

Agenda Item 8

- Subject:** **Review of the East Kent Arrangements**
- 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 the Committee to recommend to the respective Councils.
- Decision type:** Non-key
- Classification:** This report is open to the public.
- Summary:** *This review examines options for the East Kent Committee Arrangements in the future and suggests a way in which they might be adjusted to align with the services being delivered.*
- To Recommend/Resolve/Consider:** **To recommend to the executives and councils of Canterbury City Council, Dover District Council, Kent County Council, Shepway District Council and Thanet District Council ('the Participating Councils') that the amendments to the East Kent Arrangements set out in this report be adopted and therefore:-**
- (a) **The East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee be dissolved with effect from 1 October 2012.**
 - (b) **That operating arrangements for a Committee relating to functions shared by Canterbury City Council, Dover District Council and Thanet District Council ('the Continuing Councils') be drafted by the respective heads of legal and be submitted to the Continuing Councils for approval with scrutiny being undertaken by the scrutiny committees of the Continuing Councils.**
 - (c) **That any existing delegations to the Director of Shared Services, the Head of the East Kent Human Resources Partnership and the Payroll Officer for Kent County Council relating to the functions of the Continuing Councils continue.**
 - (d) **That the delegation to the Payroll officer for Kent County Council by Shepway**

District Council continue.

- (e) All agreements or arrangements which may need to remain in effect after 1 October 2012 be reviewed by the Heads of Legal of all the Participating councils and they be delegated the power by their respective councils that if relevant to them they agree the continuation of those matters in such form as they think appropriate.**

Next stage in process Reports to be submitted to the councils and executives of all participating councils.

SUPPORTING INFORMATION

1. Introduction

At the last meeting of the East Kent Joint Arrangements Committee (EKJAC) on 14 March 2012 the Committee received a report from us with a proposed protocol refining the administrative arrangements for the East Kent Joint Scrutiny Committee (EKJSC) and governing its relationship with the Scrutiny Committees of individual authorities.

From that debate it was clear the EKJAC wished to get on with exercising its oversight of shared services but also that scrutiny should primarily be exercised at the local level. Problems which arose at a strategic level should be for the EKJAC to address.

This led in turn to a wish to review the Committee arrangements in the light of how they have functioned and where shared services now are both in terms of reporting to the EKJAC and which services are shared or in prospect of being shared. It was envisaged such review might entail having some other form of management arrangements.

Background

EKJAC and EKJSC were formed in June 2008 as part of a plan to develop shared working across East Kent with the participation of the four district councils and the county council. The arrangements envisaged that the EKJAC would have a strategic role in overseeing the development of ideas and then a management and monitoring role as services became shared. The EKJAC oversaw proposals for sharing revenues and benefits, information technology, customer contact centres, housing management, human resources and waste. It has been a very significant programme of projects.

A review of the arrangements was carried out by former district council Chief Executive Mr Douglas Bradbury. His report was approved by the EKJAC on 19 May 2010. The difficulty in implementing it proved to be something which has particularly concerned the EKJSC. This is the participation of authorities in debates who are not participants in a particular shared service. Legally if a Member is appointed to a Committee they have a right to fully participate in its business and only by convention could they be excluded. For whatever reason there does appear to be a reluctance

for authorities which are not engaged in a particular shared service to have an involvement in its governance.

The Services

It may be helpful to review in relation to each service where it now stands in relation to the joint committees and the individual authorities.

East Kent Services

This is a joint service hosted by Thanet with, in effect, a brand name. It provides revenues and benefits, information technology and customer contact services to Canterbury City and Dover and Thanet District Councils. It reports directly to EKJAC and the EKJAC has delegated the relevant powers to the Director of Shared Services who heads the organisation.

East Kent Human Resources

This is a separate shared service which up to 31 March 2012 provided shared services to Canterbury City, Dover, Shepway and Thanet District Councils. Shepway withdrew with effect from 31 March. The Head of the East Kent Human Resources Partnership is also delegated powers through the EKJAC although on the basis of a different form of agreement.

East Kent Housing

This is an arms length management organisation providing housing management services to Canterbury City, Dover, Shepway and Thanet District Councils. Having been developed under the auspices of the Joint Committee Arrangements it now has its own management arrangements. East Kent Housing is a separate company with its own employees. The four authorities are represented on an Owner's Committee which is charged with making the key management decisions. The East Kent Joint Arrangements Committee having overseen its establishment now has no role in relation to it.

Waste

The EKJAC has overseen the development of arrangements across east Kent. All the participants in the East Kent arrangements have signed a five way waste agreement intended to set the strategic direction for waste across east Kent and in particular committed us all to the method of collections known as the "NOM". Whilst the aspiration is to move towards a single contract our respective contractual timetables meant that Shepway, Dover and Kent have tendered and secured a contract, Canterbury is in the process of doing so and Thanet has its in-house operation. In relation to the existing and proposed contractual arrangements the EKJAC has no management role. It remains the place where strategic matters, should they arise, can be debated.

The role of EKJAC

The EKJAC's Terms of Reference are attached as Appendix 1 to this report. It clearly has a role in relation to those services where delegations have been made to it and where it in turn has delegated to an officer acting on its behalf. However that now concerns three of the five authorities.

As noted above it could have a strategic role in relation to waste but given the decisions that have been made and the contracts which have been entered into or will be entered into that strategic role will probably not revive until perhaps 2017 when decisions will need to be made on an east Kent contract.

Ashford Borough Council is also an east Kent authority. It was for some time associated with the housing project but withdrew. It has expressed an interest in exploring some form of formal connection with the other east Kent districts which if it arises is likely to mean an alignment of certain of policies and perhaps the sharing of services associated with them.

Drawing these threads together then the questions which arise are:

- should the east Kent arrangements be refashioned to facilitate a wider grouping?
- alternatively using the precedent of East Kent Housing should it be refashioned to become a management body for East Kent Services consisting solely of the three participating districts, or
- should the arrangements be abolished altogether and the authorities simply have an agency arrangement with Thanet.

Discussion

The fundamental question is whether the original vision held in 2008 still holds true.

In our view Shepway's decision not to participate in East Kent Services and then to withdraw from East Kent HR is significant. Further the strategic oversight of waste does not appear to be a live issue at least in relation to decision making and East Kent Housing has its own separate arrangements. If there are to be future shared arrangements it appears this may on a broader east Kent scale including Ashford or alternatively the three participating authorities in East Kent Services may add further to the functions performed by that organisation.

Therefore there are quite persuasive arguments for suggesting that the joint arrangements in their current form might usefully be changed.

This suggests one of two alternatives as things presently stand. First that the arrangements are refashioned simply to cover those participating authorities in East Kent Services or alternatively the Committee is abolished altogether and there is simply an agency arrangement with Thanet.

The pros and cons

The difficulty with an agency arrangement is one of accountability. The agent at any time (subject to the details of the agency) may divest themselves of the responsibility. In times of stability what is a relatively short term arrangement may extend over several years. However in times of economic uncertainty ultimately the interests of the agent must always come first unless there is some positive incentive to carry on the agency the authorities delegating the function must appreciate they have little real control in how it is performed although they always have the option of withdrawing the delegation.

A joint committee addresses the question of accountability. The respective authorities delegate functions to the joint committee which in turn delegates them to a single officer of one of the participating authorities. That officer is answerable to the joint

committee for those functions and not to the authority by whom they are employed. This means that every participating authority has a say in the management of the functions and whilst they may be outvoted in the joint committee they have the right to influence the management and performance of the service.

Thus whilst for a simple or straight forward service or, as in the case of waste, where it bears a direct relationship to an external contract into which all the parties are bound, an agency arrangement has its place, it is not to be recommended for a range of services involving a substantial number of staff.

Wider east Kent collaboration

It's important to emphasize that what is being discussed solely relates to the formal Committee arrangements. The discussions between all east Kent Chief Executives and county representatives at the East Kent Forum, the East Kent Leaders and Chief Executives meetings, the East Kent Regeneration Board and discussions on some possible east Kent district arrangement would be entirely undisturbed. This solely relates to the formal Committee structure.

The need for EKJSC

As described in the report to the Committee concerning the proposed protocol the East Kent Joint Scrutiny Committee has been considering its future role and indeed behind that question was whether it does have a future role. In the context of refashioning the Committee simply to exercise oversight of the existing east Kent arrangements or the putting of additional services into them by the three participating authorities there seems rather less need for a Joint Scrutiny Committee.

It is worth remembering that at the time the joint committees were established there was no statutory foundation for establishing a joint scrutiny committee across different authorities and different local government tiers. However, consultants engaged at the time recommended that a committee be established exercising a scrutiny role. Accordingly, EKJSC was established as a joint committee under the Local Government Act 1972. It is not a statutory scrutiny committee within the meaning of the Local Government Act 2000 but exercises functions which may broadly be described as scrutiny like functions and, were it exercises powers (e.g. call-in) it does so by convention rather than as a matter of law.

Importantly, there has been primary legislation (most recently) the Local Democracy, Economic Development and Construction Act 2009 to enable joint scrutiny committees between tiers of local government but the necessary regulations to give effect to that legislation have not been made.

The Joint Scrutiny Committee was created and has done its most valuable work when the proposals for shared services were being fashioned. With three remaining participants actively pursuing shared arrangements scrutiny can be performed at the point where services are delivered by the individual authorities and management issues can be referred to the Joint Committee for consideration. East Kent Housing is a precedent. Further, without effective statutory underpinning the question may reasonable be asked whether a scrutiny committee operating by convention is satisfactory.

If by contrast the 2008 vision still holds good then, with the addition of the protocol put to the EKJAC at its last meeting the EKJSC may have a future role providing

strategic scrutiny in the future but it is clear that scrutiny of services should primarily be the function of the individual recipient authorities.

Consequences of dissolution

For the three participating councils in East Kent Services they will clearly need to form a new committee to oversee and to be held to account for the continuing shared service. Payroll is shared separately from Human Resources and includes Shepway but that is a service which is readily addressed by means of adjustment in the delegation documents to be approved and drafted by the Heads of Legal. To ensure a smooth transition a date has been recommended sufficiently in advance for the necessary decisions to be taken, scrutiny comments received and any reservations dealt with to avoid disruption. As we have existing arrangements in place they will need to be dissolved on a mutually acceptable basis and timescale.

From a practical point of view it is suggested that the meeting of EKJAC on 14 June and the EKJSC that follows it be the last meetings of these committees and that any subsequent scheduled meetings be cancelled.

2. Relevant Documents

The East Kent Joint arrangements.

3. Consultation planned or undertaken

None, save as indicated below under legal implications.

4. Options available with reasons for suitability

Refashioning the Committee arrangements to reflect the services which are actively being shared whilst retaining the other bodies to facilitate collaboration in other areas appears the best way of deploying resources effectively.

5. Reasons for supporting option recommended, with risk assessment

The reasons for the proposal are set out in the report. There is little risk in rejecting them and maintaining the status quo if that is required.

6. Implications

(a) Financial Implications

None.

(b) Legal Implications

See the body of the report. All heads of legal of all the participating councils have been consulted upon it.

7. Conclusions

We argue that the participating authorities should revisit the 2008 vision for the East Kent arrangements and decide whether they still hold good. In our view the informal arrangements certainly do and are gaining in importance. So far as the formal Committee arrangements are concerned they could be more usefully confined to

those authorities who are actively participating in shared services through the mechanism of a refashioned EKJAC with the participating authorities of Canterbury, Dover and Thanet. There would be no need for a joint scrutiny committee with scrutiny being carried out the district level.

We suggest the arrangements are refashioned along those lines.

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EKJAC300312
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Date 08/06/2012
Time 3pm

The Schedule

TERMS OF REFERENCE of the EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

1. To exercise the executive and non-executive functions of the parties in order to commission, co-ordinate, provide, procure and/or manage any shared services as are agreed from time to time by two or more of the Parties
2. To provide strategic direction to the officers advising the EKJAC
3. To exercise any of the functions or services that are determined to be a shared service in accordance with these arrangements
4. To develop work programmes and projects in relation to the functions which the parties are minded to be delegated to the EKJAC by the Parties
5. To regularly report to each of the Parties on its activities
6. To respond to reports and recommendations made by the East Kent Joint Scrutiny Committee
7. To monitor the operation of the EKJAC and of any shared service
8. To propose a budget for a shared service to the Parties and to monitor and manage any such budget once approved by them
9. To review these arrangements from time to time and make recommendations to the Parties for improvement and change and to propose (as appropriate) the creation of special purpose vehicles for the achievement of the Objectives, including companies, formal partnerships or consortia, the expansion of these arrangements to include other local authorities, the conclusion of contracts with other persons and the provision of services, supplies and works to other persons