

## EAST KENT JOINT ARRANGEMENTS COMMITTEE

14 MARCH 2012

- Subject:** **Review of the role and function of the East Kent Joint Scrutiny Committee**
- Director/Head of Service:** Head of Legal and Democratic Services (Canterbury) and Solicitor to the Council (Dover)
- Decision Issues:** These matters are within the authority of each the Council
- Decision type:** Non-key
- Classification:** This report is open to the public.
- Summary:** *This report responds to an item in the minutes of the East Kent (Joint Scrutiny) Committee and suggests a protocol to address the significant issues raised*

**To Consider and if approved recommend to each Council the draft protocol attached to this report:**

**Next stage in process** **For each council to consider the draft protocol attached to this report taking into account any comments from the East Kent (Joint Scrutiny) Committee**

### SUPPORTING INFORMATION

#### 1. Introduction

At its meeting on 12 October 2011 the East Kent (Joint Scrutiny) Committee (the Joint Scrutiny Committee) considered its role and function. The relevant minutes of that committee are attached as Appendix 1 to this report.

The primary purpose of this report is to present a draft protocol (Appendix 2) in response to resolutions (e)(i) and (iv). It also touches on the other resolutions where it is necessary to do so.

At the outset it is worth quoting the key principles of the East Kent Joint Scrutiny Committee which are set out at paragraphs 1.1 to 1.3 of the Joint Scrutiny Committee's operating arrangements.

- 1.1 The members of the EKJSC will work together to maximise the exchange of information and views, to minimize bureaucracy and make best use of the time of members and officers of local and other authorities.
- 1.2 The guiding principle for the work of EKJSC is that it should be consensual and positive. The emphasis of the work should be on making proactive contribution to the development of policy and the discharge of EKJAC's

functions. This is best achieved by an inclusive process covering members, the parties' partners, service users and officers.

- 1.3 The process of joint scrutiny will be open and transparent, designed to engage the parties, their residents and other stakeholders.

The striking points are that the intention is to minimise bureaucracy with the emphasis on the development of policy and the discharge of EKJAC's functions.

Once a service becomes shared of prime concern to each individual authority is how the service is being delivered within its own district. So that, for example, in the three way collaboration agreement between Dover and Thanet districts and Canterbury city in relation to East Kent Services it is provided that 'scrutiny of the operation of this agreement will be responsibility of each individual authority'.

It should also be noted that with the establishment of East Kent Services and other shared working initiatives the East Kent Joint Arrangements Committee have not found the need to meet often over the past year.

It is in the context of these matters that the Joint Scrutiny Committee had a debate regarding their future role.

## **2. Discussion**

Members will recall that Mr Bradbury carried out an external review of the joint arrangements. We will return to that review later. Mr Bradbury recognised the difficulties with a protocol to limit local scrutiny and it was not pursued. Indeed as set out above it was recognised that it would be unrealistic to expect individual local authorities to surrender their individual scrutiny of a shared service to the Joint Scrutiny Committee. In the spirit of the operating arrangements this then places a responsibility on the Joint Scrutiny Committee not to operate in such a way as to duplicate the work of individual scrutiny committees and points towards their role as being at a strategic level. In other words they look at proposals for joint arrangements and how joint arrangements are working across all the authorities participating in them.

It is not always easy to strike the necessary balance, because for example very good performance in one district may be contrasted with poor performance in another. Legitimate questions would be raised by such a situation. In framing an agenda it should be understood there is a difference between that situation and looking at the two authorities services individually.

The Joint Scrutiny Committee has felt frustration in getting the officers they wish to speak to to attend their committee and to obtain answers to the particular questions they have. Therefore another purpose of the protocol is to set up a machinery whereby appropriate officers can be identified and members of the committee in advance identify the issues that they wish to pursue. In turn this can inform the decision on which officers can attend.

The other main issue the protocol seeks to address is the participation by council representatives in debates when they are not members of the particular shared service. The review mentioned above of the EKJAC arrangements and the East Kent arrangements generally did not progress because of exactly this issue. As a matter of law once a councillor is appointed to a joint committee they have the right to participate. The EKJAC arrangements say otherwise but technically they are not

enforceable. This protocol seeks to address that issue by creating a convention that members in that situation will not exercise voting rights or to receive confidential information in certain circumstances. If in the chair they have responsibilities and again, by convention, provision is made for the exercise of the casting vote. If these proposals find favour they may be extended to the arrangements more generally.

### **3. Other matters**

Dealing with each of the other resolutions in turn, resolution (a) and an annual report turns very much on the activities of EKJAC. As we are coming to the end of the first year of operation of East Kent Services and the joint waste arrangements we can expect that at the June meeting of EKJAC there will be annual reports from the shared services on their activities over the past year and their plans for the next with necessary performance data. Any annual report that the Joint Scrutiny Committee prepares could sensibly reflect that timetable.

Resolution (b) is purely procedural and resolution (c) can be noted. Resolution (d) is a matter for the Chairmen of all the committees. In relation to resolution (e) we have dealt with the main points above but we would point out that East Kent Housing are not part of the EKJAC arrangements. It was necessary to set up their own governance arrangements including the East Kent (Housing Management) Committee, the local boards and a company board. Clearly scrutiny will still be actively pursued at a local level but at a strategic level it is for the East Kent (Housing Management) Committee to have oversight of the whole of the east Kent housing operation.

In relation to (e)(ii) and (iii) there is no objection to such a performance management system subject to their being no duplication between individual authorities and the Joint Scrutiny Committee. It is suggested that those preparing the annual reports for EKJAC on the performance of their service identify key indicators appropriate for strategic scrutiny which are discussed informally with the chairs of the Joint Scrutiny Committee and the individual authority scrutiny chairs. Such indicators will never be cast in stone and will be subject to review as circumstances change.

Resolution (iv) is provided for in the arrangements and as been addressed in the draft protocol.

With regard to resolution (vi) this depends whether EKJAC is prepared to recommend this protocol to the Joint Scrutiny Committee and to the individual authorities for approval in its present form or whether it has observations or comments to make. On the assumption that all the bodies are minded to approve it then it should go through adoption processes and be agreed by the various parties by June.

### **4. Implications**

(a) Financial Implications

None

(b) Legal Implications

None

## **8. Conclusions**

A key issue remains the division of responsibility between the Joint Scrutiny Committee and individual districts. Having established that, the processes are which are put in place by the protocol should seek to establish the position that no-one in the course of joint scrutiny should be taken by surprise.

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Version 2

Date 06/03/12

Time 15.03

## Appendix 1

Minutes of the meeting of the **EAST KENT (JOINT SCRUTINY) COMMITTEE** held at the Council Offices, Whitfield on Wednesday 12 October 2011 at 9.30 am.

Present:

Chairman: Councillor I Linfield (Canterbury City Council)

Councillors: C Goddard (Shepway District Council)  
G Glover (Canterbury City Council)  
D Green (Thanet District Council)  
I Gregory (Thanet District Council)  
D Hannent (Dover District Council)  
G Lymer (Dover District Council)  
Z Wiltshire (Thanet District Council)

Officers: Chief Executive (Dover District Council)  
Solicitor to the Council (Dover District Council)  
Democratic Support Officer (Dover District Council)

Apologies for absence were received from Councillors B Copping, J Holben, K Mills and M Vye.

### 1 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

### 2 MINUTES

The Minutes of the meetings of the Committee held on 22 March 2011 were approved as a correct record and signed by the Chairman.

### 3 OPERATING ARRANGEMENTS

The Committee considered the operating arrangements.

RESOLVED: That the operating arrangements be noted.

### 4 ISSUES REFERRED TO THE COMMITTEE BY THE EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

There were no items for consideration.

### 5 ITEMS PLACED ON THE AGENDA BY A MEMBER OF THE COMMITTEE

There were no items for consideration.

### 6 REVIEW OF THE ROLE AND FUNCTION OF THE EAST KENT (JOINT SCRUTINY) COMMITTEE

The Democratic Support Officer advised the Committee had resolved at its last meeting (Minute No 54(c)) that a review of its role and function be undertaken. The report before Members set out one possible approach to resolving the concerns raised and also set out the view of the East Kent

Forum on the future role of the committee. It was stated that in principle both approaches were not mutually incompatible.

The Chief Executive reminded Members that scrutiny of the shared services was already taking place at a local level in each authority and suggested that the development of a protocol as recommended by the East Kent Chief Executives Forum would lead to be a clearer definition of the roles of the East Kent (Joint Scrutiny) Committee (EKJSC) and district scrutiny committees. It was the view of the Forum that the Committee should wait until such a protocol had been drafted before proceeding with the recommendations set out in the report.

There was concern expressed over the need to ensure continuity in the membership of the EKJSC to build experience, although the majority view was that there was no benefit in changing the rotating chairmanship arrangements at this point.

- RESOLVED:
- (a) 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.
  - (b) That a standing item for the receipt of referrals from local scrutiny committees be added to the agenda.
  - (c) 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.
  - (d) That an annual informal meeting be held between the Chairman of the East Kent (Joint Scrutiny) Committee and a Chairman from a scrutiny committee at each authority represented on the East Kent (Joint Scrutiny) Committee.
  - (e) That it be recommended to the East Kent (Joint Arrangements) Committee:
    - (i) 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.
    - (ii) 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.

- (iii) 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.
- (iv) That a process of pre-decision scrutiny be adopted where it is appropriate to do so.
- (v) That a voluntary protocol be drawn up to sit alongside the Operating Arrangements for the East Kent (Joint Scrutiny) Committee for the purpose of resolving the anomaly where Members whose authority is not participating in a shared service have voting rights at the Committee in respect of that shared service and that such a protocol also cover the issue of the Chairman's casting vote where she or he is a member of an authority not participating in the shared service.
- (vi) That in the event of the East Kent (Joint Arrangements) Committee being willing to accept the recommendations set out at (e)(i)-(v) in whole or part, a report be submitted to a future meeting of the East Kent (Joint Scrutiny) Committee setting out a timescale for the implementation of the agreed recommendations.

The meeting ended at 10.15 am.

**East Kent Joint Scrutiny Committee  
Protocols on the Operation of the Scrutiny Process**

**1. Purpose**

- 1.1. The purpose of this protocol is to sit alongside the East Kent (Joint Scrutiny) Committee Operating Arrangements to facilitate the effective operation of the Scrutiny Process both by the Joint Committee itself and by the statutory scrutiny committees of each authority represented on the East Kent (Joint Scrutiny) Committee.

**2. Status**

- 2.1. It is acknowledged that the statutory framework applicable to the East Kent (Joint Scrutiny) Committee (the Joint Committee) does not altogether reflect the way in which the participating authorities would wish the Joint Committee to operate and, in part, the purpose of the protocol is to achieve a non-legally binding understanding of the way in which the participating authorities representatives will conduct themselves at meetings of the Joint Committee.
- 2.2. Whilst the expectation of the participating authorities is that this protocol will be adhered to as a matter of convention, it is further acknowledged that the law must ultimately prevail. In the event of any party insisting upon the strict exercise of their legal rights they are expected to give notice to all members of the Joint Committee, and the host authority Scrutiny Support Officer (Scrutiny Support Officer) as soon as practicable after that intention has been formed.

**3. Meetings**

- 3.1 The Joint Committee usually meets after the East Kent Joint Arrangements Committee (EKJAC) has met to consider any items which may have been called in. If the Chairman having received views from other Members of the committee believes a non-scheduled meeting is required to carry out pre-decision scrutiny or for some other purpose then the Chairman shall invite the Scrutiny Support Officer to organise such a meeting in accordance with the operating arrangements and this protocol.

**4. Agenda Setting**

- 4.1. The EKJAC Operating Arrangements require that the Agenda for the Committee shall be agreed by the Chairman following a briefing by relevant officers. This will be expanded upon as follows:
- Pursuant to the ability of any member of the Joint Scrutiny Committee to require an item to be placed on the agenda for the next available meeting, members of the Committee are encouraged to notify the Scrutiny Support Officer not less than three weeks before the date of a programmed meeting that they require such an item to be placed on the agenda.
  - For each item of scrutiny contained in the Agenda, a Chairman's Meeting may be held to identify a list of Key Questions or Key Areas for scrutiny; these shall be set out in the Agenda.

- The Chairman may hold a Scrutiny Committee pre-meeting (at which all Members of the Scrutiny Committee are invited) in order to verify that all matters of concern have been covered by the Key Questions/Key Areas. If any member is unable to attend they should notify the Scrutiny Support Officer of any points they wish to raise.
- The Chairman, with the assistance of Scrutiny Support Officer shall develop a programme of meetings (or other arrangements) to deal with agenda setting, pre-committee briefings and work programme monitoring.

## 5. Attendance of Members and officers

- 5.1. Following consultation with the chairman the Scrutiny Support Officer may request the attendance of officers employed by the participating authorities to answer questions and give evidence to the committee. The Scrutiny Support Officer shall inform the member or officer in writing giving reasonable notice of the meeting at which he/she is requested to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee or sub-committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of the documentation.
- 5.2 In relation to an item which is being considered by the Joint Committee the Joint Committee may by resolution request the attendance of officers employed by the participating authorities to answer questions and give evidence to the committee. Such requests must be made via the Chief Executive of the relevant participating authority.

In respect of shared services, request for the attendance of officers engaged in the shared service must be made via:

- EK Services - Director of Shared Services; in respect of shared services under EK Services
- East Kent Human Resources Partnership – Dover District Council Head of the East Kent HR Partnership.;
- In all other cases – the chief executive of the host authority

Where the Joint Committee requests the attendance of officers, the Scrutiny Support Officer shall inform the member or officer in writing giving reasonable notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee or sub-committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

## 6. Participation

- 6.1 A service will only become a shared service after at least two of the parties have resolved to delegate the relevant functions to the EKJAC. Where two or more parties have resolved to delegate then:

- The service will thereafter be a shared service only in relation to those parties and
- Those parties alone will have voting rights at the Joint Committee in relation to further decisions as to how that shared service is jointly managed, provided or procured.
- Save as provided below 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.
- Provided that if the chairman is from a party that did not delegate that shared service they are encouraged to refrain from voting unless there is an equality of votes when they may exercise a casting vote should they be minded to do so.
- Whilst the parties are to be open and transparent in their dealings with each other there may be occasions when a service is not shared by all that some discretion is required. The parties in a shared service may only disclose confidential information to any other council in relation to that shared service if there are staff who have a need to know by reason of their work. If their staff have a need to know then such confidential information may be disclosed to members of that authority if not data protected but the council concerned shall ensure that its staff and members are aware of, and comply with the confidentiality obligations in the Joint Committee operating arrangements.

## **7. Division of responsibility**

7.1. To minimise bureaucracy and make best use of the time of Members and officers the agendas of the Joint Committee and the individual statutory Scrutiny Committees shall adhere to the following principles in making a contribution to the development of policy and the discharge of the EKJAC's functions:

- The objectives should be the avoidance of duplication and that matters are scrutinised at the appropriate level.
- The performance of a shared service in relation to the parties is primarily a matter for each of the parties to scrutinise through their individual statutory Scrutiny Committees.
- Each such committee is encouraged to refer to the Joint Committee matters which are thought of wider concern which touch upon the other parties. Likewise the Joint Committee should refer matters to individual Statutory Scrutiny Committees topics of local concern.
- The Joint Committee should be primarily concerned with the performance of a shared service as a whole or with a matter of joint concern.