

## REPORT OF THE DIRECTOR OF GOVERNANCE

EAST KENT (JOINT SCRUTINY) COMMITTEE – 12 OCTOBER 2011

**REVIEW OF FUNCTION AND ROLE OF EAST KENT (JOINT SCRUTINY) COMMITTEE****Recommendation**

*That it be recommended to the East Kent (Joint Scrutiny) Committee:*

- (1) That an annual report be prepared by the host authority for consideration by the Committee at the last meeting of each municipal year detailing topics received, reviews undertaken, reports and recommendations made and those accepted, performance analysis and any other relevant information.*
- (2) That a standing item for the receipt of referrals from local scrutiny committees be added to the agenda.*
- (3) That the proposed annual budget for 2012/13 be provisionally set at zero, subject to review during the course of the municipal year 2011/12.*
- (4) To consider whether there is any benefit in holding an annual informal meeting between the Chairman of EKJSC and Chairmen from a scrutiny committee at each authority represented on EKJSC.*
- (5) That it be recommended to the East Kent (Joint Arrangements) Committee:*
  - (a) That a protocol be developed with East Kent Services, East Kent Housing and East Kent Human Resources Partnership to ensure that appropriate officers are made available on request to attend meetings of the East Kent (Joint Arrangements) Committee and East Kent (Joint Scrutiny) Committee.*
  - (b) That a Red, Amber and Green ('RAG style') performance report based on a selection of key indicators for East Kent Services, East Kent Housing and the East Kent Human Resources Partnership be submitted to the East Kent (Joint Arrangements) Committee and the East Kent (Joint Scrutiny) Committee on a six month basis.*
  - (c) That where a shared service has a 'red' indicator on the Performance Report, an officer representing that shared service attend the meetings of the East Kent (Joint Arrangements) Committee and the East Kent (Joint Scrutiny) Committee to provide an explanation of why the 'red' indicator had occurred and what steps were being taken to restore the indicator to a 'green' status.*
  - (d) That EKJAC recommend to each authority that the Operating Arrangements for the East Kent (Joint Scrutiny) Committee be amended in keeping with the Review of Administrative Arrangements for the East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee as follows:*

- (i) *To add "11.1 Where two or more parties have an equality of votes the chairman may have a second or casting vote unless his or her council is not participating in the shared services concerned."*
- (ii) *To add "11.3 Where two or more parties have resolved to delegate the relevant functions to EKJAC then:*
  - (A) *The service will thereafter be a shared service only in relation to those parties and*
  - (B) *Those parties alone will have voting rights at the EKJSC in relation to further decisions as to how that shared service is jointly managed provided or procured.*
  - (C) *The parties that did not delegate that shared service will not have voting rights in relation to that shared service until or unless they do delegate such service at some future date.*
- (e) *That a process of pre-decision scrutiny be adopted where it is appropriate to do so.*
- (f) *That in the event of EKJAC being willing to accept these recommendations in whole or part, it be requested to report back to EKJSC with a timescale for the implementation of the agreed recommendations.*

Contact Officer: Rebecca Brough (Dover District Council), extension 2304.

#### Reasons why a decision is required

1. The East Kent (Joint Scrutiny) Committee at its meeting held on 22 March 2011 requested that a report be brought to a future meeting on the role and function of the Committee following the establishment of East Kent Services and East Kent Housing. This report reviews the arrangements to date and sets out the possible options available to the Committee.

#### Options available to the Committee with assessment of preferred option

2. Option 1 – To approve the recommendations as set out above. This is the recommended option as it attempts to take steps to resolve areas of concern raised by Members at previous meetings.
3. Option 2 – To amend the recommendations set out above.
4. Option 2 – To reject the recommendations set out above. This is not recommended as it does not tackle the areas of concern raised by Members at previous meetings.

## Information to be considered in taking the decision

### **Introduction**

5. In 2008 the four East Kent District councils and Kent County Council established two joint committees for the purpose of making decisions relating to shared services (the East Kent (Joint Arrangements) Committee and the scrutinising of those decisions the East Kent (Joint Scrutiny) Committee).
6. These two committees have so far overseen the establishment of East Kent Services (EKS), East Kent Housing (EKH) and the East Kent Human Resources Partnership (EKHRP).

### **Governance Framework**

#### (a) East Kent (Joint Arrangements) Committee

7. The EKJAC was established by both the Council and Executive (Cabinet) of each authority as it exercises both executive and non-executive powers. Once two or more authorities decide to put a function into a shared service arrangement, following a business case being agreed, the function is delegated from the individual authorities to the shared body and the management of the service will be within the remit of EKJAC.
8. It is important to emphasise the implications of delegating a function to a shared service body. The report from the five authorities that established EKJAC and EKJSC stated that:

*"It is fundamental to this arrangement that once a service becomes a 'shared service', control and management of that service will be passed from the [individual] council to EKJAC and, within the prescribed delegation limits, EKJAC (on which councillors who are not members of [your] Council will sit), will fulfil the functions delegated. This "loss of sovereignty" is a concept that should be fully appreciated."*

9. An individual authority may still withdraw from a shared service, most likely when a particular contract expires or a natural break point arises. The remit of EKJAC is limited to those services/functions which have been delegated to it and the decision to enter into or exit from a joint service rests with each individual authority.

#### (b) East Kent (Joint Scrutiny) Committee

10. The second joint committee, the EKJSC was established under Sections 101 and 102 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 for the purpose of acting as a single scrutiny committee for the monitoring, review and scrutiny of the EKJAC. However, it should be stated for clarity that the EKJSC is not a scrutiny committee in the sense of such committees operated by the District and County Council but rather a committee exercising scrutiny like functions. Once again, the report that established EKJAC and EKJSC made this point clear

*"The law does not contemplate joint scrutiny committees between authorities except in specific circumstances (such as health or local area agreements). In the circumstances here, it is proposed that a*

*joint committee be created whose terms of reference have scrutiny type functions."*

11. The implications of being a committee exercising scrutiny-like functions is that nothing in the operating agreement for the EKJSC abrogates any powers held by individual District scrutiny committees to scrutinise or call-in the decisions of their own executive, including those taken by executive members sitting on EKJAC. While this power is statutory the intention is that it voluntarily not be used and that scrutiny and call-in of EKJAC decisions be undertaken through EKJSC.
12. The terms of reference for EKJSC are as follows:
  - (i) Make recommendations for reconsideration of any decisions made or actions taken and to make recommendations for improvement and/or changes in responsibilities and functions of the EKJAC.
  - (ii) Prepare reports and recommendations to the parties on the performance and delivery of the shared services provided by the EKJAC.
  - (iii) Propose an annual budget for the EKJSC in accordance with the requirements of the parties.
  - (iv) Prepare an annual report to the parties on the performance of these arrangements.
  - (v) Facilitate the exchange of information about the work of the EKJSC and to share information and outcomes from reviews.

#### **Assessment of EKJSC since 2008**

13. It is important to consider the effectiveness of EKJSC in the environment it operated in. The first two years (2008/09 and 2009/10) of operation of EKJAC and EKJSC were primarily concerned with the development of business cases/service level agreements for the first tranche of shared services. At this stage Members were provided regular reports and regular access to chief officers as the shared services agenda developed, although for many District Councils the emphasis on scrutiny of shared services remained at a local level.
14. A Review of Administrative Arrangements for the EKJAC and the EKJSC was undertaken in 2009 by Mr D Bradbury (former Chief Executive of Shrewsbury and Atcham Borough Council) on behalf of the constituent authorities and this led to the report of the Head of Legal and Democratic Services (Canterbury) that was considered by EKJSC at its meeting held on 30 June 2010. The Committee expressed its support for the reports recommendations, which were broadly around procedural and administrative reforms, in relation to EKJSC (Minute No 33), although the recommendations have yet to be adopted by the constituent authorities.
15. The initial pace of development changed for the most recent municipal year (2010/11) during the pause between the agreement as to the first tranche of shared services at the end of 2009/10 and the services going 'live' at the end of the 2010/11 municipal year. During this transitional phase the Committee questioned its role and how it added benefit to the shared working agenda.
16. At the meeting of the East Kent (Joint Scrutiny) Committee (EKJSC) held on 22 March 2011, Members concluded that the Committee "added value and had a role

to play in respect of future shared services and partnership working". Despite this however, Members did express concern that there needed to be improvements in several areas and in particular relating to the attendance by officers at meetings of EKJSC, a lack of detailed information in reports and the perceived lack of power to be effective.

### **Suggested Approach for 2011/12**

17. For the municipal year 2011/12, the Committee now finds itself in the position of having to engage with the new shared services framework as established intra-authority decision-making frameworks are replaced by new inter-authority frameworks. The key challenge for this municipal year will be for EKJSC establish a meaningful and effective role in this new landscape beyond that of duplicating work undertaken by local scrutiny committees or it risks becoming a 'talking shop'.

#### **(a) Attendance by Officers**

18. Unlike District scrutiny committees which have the power to require attendance by members of the executive and chief officers, the EKJSC may only request officers' attendance through the Chief Executive of the relevant participating authority. In theory this should be sufficient to ensure that Members have the appropriate officers present at the meetings although if Members are of the belief it is not sufficient then it is suggested that the Committee request EKJAC to draft a formal protocol on officer attendance at meetings.
19. In the event that the Committee does wish a protocol to be drafted it is suggested that such a protocol should also cover the attendance of the most senior officer (i.e. Chief Executive or Director) of the particular shared service.

#### **(b) Access to Detailed Information**

20. In examining past minutes there appears to be two issues in respect of information available to Members. The first is in respect of the information supplied with the business case/service level agreement when a service is being developed as a potential shared service.
21. The second issue is in respect of monitoring shared services once implemented. This issue has already been the subject of discussions by EKJSC and no doubt by District scrutiny committees faced with the task of performance monitoring for their authority. This is also one of the areas of terms of reference for the committee – *Prepare reports and recommendations to the parties on the performance and delivery of the shared services provided by the EKJAC.*
22. In order that the Committee can prepare recommendations of the performance and delivery of shared services, it needs to have access to performance data. It is recommended that the development of a 'RAG status' (Red, Amber and Green) style Performance Report to be presented twice a year would provide for an effective measure by which the performance of shared services both overall and in respect of specific areas of functions could be monitored and scrutinised.
23. The shared services currently provide such information to the constituent authorities and this recommendation would involve the formalisation of this process into a twice yearly report for EKJAC and EKJSC. As a consequence of scrutinising the Performance Report it would enable Members the opportunity to drill down into more detail in areas of concern and establish a rapport with senior shared services officers

who it would be envisaged would be at the meeting to provide an overview of the indicators.

24. In addition, by developing a direction of travel over the course of a year it would give the Committee the opportunity to identify potential areas of below target performance that could be the subject of more detailed scrutiny.
25. It is further recommended that where a target in the Performance Report is 'Red' status (ie failing to meet the agreed performance target) it be built into the officer attendance protocol that a manager from that specific service area attend the meeting to provide a detailed account of why the target was not being met and what steps were being taken to restore the indicator to 'green' status.
26. Finally, if the idea of the Performance Report were to be adopted it is suggested that the first meeting of the Committee in 2012 would be an appropriate time to receive the first report given that most shared services would have been operational for just over six months.

(c) Increased Effectiveness

27. It is vital for EKJSC to act as a 'critical friend' to EKJAC if it is to effectively influence the development of the shared service agenda. As a body that has non-controlling group representation, EKJSC is also a useful conduit for the voice of the wider council membership of the constituent authorities.
28. The first stages in the process of making EKJSC more effective are to ensure that it has the tools by which to fulfil its terms of reference:
  - (i) Make recommendations for reconsideration of any decisions made or actions taken and to make recommendations for improvement and/or changes in responsibilities and functions of the EKJAC.
29. The current procedure for the scrutiny of decisions is based on a post-decision (EKJAC – EKJSC – EKJAC) model as opposed to a pre-decision (EKJSC – EKJAC) model. While both models are equally valid it is suggested that the Committee may wish to consider whether the post-decision scrutiny model is always the most suitable method.
30. The advantages of the post-decision model is that it enables EKJSC to scrutinise the actual decision made by EKJAC rather than the officer recommendation contained within the report and allows for EKJSC to have access to the same paperwork as EKJAC when it made its decision. The second EKJAC meeting in the process allows EKJAC the opportunity to revise its decision in light of the recommendations of scrutiny (if any). The disadvantages of the post-decision model is an elongated decision making process, the additional resource cost (actual and opportunity) of holding a second meeting and potentially reduced effectiveness of the scrutiny process if it is perceived simply as a 'rubber stamping' body.
31. Pre-decision scrutiny can be held as either part of the policy development process or as part of the decision-making process. In the first instance, pre-decision scrutiny allows Members the chance to shape policy directly as it is being formed and play a significant role in the direction it takes (overview role). There is a potential for conflict within the 'critical friend' role in this approach however, as the Executive may well see this very activity as crucial to its own functions.

32. The more common of the pre-decision scrutiny models is to hold pre-decision scrutiny as part of the decision-making process. This would allow EKJSC to comment on the same information as that EKJAC would be considering when it makes its decision and potentially enable it to offer an alternative perspective for consideration. It reduces the potential for Call-In to be utilised as EKJAC would already have given consideration to the views of scrutiny in its deliberations. There are also modest savings to be made in not requiring a second EKJAC meeting to be held. However, a move to pre-decision scrutiny would require amendments to the programme of meetings in order that EKJSC meetings could take place prior to EKJAC meetings in the cycle.
33. Each method has advantages and disadvantages dependent upon the nature of the decision being taken. It is suggested that Members may wish to ask EKJAC to consider more flexibility in using pre-decision scrutiny where it is appropriate to do so.
- (ii) Propose an annual budget for the EKJSC in accordance with the requirements of the parties.
34. The operating costs of administering EKJSC have so far been largely born by the host authority. Where there has been a need for expert advice to date this has been provided by the host authority or one of the other constituent authorities. At present there is no indication that this arrangement will change or any imminent need for external advice not available from the constituent authorities and no annual budget was proposed for 2011/12 by EKJSC.
35. It is therefore recommended that the proposed annual budget for EKJSC for the municipal year 2012/-13 be provisionally set at zero but reviewed and monitored during the course of the municipal year with a view to making a proposal to EKJAC in the event that the situation changes.
- (iii) Prepare an annual report to the parties on the performance of these arrangements.
36. In order for EKJSC to be effective there needs to be continuity across different municipal years to ensure that knowledge and experience is not in effect reset to zero each year. The preparation of an annual report, possibly in the form of a short letter from the Chairman, to be agreed by the Committee at the last meeting of each municipal year would enable points to be passed over as the Chairmanship rotates to the next authority.
- (iv) Continuity of Experience
37. In discussions with the Chairman, Councillor I Linfield, during the preparation of this report the issue of how experience can be passed from one municipal year to the next has been identified as a concern. At first glance, the role of the Chairman and Vice-Chairman would seem to provide the logical link between municipal years and authorities as the authority holding the Vice-Chairmanship holds the Chairmanship of EKJSC the following year. However, a study of the rotations in Chairmanship and Vice-Chairmanship suggest that this opportunity to provide continuity in leadership experience is often missed.

Year	Chairmanship	Vice-Chairmanship
2008/09	Councillor T Prater (SDC)	Councillor K Mills (DDC)
2009/10	Councillor G Cowan (DDC)	<b>Councillor M Vye (KCC)</b>

<b>Year</b>	<b>Chairmanship</b>	<b>Vice-Chairmanship</b>
2010/11	<b>Councillor M Vye (KCC)</b>	Councillor A Perkins (CCC)
2011/12	Councillor I Linfield (CCC)	Councillor D Green (TDC)
2012/13	Thanet District Council	Shepway District Council

38. To further illustrate the gap in continuity, of the 15 members who were eligible to attend the first meeting of EKJSC on 9 July 2009, only two Councillors, K Mills (DDC) and M Vye (KCC), are currently still serving on the Committee. Councillor Vye is the only Councillor to have been a member of EKJSC in each one of the last four municipal years, although Councillors C Goddard (SDC), R F Manning (KCC) and K Mills have each served for three municipal years on the Committee.
39. As the appointment of the Committee's membership is conducted on an annual basis, there exists the possibility that in any given year a completely new membership could be appointed with no previous experience of the Committee. A key factor in continuity of membership would be to make an appointment to EKJSC a desirable position for Members through the achievement of significant outcomes through the scrutiny process and it is hoped that other proposals in this report go some way to achieving this.
40. Another approach to establishing continuity of experience would be to seek to vary the operating arrangements so as to increase the term of appointment for the Committees Chairman and Vice-Chairman or introduce a position of Co-Chairman, shared between two authorities. Although no specific option on this forms part of the recommendations to this report, if Members wished to do so nothing would prevent them from developing a recommendation to EKJAC in respect of it.
- (v) Facilitate the exchange of information about the work of the EKJSC and to share information and outcomes from reviews.
41. There is a need for clear lines of communication between the Chairmen of the local District scrutiny committees and the Chairman of the EKJSC in order to minimise duplication of work and ensure issues that have been identified as a success/concern at one constituent authority are shared with the other authorities.
42. It is proposed therefore that a standing item concerning referrals from local scrutiny committees be added to the agenda. The Committee may also wish to consider whether there is any merit in having an informal annual meeting between the Chairman of EKJSC and the Chairmen of the appropriate local scrutiny committees.

#### Background Papers

East Kent (Joint Scrutiny) Committee Agenda/Minutes – 22 March 2011

#### Resource Implications

Requirement from Current Budget	Requirement for Additional Budget	
	Current Year	Full Year
None	None	None

#### Consultation Statement

In drafting this report the Chairman of the East Kent (Joint Scrutiny) Committee has been consulted.

### **Impact on Corporate Objectives and Corporate Risks**

Active engagement by Members in the area of shared services prevents the emergence of a democratic deficit.

### **Customer Access Review**

There are no customer access issues arising from this report.

### **Appendix**

Appendix 1 – Comments by the East Kent Chief Executives' Forum

DAVID RANDALL

Director of Governance

The officer to whom reference should be made concerning inspection of the background papers is the Democratic Support Officer, Dover District Council, White Cliffs Business Park, Dover, Kent CT16 3PJ. Telephone: (01304) 821199, Extension 2304.