
REPORT TO:	FINANCE AND MANAGEMENT COMMITTEE	AGENDA ITEM: 15
DATE OF MEETING:	23RD OCTOBER 2008	CATEGORY: RECOMMENDED
REPORT FROM:	DIRECTOR OF CORPORATE SERVICES	OPEN PARAGRAPH NO:
MEMBERS' CONTACT POINT:	MARTIN GUEST 8705	DOC:
SUBJECT:	IMPROVING LOCAL ACCOUNTABILITY – CONSULTATION ON THE WHITE PAPER: COMMUNITIES IN CONTROL	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:

1.0 Recommendations

Members are requested to:

- 1.1 Note the briefing and consider the implications for the Council.
- 1.2 That the Committee responds to the 13 consultation questions highlighted in Appendix A, and submits this matter for consideration by the Overview and Scrutiny Committee. Appendix 2 shows an example response.
- 1.3 That the Director of Corporate Services in consultation with Chairman of Finance and Management Committee, the Leader of the Opposition and the Chair of Overview and Scrutiny be authorised to finalise the consultation response.
- 1.4 Note and comment on the draft responses to the questions for Member Consideration.

2.0 Purpose of Report

- 2.1 To develop a response from the Council in relation to the government consultation paper on 'Improving Local Accountability – Communities in Control'.

3.0 Executive Summary

- 3.1 This is the first in a series of Communities in Control (Real people, real power) consultations flowing from the recent white paper (July 2008). The consultation also covers implementation of the overview and scrutiny provisions in the Local Government and Public Involvement in Health Act 2007. It seeks views on how to develop overview and scrutiny powers to hold local officers to account and how to facilitate the work of councillors.

4.0 Detail

4.1 Background to the consultation

The Government is consulting about a number of policy commitments. These consultations will cover both the 2008 'Communities in Control' White Paper and the 2007 Local Government and Public Involvement in Health Act.

4.2 Main proposals of the White Paper on Communities in Control: Real people, real power

4.2.1 The "duty to promote democracy".

The document recognises councils' positions as the "hub" of local democracy. The duty will draw on the best examples from councils and will encourage a range of actions which could include better information for residents, engaging young people, and giving practical support to councillors.

4.2.2 Petition Power will be strengthened.

There will be a new duty for councils to respond to petitions and for any petition signed by five per cent of the local population, there will have to be a full council debate. Local authorities will be able to set lower thresholds. Councils will also act as "community advocates" in responding to petitions that deal with issues outside of their direct control e.g. GP surgery opening hours.

4.2.3 Powers of overview and scrutiny are to be updated and made more visible to the public.

Local senior public officers (i.e.: not just council officers) may be required to face public scrutiny as the result of residents' petitions, this is to be consulted upon. Chief Executives and Chairs will face a regular public hearing with the intention that such public officers will become more visible locally.

4.3 Focus of this consultation paper

The focus of this first consultation paper is on certain tools for enabling local people to participate in decisions which affect their day to day lives; to hold to account those who exercise power in their locality; and to facilitate the work of those democratically elected to represent their communities.

Specifically the Government is seeking views on:

4.3.1 Developing and strengthening overview and scrutiny through: -

- **Implementing the provisions of the 2007 Act**, enhancing councils' scrutiny powers in relation to scrutiny of Local Area Agreement partners and their delivery of LAA improvement targets: in particular the powers to make regulations in respect of:
 - O&S committees requiring information from partner authorities
 - Publication of scrutiny reports, recommendations and responses
 - The establishment of joint county and district O&S committees and enhancement of their powers
 - Raising the visibility of, and to strengthen, the scrutiny function as laid out in the Communities in Control White Paper.
 - Scrutiny in small district councils operating a streamline committee system

4.3.2 Increasing the visibility and accountability of local public officers

- So that they are all open to public scrutiny and questioning from local communities through chairs and chief executives of local public bodies attending regular public hearings
- A new right for local people to petition to hold officers to account

4.3.3 Facilitating the work of councillors

- By modernising the way they do business to enable them to use information and communications technology to participate in meetings and vote remotely.

5.0 Financial Implications

5.1 None directly arising out of the report.

6.0 Corporate Implications

6.1 As detailed in the report.

7.0 Community Implications

7.1 The report focuses on the Government's wider agenda to modernise the democratic system. To deliver genuine empowerment to local people and local communities by passing more power to more people through every practical means.

8.0 Conclusions

8.1 We need to feedback as a council our views on this consultation to shape the development of these provisions at a national level. The Department of Communities and Local Government will analyse all responses and produce a

summary of these within three months of the close of the consultation. These will then be published on the Department's website

9.0 Background Papers

A full copy of the consultation on the White Paper is available from the Communities and Local Government site

<http://www.communities.gov.uk/publications/communities/localaccountability>

A summary of The White Paper – Communities in control: Real people, real power can be found on

<http://www.communities.gov.uk/publications/communities/summarycommunities>

The background research that supports this is available through

<http://www.communities.gov.uk/documents/communities/pdf/886123.pdf>

Appendix A - List of consultation questions

Based on Chapter 2 of the consultation: Developing and strengthening overview and scrutiny

Implementing the Local Government and Public Involvement in Health Act 2007 provisions

Question 1 Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?

As the system of Local Area Agreements require local authorities to pursue a number of broad targets, many of which they cannot achieve alone but only through the joint action of a range of agencies (broadly, the "Partner Authorities"), it is sensible that local authorities should have a mechanism for reviewing how those Partner Authorities propose to assist in meeting those targets, and how they are performing in that endeavour, and for that purpose they need the ability to obtain relevant information from such Partner Authorities. Ideally, Partner Authorities would be collecting the vast majority of such information for their own purposes and would be able to make it available without excessive cost, and subject to commercial and personal confidentiality there is no reason why Partner Authorities should object to being required to disclose such information, where they already collect it.

A more sensitive issue arises where the local authority either wants more detailed information than that which the Partner Authority already collects for its own purposes, wants it collected in a different form, or wants additional information on additional matters. The Consultation Paper proposes that Partner Authorities should be placed under an obligation to provide any information which is relevant to a target which relates to that Partner Authority, relates to an item of the overview and scrutiny committee concerned and has been requested by that overview and scrutiny committee.

Question 2 Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?

It is sensible that, where an Overview and Scrutiny Committee or an Executive is required to publish a report, that requirement should be subject to the well-defined protections provided by the definitions of confidential and exempt information. However, when local authorities apply those same rules to determine whether to allow public access to meetings and reports, they are required to apply a public interest test before excluding access to exempt information. That important qualification appears to be absent from the new Section 21D to the LGA 2000, and should be included in the test for denying access to such information.

Question 3 Do you agree with the proposed approach towards joint overview and scrutiny committees? Are there specific issues that should be considered as part of the approach?

A discretionary power to establish joint Overview and Scrutiny Committees in respect of LAA targets is sensible, with the potential to avoid duplication and multiple call-ins, and the attendant delays in implementation.

However, the benefits of such joint Overview and Scrutiny Committees, which are already permitted for Health scrutiny, goes rather wider, and we would like to see a general discretionary power not limited to LAA targets. Thus, where two or more authorities are undertaking a joint project, such as a shared waste procurement, it makes a lot of sense to enable those authorities to establish a joint Overview and Scrutiny Committee, or Sub-Committee, to monitor and review that project, and as a vehicle for wider community involvement. The ability to appoint a Joint Sub-Committee, as opposed to just a Joint Committee is important as it allows the various Scrutiny Committees to set up such joint arrangements without needing to go back to full Council for approval, and it avoids the need to recalculate the proportionality of every Committee when setting up what might be a short term body.

Accordingly, we would like to see a general discretionary power for local authorities to establish joint Overview and Scrutiny Committees and Sub-Committees, not limited to LAA targets, and that this should not be limited to County areas.

Question 4 Do you agree with the proposed approach to enable district scrutiny committees to review the delivery of LAA targets?

There is a huge potential for duplication here, with the County Council being required to respond to requests from the various Overview and Scrutiny Committees of each District Council. But the principle of equality indicates that this should not be a one-way process and so this provision should apply equally from District to County as from County to District.

Any proposal put forward should seek to maximise the existing communications channels that already exist, especially those with strong LSP's

Question 5 Do you agree with the proposal to apply these new powers in councils operating alternative arrangements? Are there any specific implications that should be taken into account in doing so?

There are no specific implications. A consistent approach is advocated.

Taking forward the 2008 White Paper commitments

Question 6 What issues should be considered as part of any new power to establish area scrutiny committees?

There is no reason why an area Scrutiny Committee should be limited to the total area of a County, as it may be appropriate for the area of a

District Council, or for part of a unitary authority's area.

Further, this power should not be limited to Committees, but should also cover the establishment of an area Scrutiny Sub-Committees, for the reasons set out above.

Question How might the requirement for dedicated scrutiny resource be put into practice?

As suggested, the Monitoring Officer model would require the authority to provide the resource specified by the Scrutiny Committee as necessary to enable it to support it and enable it to deliver its functions. This may include:

- Report to the Council, as necessary on the staff, accommodation and resources they requires to discharge its functions;
- Have sufficient resources to enable them to address any matters concerning the role of Scrutiny;
- Have control of a budget sufficient to enable them to seek opinion on any matter concerning Scrutiny;

Question 8 Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise? (Check with AM)

First, the proposal to place a legislative requirement to respond in a particular manner to a petition is mis-directed. Almost every authority has its own arrangements for dealing with petitions, which reflect the fact that a substantial petition almost certainly reflects the views of a significant number of local electors. But each authority has its own rules, and has the ability to vary them as appropriate. So, the experience of authorities has been that the introduction of such formal rules has been that particular interest groups have used them to put their concerns on the agenda of the authority, irrespective of any wider public interest. Where this has happened and an authority has been inundated by petitions, or petitions from one source, it now has the flexibility to amend its rules to prevent abuse. By legislating on this point, and setting a single procedure in stone for every authority, the Department increases the likelihood for such abuse, and removes the ability of the authority to amend its procedures in response, so increases the probability that they become meaningless. Second, as many petitions are organised by interest groups seeking a change in the priority of local spending which the authority's Policy Committees has already determined, an Overview and Scrutiny Committee will be powerless to alter those priorities. At best, it can recommend to Council and the Policy Committees that a change be made in spending priorities, if only next year when the Budget comes up for review. It is therefore certain that many of the petitioners will not be satisfied with the authority's response. That does not mean that the authority's response is inadequate. The proposed remedy is for the Scrutiny Committee to refer the matter for debate in Council, which has no effective control over the subject matter of 95% of the issues raised in the petitions. The end result is that both the petitioners and the Council and the Executive are frustrated by the process. This is really an area where the Department should not attempt to over-regulate. The CPA process

already takes account of citizen satisfaction with the authority and this, combined with the fact that authorities will naturally be responsive to the views of a significant number of local electors, is more than sufficient.

Based on Chapter 3: Increasing the visibility and accountability of local public officers

- Question 9 Do you agree with this approach that those responsible for the job descriptions should determine the precise arrangements by which the chair or chief executive will attend regular public meetings?

The proposal to introduce a statutory requirement that the chief executive of a local public body must attend a regular public hearing to explain their actions is fundamentally mis-directed. Many local authorities already provide for public questions at Council, Committee and Executive meetings, and the flexibility to determine appropriate procedures in each authority gives the ability to prevent abuse of such a facility. If such a system of mandatory public hearings is to be instituted, then it is essential that it be attended by both the Chief Executive and the Leader of the authority.

Further, experience of such “hearings” is that they are used by interest groups to push a particular agenda, whether that be the refurbishment of the bowling greens, or concerns over the impact of pedestrianisation on commercial businesses. If one interest group is not to dominate the agenda of such a “hearing”, then the authority must have the ability to control the agenda, in which case it has the ability to restrict access to supporters and stifle opponents.

The proposal to require this to be included in job descriptions is fundamentally mis-directed. The job description of a Chief Executive of a local authority includes a requirement to do anything which the authority reasonably requires him/her to do. It is not appropriate for the Government to impute such a requirement into every chief executive's job -description.

- Question 10 Do you agree with our proposals to require the local authority with its strategic partners to agree a local scheme for petitions to hold officers to account? What practical issues might arise?

It might be appropriate for the partner authorities in each LAA area to be required to hold a periodic public meeting at which members of the public can ask questions about the LAA and the progress of the Partner Authorities towards attainment of those LAA targets. In such a case a requirement on each authority to ensure that appropriate members and officers are present to respond to questions which are likely to arise is a natural outcome.

But the proposal is rather different - to define in legislation a requirement for a specific officer to attend a “public hearing” if named in a petition, and this proposal is fundamentally mis-directed.

Petitions are submitted by interest groups. Many such petitions will relate to issues over which the particular authority has only limited controls or

influence, so that the petitioners will inevitably be frustrated by the process. Other petitions do not relate to broad LAA targets such as crime reduction but rather the specific issues such as “why are the bowling greens not maintained adequately?”, “why was planning permission granted for this development”, or even “can we ensure that planning permission is never granted for this development?” There is absolutely no purpose to giving the LAA partner authorities power to determine how a particular authority will respond to such unpredictable single issue petitions.

- Question 11 Should the Government provide some minimum standards for local schemes to hold officers to account? What should they be? Which, if any, local service providers and agencies must, or must not be in any scheme?

This should be a matter for each authority to determine and the suggestion that local service providers and agencies should have a role in determining how a local authority should be required to respond to a petition is mis-directed. There is already a mechanism, through the CAA process, to ensure that each authority has adequate mechanisms for responding to public concerns, and a remedy in terms of measurement of public satisfaction.

- Question 12 Do you agree that the scope of the scheme should be agreed locally subject to any statutory minimum standards and whether this would be an effective means of empowering communities?

As set out above, only a proportion of petitions will relate to LAA targets, and so the involvement of Partner Authorities in the determination of an authority’s scheme for dealing with petitions is mis-directed.

The concept of a statutory requirement that a petition to a local authority should give a right to a “public hearing” holding a specified officer of a local authority to account is inappropriate. Such a meeting with the members and officers concerned in the subject matter of a petition should be merely one of the responses which an authority should invoke on appropriate occasions. Accordingly this should be determined at a local level.

Based on Chapter 4: Facilitating the work of councillors

- Question 13 Do you agree with the proposed approach?

Would remote participation be helpful to local authorities?

The present formulation of the Local Government Act 1972 means that a “meeting” must comprise the members in the same room at the same

time. There are some decisions where this is inconvenient, because of members' other commitments, and where the ability to include a member in a meeting remotely would facilitate decision-making, not least by securing a quorum where the requisite number of members would be unable physically to attend the meeting.

Can remote member participation be secure?

At the simplest level, when a member is physically present in the Council Chamber or Committee Room, everyone can see that it is actually the member who is present, that they are attending to the issue and that they are not under any visible duress, and that they are not being coached by a third party. For audio-only systems, the voice may sound right, but there is no guarantee that it is actually the member who is participating. Further, there is no means of ensuring that it is just the member who is present and that they are not accompanied by another person who is dictating their actions. Video-conferencing is a little better, but again the camera is uni-directional and so there is no security that there is not another person present.

Can remote member participation facilitate proper debate?

Debate between members is an essential part of the democratic and decision-making process, both in forming members' decisions and in enabling the public to see how the decision is formed. Remote video-conferencing is very much a second-best medium for debate. Audio-only conferences are worse, as there is no visual image and no means of ensuring that the remote parties are actually listening to the debate. Of course, there are some decisions where little debate is required, and what is sought is just confirmation of the members' understanding of the issue and then agreement to the recommendation. But the fact that some decisions could satisfactorily be taken remotely does not remove the fact that much decision-making would be seriously devalued if it were allowed to be undertaken remotely.

A further aspect of debate is the role of the Chairman, both in securing fair access to the debate and in ensuring that the matter is properly considered. It is very hard to see how a Chairman, operating from a remote position whether by video or by audio link, could properly conduct a meeting where the other members were all physically present in the meeting room.

Can remote member participation enable the use of visual aids?

Increasingly, decisions are taken with the aid of visual aids. These may be charts and graphs, or more frequently particularly in Planning decisions, they are plans, photographs and illustrations. With just an audio link, a speaker cannot transmit an image and place it before the remote member. Remote member access does not allow for adequate use of visual aids.

Can remote member participation provide adequate public access to decision making?

One of the essential elements of public access to decision-making is the

ability to attend the meeting, and to see the decision-makers take the decision. It must be acknowledged that the value of this access would be reduced if the “meeting” comprised one member in a room and three or four other members on a conference call from remote audio links.

Could remote member participation be limited to certain types of decisions?

There are some decisions where debate and public access are less important. The difficulty is that it is not always possible to define in advance for which decisions this will be true. Matters which might be thought of as uncontroversial can attract public attention. So it is not practicable to define categories or descriptions of matter for which remote access might be feasible.

There is no simple means of defining those matters for which remote member participation would be permitted.

How can the Code of Conduct be applied to remote member access?

The Code would require to be amended as at present it only requires a member with a prejudicial interest to withdraw from “the room or chamber in which the matter is being considered.” That has always been the Council Chamber or Committee Room. With remote member access the Code would need to make it clear that this includes the room in which the member sets up the video or audio link, which may well be private premises at their workplace or home, but only for such period as the member is actually on-line. If the member remains connected remotely during the consideration of an item where they have a prejudicial interest, then there is no secure means of ensuring that the member is not listening in on the debate, which would clearly be contrary to the Code. This is simply impracticable.

What does “attendance at a meeting” signify?

If remote member attendance is permitted, it would be appropriate to amend Section 85 of the Local Government Act 1972, to make clear whether such remote attendance counts toward the period of 6 months absence.

Will remote member participation improve the public access and accountability of Council decision making?

The principle thrust of the Communities White Paper and the Consultation Paper is on improving local accountability. As set out above, remote member access would undermine public rights of access to the decision-making process. There are problems on applying the Code of Conduct on prejudicial interests, detracts from the quality of debate, undermines public speaking rights and denies members of the public the ability to see their elected Councillors engaging in debate. The introduction of remote member participation therefore runs entirely counter to the principle purpose of the Communities White Paper in securing improved public accountability.

What minimum facilities should be provided to the public?

Remote member participation goes to the core of allowing the public to attend meetings and see their elected Councillors take decisions. However, if the Government determines that such remote access should be allowed, then the public must be provided with at least the same facility as the members who are physically present at the meeting.

Which authorities should remote participation apply to?

If the principle of remote member participation is conceded, there is no reason why it should be limited to Councils. It would be equally apply to combined Police and Fire Authorities, National Park Boards, Conservation Boards, Passenger Transport Authorities and Joint Waste Authorities.

What will it cost?

The Consultation Paper is unrealistic in suggesting that the introduction of remote member access would not result in any additional costs. It would require the provision of additional equipment in every meeting room in every local authority in England. Providing facilities for more remote stations is more expensive.

Do you agree with the proposed approach?

No. The loss of public accountability is more important than any occasional gain in terms of facilitating member participation.

Responses to:

Responses must be received by 30 October 2008 by email:
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or by post to:

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