the Government's approach to intervention. The principles set out in chapter 5 may offer scope to increase the weight to this established position, making it more explicit that local government should be free to exercise its functions in the interests of their citizens without unnecessary direction or control from central government or other agencies. This principle reflects the current Government position on intervention.

126. We will also discuss the results of the recent Local Government Association/Improvement and Development Agency consultation on sector-led support<sup>27</sup> to establish an agreed joint approach to tackling failure and underperformance, including the roles and responsibilities of elected councillors and ministers.

127. There is a powerful case for the next stage of development to be one where effective local scrutiny, coupled with entitlements, leads to reductions in the volume of central prescription and inspection. This will not be an immediate change, and relies on local government delivering on the use of powers and responsibility given, but responses to this consultation should bear this long-term ambition in mind.

### Partnerships

128. Strong local partnerships are needed to deliver the high quality public services that citizens expect and democratically elected leaders and councillors are getting involved in partnerships to good effect. The first assessments of the Audit Commission and other inspectorates under the comprehensive area assessment are looking at the delivery of outcomes delivered in partnership.

129. But we cannot take effective partnership working for granted. Effective partnerships generally share a number of strong characteristics that seek to actively empower and engage with their partners and communities. Research into Local Strategic Partnerships and Beacon councils has identified that partners need:

- informal as well as formal ways of working
- developed trust and understanding
- strong connections to the democratic processes

<sup>26</sup> *National Improvement and Efficiency Strategy*, Communities and Local Government/Local Government Association, 2008

<sup>27</sup> *Setting the Pace: Developing a framework for sector-led help*, Local Government Association/Improvement and Development Agency, 2009



- mechanisms for scrutiny and holding partners to account
  - to raise aspirations and are ambitious and challenging
  - to keep things simple
  - transparency on what partners contribute
  - space to innovate – to look for new solutions
- good information systems.
130. **Whilst much partnership working is useful and effective, we also need to ask whether all the partnerships are needed or whether they could be streamlined. We need to make sure that each is essential, with a clear purpose and remit, with easily understood responsibilities.**

### **Consultation questions**

- 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?**
- 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?**
- 11. Do you agree that greater powers should be premised on demonstration of local confidence? How should this be demonstrated? How can councils best reverse the decline in confidence?**
- 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?**
- 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?**

# Chapter 3

## Local authorities tackling climate change

131. Climate change is the greatest long-term threat facing the world today. The potential costs of climate change are huge, estimated as being up to 20 per cent of global Gross Domestic Product. Mitigating these effects will require decisive international, national and local action. So a critical question for this consultation is whether councils have the right powers and responsibilities to help address climate change.
132. This consultation invites views on proposals to give local authorities a greater role in tackling climate change perhaps through local carbon budgets or other mechanisms. This step change in local councils' broader strategic functions will not only support the future of our nation but has the potential to engage local citizens in action to fight climate change in a way that is meaningful for them.

### The challenge

133. As *Building Britain's Future* outlined there are a number of global and national challenges facing this country and local government has an important part to play in meeting these. One of the most pressing is climate change. The recent *UK Low Carbon Transition Plan* sets out how the UK will make the shift towards becoming a low carbon country<sup>28</sup>. We want to see councils increasingly active in reducing carbon, taking a key role in meeting UK carbon targets and adapting to the consequences of climate change.
134. Local authorities are already responsible for planning, building control, and management of waste. But they can also develop entirely new roles and services. We want the decisions that local authorities make in this area, and their performance, to drive for local engagement and renewal.

### The current picture

135. Almost all (97%) of Local Strategic Partnerships chose to include one of the three carbon indicators in their Local Area Agreements (LAAs), and a significant number also chose the adapting to climate change indicator for their LAA. This demonstrates the commitment that exists in local areas for tackling new challenges beyond their traditional remit. But using the direct mandate they have from local people to lead and inspire local responses to issues like climate change is exactly what strong local government should be doing.

<sup>28</sup> *The UK Low Carbon Transition Plan*, HM Government, 2009

### Climate change at a local level

To tackle climate change, Government has committed to reducing carbon emissions by at least 80 per cent by 2050, and to set and meet carbon budgets to keep us on track. This will mean huge changes in the way that we generate and use energy in every form, at home, at work, and at leisure, how we travel, and how land is managed.

As a society, we will face choices about how to make the changes that we need. Some choices will be best made nationally. But many will be better made – or can only be made – locally. Often decisions made nationally – such as on energy policy – will have profound effects at a local level or can only be delivered by local bodies and with the consent they can build.

In setting out its carbon budgets, and policies and proposals to meet them, the Government is presenting a national routemap for the changes we need to make. For this to take root, it will need to be driven in every community across the country. We believe that people should increasingly be able to look to their local authority not only to provide established services, but also to co-ordinate, tailor and drive the development of a low carbon economy in their area, and in a way that suits their preferences. The consent built through a strong and vibrant local debate of the choices we face will be essential to make the change a success. And in setting out their ambitions for carbon, where there are clear local plans with local support, the Government would support the goal of going beyond national targets on carbon.

## Future options

136. The fact that almost all local authorities have included carbon indicators in their LAAs demonstrates local government's commitment to help fight climate change. Innovative authorities are leading and inspiring local responses, including Kirklees, Southampton, Woking, Barnsley, Barking & Dagenham, Reigate & Banstead. The Carbon Reduction Commitment, which we are introducing next year, will provide a further incentive to action.
137. There is scope for councils, working with their partners including the third sector, to go further. This would build on – but not be limited to – their existing responsibilities for planning, transport, building control, and management of waste. The decisions that local authorities make in this area, and measures of their performance, should:
- make it easier for individuals to judge the choices that their local authority is making – both on the extent and nature of their actions – and whether that meets their expectations and preferences, reinforcing local accountability

- encourage the development of locally tailored responses and innovation to deliver the changes needed in a way that commands local support and
- ensure fairness between areas, but supporting those who take an active approach.

138. Government has now set out its proposals for managing carbon budgets at the national level. We will explore the role that local government could take in meeting the UK carbon budgets, and how this might work at a local level. There is already a strong tradition of cooperative working between national and local government on fighting climate change. This includes reviewing the operation of the climate change planning policy statement, building carbon into the ‘single conversation’ that the Homes and Communities Agency conducts, and encouraging schemes that bring together initiatives at the local level.

139. There is also an economic role for local authorities in ensuring that communities benefit from low carbon economic development, working with Regional Development Agencies and others. Where relevant, this will include playing a key part in the establishment and successful operation of low carbon economic areas as announced in the *Low Carbon Industrial Strategy*<sup>29</sup>.

140. Such new roles and new activity could have profound effects – changing our expectations of what local government is and what it does for people. To unlock this potential, we must carefully consider what powers and resources local government needs, and the conditions under which they can be exercised.

141. Set out below are the issues which need to be addressed and possible ways in which these might be taken forward.<sup>30</sup> Views are sought on these, which will then be used to shape specific policy options, in partnership with the sector. These are:

- The role of local authorities in coordinating funding streams to support low carbon activity in local areas. This might include working with energy suppliers on targeting work to improve energy efficiency, and to make best use of new support for renewable electricity and heat. We will consider the case for greater local influence over the supplier obligation.
- Supporting authorities who wish to offer innovative financing for energy efficiency and renewable energy, and perhaps even green mortgages. Authorities should be able to play a full role in developing local energy markets, acting as investor where they wish to.
- Empowering authorities to deliver cost effective and publicly supported infrastructure plans. We will examine the degree of public support that would be needed to establish the case for such schemes. Local authorities may also need the ability to require existing, as well as new, developments to connect to heating schemes.

<sup>29</sup> *The UK Low Carbon Industrial Strategy*, HM Government, 2009

<sup>30</sup> Government will ensure that any schemes which fall within the definition of business support are Solutions for Business compliant

- Encouraging authorities to consider using their new powers under the Business Rates Supplements Act 2009 to raise funds to support emissions reductions projects, provided the link to economic development can be established.
  - Encouraging authorities, using existing powers, to ensure minimum energy efficiency standards for housing. Following the Rugg Review, we are consulting on proposals for a national register of private landlords to increase the professionalisation of the sector and help improve the quality of the worst stock especially where category 1 hazards under the Health and Safety Rating System are found. The register may also be a valuable tool in making landlords more aware of the reasons to improve the energy performance of their properties, and measures which are available to help them.
  - Moving planning authorities forward in their thinking about how to tackle climate change, and to encourage more community engagement to develop locally owned low carbon energy solutions. The Climate Change Planning Policy Statement sets out how planning should contribute to reducing emissions and stabilising climate change. Much has changed since this was published in 2007 and planning authorities and other stakeholders have an opportunity to shape a new Planning Policy Statement to deliver innovative approaches to low carbon communities.
- Helping, and challenging local authorities make the contribution we are asking from them in delivering the low carbon transport strategy, including supporting a shift to new technologies and promoting lower carbon transport.
142. We will examine how a range of possible incentives might be used to reward areas that make progress, and explore the case for developing mechanisms that will allow local authorities wishing to make faster progress than our national plans can do so, with support from less ambitious authorities. Some authorities have experimented with voluntary carbon trading, as part of a Local Government Information Unit research project looking forward to the introduction next year of the carbon reduction commitment. We are interested in learning from these authorities' experience, in particular identifying what we can draw on to support the ideas we have set out here.
143. **Some authorities may choose to put their efforts into a broad spread of activities; others may want to focus on more narrowly defined schemes. The common thread is that new freedoms and responsibilities will be delegated to councils which put in place plans that add value to our national policy, and that command local support.**
144. Not all local authorities will have the capacity to be at the forefront of this issue or wish to pursue these opportunities. The aim is to support and encourage those who do, and to unlock the local potential and positive intent we know is there.

### **Consultation questions**

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

# Chapter 4

## Sub-regional working

145. Many local authorities have come together to form partnerships across city-regions and other kinds of sub-region. Some of these partnerships have entered into Multi-Area Agreements with central government and other partners, and the Government has also announced two city-region pilots. We know that this joint working is the right way to drive forward the economies of local areas.
146. As sub-regional structures grow in power and influence, it is important that greater power is matched by clear, democratic and accountable leadership. The form of democratic accountability that should exist will need to be considered as partnerships move forward and this chapter sets out the issues and options to be considered.

### The challenge

147. People rightly expect councils to be the centre of decision making for their local area. However the challenges that they face often do not fit neatly into current administrative boundaries. Councils increasingly need to work together to tackle difficult issues and improve outcomes for citizens. This is particularly the case on economic challenges, as the area across which local economies function is often significantly larger than the area covered by any one local authority. Councils and other agencies have started to come together in voluntary partnerships to drive economic growth in their areas and to take joint decisions about important issues such as housing, regeneration, employment and skills.
148. The Government believes that joint working between authorities is the best way to deliver improvements in economic outcomes and has been encouraging councils to cooperate more closely through mechanisms such as Multi-Area Agreements (MAAs). This has led to a growth in sub-regional working to address issues which cross council boundaries but are not so large as to need a regional approach.
149. As these partnerships of authorities have developed it has become more difficult for citizens to understand who is doing what on their behalf. It is vital that local people and organisations understand how these partnerships work, and how they can influence what takes place at this higher level.

150. **We want to ensure that existing and planned mechanisms for joint working between authorities at the sub-regional or city-regional level are as accessible, transparent and accountable as possible.**
151. We also want to look ahead to the longer term. In *Building Britain's Future*, the Government committed to a debate about the powers that should be devolved to the city-regional level. If city- and sub-regional structures are to assume greater responsibilities, it is all the more critical that they are fully accountable to local residents.
152. The acid tests for ensuring the accountability of mechanisms for city- and sub-regional working have to be:
- Are citizens clear about how those arrangements work and what they do?
  - Do people know who is making the decisions?
- How can citizens hold them to account through the local democratic process – and what does this mean for getting the right form of democratic accountability at that level?

## The current picture

### Multi-Area Agreements

153. MAAs are voluntary agreements between a group of local authorities, other local partners and the Government to deliver particular improvements for an area. MAAs derive their democratic legitimacy and political accountability from both the local and national level as they are agreed through negotiations between a partnership of local authorities and central government. They also have specific local accountability arrangements, tailored to individual partnerships – for example, joint governing boards made up of local authority leaders with delegated authority to oversee partnership activity.



### MAAs and city-region pilots

There are currently ten multi-area agreements (MAAs) with a further six agreements in prospect. When these agreements are signed, MAA partnerships will cover 70 top-tier authorities and 37 per cent of the English population.

Common themes across most MAAs are employment, skills, transport and housing. Beyond the powers already available to the member local authorities, MAA partnerships do not have formal powers. However, the Government has agreed through MAAs to provide certain freedoms and flexibilities to partnerships to help them accelerate local growth and improve services to the public.

The Local Democracy, Economic Development and Construction (LDEDC) Bill will give groups of authorities the option of creating an MAA with statutory duties. This will mean that authorities and their partners will be under a formal duty to co-operate in agreeing and delivering the MAA's targets, and places such MAAs on a similar statutory footing to LAAs. However, creating an MAA with duties will not in and of itself lead to greater powers or flexibilities.

Two of the existing MAA partnerships – Greater Manchester and Leeds City Region – have been announced as City Region pilots. They will benefit from increased flexibilities than those currently available to MAAs, including the stronger integration of planning, housing, transport, regeneration, employment and skills programmes, which are intended to increase their ability to drive sustainable growth.

### Formal sub-regional structures

154. Other, more formal, sub-regional structures are available to groups of local authorities to help them address specific issues. These include joint waste authorities and integrated transport authorities.
155. Further sub-regional structures are planned to allow for formal joint working between authorities on economic development and regeneration. These new structures will be known as 'Economic Prosperity Boards' (EPBs). Our intention is to also allow councils to create 'combined authorities', so that the economic development and regeneration functions of an Economic Prosperity Board can be brought together with the transport functions of Integrated Transport Authorities into a single body. These developments take the MAA approach further by allowing those local authorities who wish to, to create legally recognised, corporate bodies that can take on economic development responsibilities across their combined area.

156. All of these existing and planned sub-regional structures derive democratic legitimacy through elected councillors from their member local authorities controlling their activities.

### Regional developments

157. The Local Democracy Economic Development and Construction Bill provides for the establishment in each region of a Leaders' Board, made up of local authority leaders from the region, which will work in partnership with the Regional Development Agency to prepare a regional strategy. Local authorities in each region will need to prepare a scheme for the establishment and operation of a Leaders' Board. Before approving a scheme, the Secretary of State will need to be satisfied that the scheme adequately addresses a number of issues. These include how the Leaders' Board will be held to account by local authorities, how it will be representative of all significant political parties and how it will engage with the Regional Development Agency, in particular the process by which joint decisions will be made. The planned guidance on Leaders' Boards will cover these issues and set out how the Secretary of State will take them into account in approving the schemes put forward by the local authorities.

### Accountability

158. There are various mechanisms in place or planned for holding these formal sub-regional bodies, referred to above, to account and to allow local people to get involved in their activities. These include:

- a planned requirement on new structures for their board and committee meetings to be open to the public, and papers and minutes available for inspection, as is already the case for existing structures
- an intention for the 'duty to involve' to apply to Integrated Transport Authorities, Economic Prosperity Boards and combined authorities, meaning that they will need to take steps to ensure local people are consulted and can get involved
- a planned requirement on principal local authorities to promote understanding of their sub-regional arrangements, including any formal structures that they are engaged in
- an intention to enable local authorities to establish joint overview and scrutiny arrangements to allow them to examine any matter that is of relevance to the area. Authorities could use this mechanism to establish a committee that would be able to scrutinise the activity of local authorities working together at the sub-regional level

## Future options

159. Good progress has been made in developing mechanisms for joint working between local authorities. This is delivering valuable results for local people by ensuring that councils and other key organisations in an area are working towards common goals.
160. Over the long term, we want to see an even stronger role, with greater responsibility, for city- and sub-regional level working as this provides the best fit for real local economies. Given this, it is the right time to look at how the accountability and the transparency of these structures can be strengthened, so that any greater powers for the sub-regional tier go hand-in-hand with strengthened accountability.
161. In the first instance there is a strong case for strengthening existing and planned structures through:
- requiring the activity of sub-regional partnerships to be subject to scrutiny arrangements
  - enabling joint overview and scrutiny committees to require sub-regional structures, and their partners, to provide them with a broader range of information and to consider their recommendations on sub-regional matters and
  - applying a duty to respond to petitions to apply to Integrated Transport Authorities, Economic Prosperity Boards and combined authorities<sup>31</sup>.
162. These options would give individual councils greater ability to hold sub-regional structures to account, on behalf of local citizens. Applying a duty to respond to petitions would also make these structures more directly responsive to citizens.
163. This raises the question of whether sub-regional structures are sufficiently visible and accountable to citizens. If they are to be granted significant powers and responsibilities, it is vital that local people are able to understand and be involved in the arrangements that are in place to manage activity and make decisions at this level.
164. Any new proposals will need to fit with the ideas set out in the first chapter of this consultation of local residents understanding of where they can hold local services in an area to account. We also wish to raise the question of whether citizens should be more directly involved in electing representatives to structures at this level, if significant additional powers, as was the case with London, are to be granted. Any reforms in this area would of course require public support. Whilst the government's policy on mayoral governance at local authority level remains as outlined early in chapter 2, we are interested to hear views on other possible options including:

<sup>31</sup> Using powers under clause 20 of Local Democracy Economic Development and Construction Bill

- establishing ‘city-region leaders’ – existing sub-regional partnerships could elect, from among their members, a single leader who would be a figurehead for the partnership. This would not lead to more powers but would provide greater visibility for the work of the partnership to citizens
- creating new sub-regional local authorities – rather than current and planned sub-regional bodies, which are limited to specific issues such as economic development and transport, new sub-regional local authorities could be established with a much wider range of powers. Any direct elections to these authorities would lead to greater engagement with the sub-regional level but there would need to be a clear division of responsibilities between the new and existing tiers, and scrutiny could be complex
- mayors for city- and sub-regions – executive mayors with powers over strategic issues could be created for city- or other sub-regional areas and be directly elected by the population. This would provide strong accountability but there would again need to be a clear division of responsibilities. The role of existing local authorities would be reduced, although they could scrutinise the activity of the mayor
- a combination of a directly elected executive mayor and directly elected sub-regional scrutiny body – this is similar to the model of the mayor and assembly established in London. The mayor would have executive power, potentially over a wide range of issues, and would be held to account by a body of people directly elected by citizens for that purpose.

**Consultation questions:**

- 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?**
- 19. Should the duty to respond to petitions be extended to sub-regional bodies?**
- 20. Do current and planned models for joint working give people a clear enough voice in decisions that are made sub-regionally?**
- 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?**
- 22. Should we give more powers and responsibilities to city- and sub-regions? If so, what powers or responsibilities should be made available?**
- 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?**

# Chapter 5

## Clear relationships with local government

165. This section explores whether we can – and should – find a way of better articulating the relationship between central and local government to support the aims of stronger local democracy and stronger local government.
166. This would clearly demonstrate the degree of power, and therefore responsibility, that local councils have to act on the behalf of their local citizens. It will also help show where accountability does – and should continue to – lie with central government.
167. The key proposals cover consideration of a series of principles on which central-local relations should operate as a framework for future policy; and possible mechanisms to support such principles such as a Parliamentary select committee or ombudsman style arrangement.

### The challenge

168. Citizens are entitled to clarity about what their council can do for them and about how they themselves can be involved in their council's affairs. They also need to know when and how central government influences those affairs and intervenes in such services. The quality and clarity of relationships between central government, local government, and citizens is at the heart of any well-functioning local democracy.
169. Every council has its own legitimacy derived from election by its citizens. That direct mandate is the reason why councils need clear space to operate in, respected by central government and its agencies. To serve our citizens best, the relationship between central and local government should be one of trust, challenge and meaningful engagement. Our challenge now is to look at this relationship, and consider whether we would work together better if we did so within a more formal framework.

## Current picture

170. The tradition of democratic local government is long standing in our country, extending back to the mid 19th century and to a limited extent far earlier. It has underpinned a succession of Local Government Acts and other legislation.
171. This Government has consistently recognised the need to give proper acknowledgement to local government and has supported councils in becoming more effective, efficient and responsive leaders of their communities. In 1998, the Government ratified the European Charter on local self government, which sets out certain standards and principles that are essential to any well-functioning system of democratic local government. These have been accepted by 44 member states of the Council of Europe. This gave public and formal recognition to the role of local government.
172. Current legislation is fully compliant with those standards and principles. The way in which we engage with local government and the initiatives we have developed are informed by our recognition of councils independent legitimacy.
173. To promote this relationship further, in 1998 we worked with the Local Government Association to establish the central-local partnership as a means for on-going dialogue between representatives of central and local government. In December 2007, this was further strengthened by the signing of the *Central-Local Concordat*<sup>32</sup>, following the *Governance of Britain* green paper published in 2007. This set out, for the first time, an agreed framework for how central and local government should work together to serve the public. This represented an important milestone in central-local relations and has also laid the foundations for continuing consideration of how best to make it clear for citizens – as well as institutions – the role and the rights and responsibilities of local government in relation to their communities and in relation to central government.
174. The discussion of how best to articulate and regulate the relationship between central and local government, in order to enhance local democracy and strengthen local government, can also be seen in the context of good administration and good governance, as explored in the Government's green paper on *Rights and Responsibilities*.<sup>33</sup>

<sup>32</sup> <http://www.communities.gov.uk/publications/localgovernment/centrallocalconcordat>

<sup>33</sup> *Rights and responsibilities: delivering our constitutional framework*, Ministry of Justice, 2009

## Future options

175. There is a rich debate about how best to frame central and local relations. This was set out recently in the Communities and Local Government Select Committee's report the balance of power. This raised the issue of a constitutional settlement to provide a stable framework in which local government can operate. The report also raised the question of a greater role for Parliamentary scrutiny of central-local relations. This issue has greater resonance in the context of the proposed written Constitution for the UK. The Government are now seeking views on whether principles underpinning the role of local government should be formally articulated, and, if so, what form they should take, and how best to ensure the accountability of other central and local government for their commitment in practice to such principles.
176. A set of principles designed to articulate the most effective role of local government as argued in this consultation document might take the form set out below. These principles are designed with a focus on local government but they also establish core aspects of the relationship with central government and – crucially – with citizens:
- A local government comprises councils, composed of members democratically elected by the citizens of a local area, and having powers and duties which Parliament grants, including the power to promote and improve the economic, social and environmental well-being of citizens in their area
  - B local government enables democratic local decision making and action by, and on behalf of, communities
  - C local government should be free to exercise its functions in the interests of their citizens without unnecessary direction or control from central government or other agencies, while recognising that central government should intervene where there is critical or sustained underperformance
  - D local government must exercise its functions fairly and openly, and to seek to ensure that all local citizens are aware of their rights and responsibilities in relation to those functions
  - E local government must seek to ensure that people are informed about what the council is doing, and can participate in the affairs of councils, both in accordance with electoral law through local elections, and through a wide range of formal and informal other means; these might include local polls, referendums, the 'councillor call for action', petitions, neighbourhood engagement, community planning, consultations, public meetings and engaging with their local councillor
  - F all those participating in local public life should act in accordance with the *Seven Principles of Public Life* promulgated by the Committee on Standards in Public Life, and in line with accepted standards of financial management and efficiency. Those elected as members of councils have the responsibility to maintain the trust of their electorate and to act in accordance with their council's statutory *Code of Conduct for Members*



- G local government should have the powers and the responsibility to provide leadership for its area, being responsive to its communities and having an understanding of their needs and priorities, so as to develop in partnership with local public sector partners, business, and third sectors a vision for the prosperity and well-being of the area which they will work together to deliver
- H local government should exercise a challenge role in relation to the services provided for its citizens by other local and regional public service providers

177. Government complies already with these principles, however, there may be advantages to adopting these principles more formally. A government commitment to the principles would give them weight and significance in any case, but there is an important question of whether we could go further and put them in legislation. This would create new requirements and obligations on all parties concerned – every council as well as central government. Legislation would of course be subject to Parliament in the normal way.

178. The downside of this approach is that principles made in legislation could prove inflexible and limit the room for manoeuvre by councils and government in the future. For this reason this consultation is not proposing such an approach, but is seeking views on a more flexible approach which would still provide robust oversight arrangements to secure compliance with the principles. **We propose an ombudsman style arrangement and, at a national level, if Parliament were to consent, a joint select committee of both Houses of Parliament as recently recommended by the Communities and Local Government Select Committee.**

- The Local Government’s Ombudsman role in terms of redress allows citizens to raise their concerns with an independent arbiter directly if they are unhappy with a local authority service. An ombudsman style arrangement could operate on a similar basis to cover the principles set out above. This would mean that individual citizens would be able to raise issues and concerns about their breach, rather than limiting the relevance of the principles to central and local government. It would be the case that recommendations from such a body would be non-binding as is the position for the Local Government’s Ombudsman.
- A joint Parliamentary select committee could scrutinise broad adherence to the principles and make strategic recommendations for future policy. There is a strong case for a Parliamentary select committee of both Houses as set out by the Communities and Local Government Select Committee in their report on the balance of power. We do not envisage that such a committee, were it to be established, would scrutinise the position in individual local authorities. Of course, if the consultation supported the introduction of a committee on these lines, it would be a matter for Parliament to decide.

**Consultation questions:**

- 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?**
- 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?**

# Chapter 6

## Consultation arrangements

### About this consultation

179. This consultation document and consultation process have been planned to adhere to the *Code of Practice on Consultation* issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:
1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
  2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
  3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
  4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
  5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
  6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
  7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.
180. Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.
181. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

182. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.
183. The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
184. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.
185. Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact

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## Summary of consultation questions

### 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?
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 from local government?

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?
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?
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?
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?

## **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?
9. Should councils have a power to engage in mutual insurance arrangements?
10. Are there other powers need to cover engagement in further complex arrangements of a possibly speculative nature outside of existing powers?
11. Do you agree that greater powers should be premised on demonstration of local confidence? How should this be demonstrated? How can councils best reverse the decline in confidence?
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?
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?

## **CHAPTER 3: LOCAL AUTHORITIES TACKLING CLIMATE CHANGE**

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?

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

#### **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?
19. Should the duty to respond to petitions be extended to sub-regional bodies?
20. Do current and planned models for joint working give people a clear enough voice in decisions that are made sub-regionally?
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?
22. Should we give more powers and responsibilities to city- and sub-regions? If so, what powers or responsibilities should be made available?
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?

#### **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?
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?

# Annex A

## Local government scrutiny committee powers

Current powers	Potential future powers
<p>Information can be required from:</p> <ul style="list-style-type: none"> <li>● officers of the council</li> <li>● members of the council executive</li> <li>● local NHS bodies in relation to planning, provision and operation of health services in the area</li> <li>● police forces, Police authorities, fire and rescue authorities, probation authorities and parish councils in relation to crime and disorder functions</li> <li>● LAA partner authorities where the information relates to an LAA target that the partner authority has signed up to (pending regulations)*</li> </ul>	<p>Enabling scrutiny committees to use their powers to require LAA partner authorities to provide information on issues not directly related to LAA targets**</p> <p>and</p> <p>Extend the power to require information from a wider range of authorities and bodies that carry out public services locally, for example to utility companies, and to sub-regional partnerships.</p>
<p>Attendance before the scrutiny committee can be required from:</p> <ul style="list-style-type: none"> <li>● members of the council executive</li> <li>● officers of the council</li> <li>● officers of local NHS bodies</li> <li>● officers or employees of police forces, police authorities, fire and rescue authorities, probation authorities and parish councils in relation to crime and disorder functions</li> </ul>	<p>Extend the power to require attendance to a wider range of authorities and bodies carrying out public services locally and to sub-regional partnerships.</p>

Current powers	Potential future powers
<p>Reports and recommendations can be made to:</p> <ul style="list-style-type: none"> <li>● the council</li> <li>● local NHS bodies and their relevant council</li> <li>● police forces, police authorities, fire and rescue authorities, probation authorities and parish councils</li> <li>● reports and recommendations can be copied to LAA partner authorities</li> </ul> <p>The current arrangements on receipt of scrutiny reports and recommendations vary. For example, LAA partners are required to 'have regard' to recommendations, but not required to respond formally, unlike the council, local NHS bodies or police forces etc.</p>	<p>Extend the power for scrutiny committees to make reports and recommendations to a wider range of authorities and bodies carrying out public services locally and to sub-regional partnerships.</p> <p>Extend the current arrangements to require a wider range of authorities and bodies carrying out public services locally to consider and formally respond to scrutiny reports and recommendations and to sub-regional partnerships.</p>

\* Appropriate measures will be put in place, to ensure the protection of sensitive information, if these proposals on information provision are to be taken forward.

\*\* The duty to co-operate in regard to LAAs applies to: unitary and county authorities, district authorities, Environment Agency, Natural England, fire and rescue authorities, JobCentre Plus, Health and Safety Executive, Broads Authority, national park authorities, youth offending teams, police authorities, probation trusts and other providers of probation services, Transport for London Chief Officer of Police, joint waste authorities, primary care trusts, NHS trusts, NHS foundation trusts, regional development agencies, Learning and Skills Council, Sport England, English Heritage, Arts Council, Museum and Libraries Archives Council, Highways Agency, metropolitan passenger transport authorities, Homes and Communities Agency, any other organisations added by an order under section 104(7) of the Local Government and Public Involvement in Health Act 2007.





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