

# ITEM 14



## SCRUTINY MANAGEMENT COMMISSION

28 September 2009

Report of the Director of Corporate and Adult Services

### Strengthening Local Democracy Consultation

#### RECOMMENDATION

1. For the Commission to consider the consultation document and the responses provided so far and for members to make any additional suggestions or comments that they may have.

#### SUPPORTING INFORMATION

- 2.1 The consultation paper, *Strengthening local democracy*, is published as part of the constitutional renewal debate announced by the Prime Minister following the local and European elections. The consultation considers:
  - how councillors and councils can be placed at the centre of decision-making by local service providers, principally through strengthening overview and scrutiny
  - the scope for local government to operate within the scheme of social entitlements described in the policy paper *Building Britain's Future*
  - the opportunities available for councils to lead on climate change measures locally.
  - how the powers of city and sub regions could be further strengthened, and these new bodies made more accountable
  - the nature of the relationship between central and local government.
- 2.2 The consultation specifically asks for views on what steps should be taken following the Court of Appeal's decision in the London Mutual Assurance case, and in some respects follows on from the findings of the recent Select Committee examination of the balance of power between central and local government.
- 2.3 The attached briefing document published by LGIU (Appendix 2) outlines the main issues raised in consultation, and makes some initial comments. The full consultation document can be accessed from the CLG website.

- 2.4 Responses to the consultation are required by 2 October 2009. The consultation responses will be being collated by Gavin Thompson, the Policy and Research Manager and will be considered at the Leadership meeting on 29 September 2009. Any responses of the Scrutiny Management Commission will be reported verbally to the Leadership meeting.

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<b>Background papers:</b>	Appendix 1 – Implications
<b>List of appendices:</b>	Appendix 2 – Strengthening Local Democracy Consultation
	Appendix 3 - Draft Consultation responses

## Appendix 1

### IMPLICATIONS

#### Financial

1. None arising directly from this report. There are significant financial implications associated with some of the proposals but these have not been quantified.

#### Legal

2. None arising from this report.

#### Personnel

3. None arising directly from this report. There are significant personnel implications associated with some of the proposals but these have not been quantified.

#### Equalities impact

4. Effective scrutiny will benefit all Derby people.

#### Corporate Objectives

5. This report has the potential to link with all the Council's Corporate Objectives.

# Strengthening Local Democracy: consultation

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Author: Hilary Kitchin

This covers: England

## Overview

The consultation paper, *Strengthening local democracy*, is published as part of the constitutional renewal debate announced by the Prime Minister following the local and European elections. The consultation considers:

- how councillors and councils can be placed at the centre of decision-making by local service providers, principally through strengthening overview and scrutiny
- the scope for local government to operate within the scheme of social entitlements described in the policy paper *Building Britain's Future*
- the opportunities available for councils to lead on climate change measures locally.
- how the powers of city and sub regions could be further strengthened, and these new bodies made more accountable
- the nature of the relationship between central and local government.

The consultation specifically asks for views on what steps should be taken following the Court of Appeal's decision in the London Mutual Assurance case, and in some respects follows on from the findings of the recent Select Committee examination of the balance of power between central and local government.

This briefing outlines the main issues raised in consultation, and makes some initial comments. It makes links to the consultation document, and relevant LGiU briefings, including an LGiU submission on local carbon budgets sent recently to the Secretary of State.

**Responses are required by 2 October 2009**, by post to the Local Democratic Renewal Consultation at DCLG, or e-mail to [localdemocracyconsul@communities.gsi.gov.uk](mailto:localdemocracyconsul@communities.gsi.gov.uk).

## Briefing in full

The consultation paper is divided into five chapters, each posing a number of consultation questions. This briefing outlines the issues, and draws attention to some particular questions. A full list of the consultation questions and information on responding to the consultation are set out in chapter 6.

## **Local government at the centre of decision-making**

The consultation paper envisages local government being at the centre of decision-making on public services in their areas through influence achieved by increasing the power and range of scrutiny. Councils will have an overview of the total spending by public service providers in their locality and strengthened scrutiny powers to monitor spending by other bodies.

Public organisations subject to scrutiny will be required to explain their spending, and to explain and justify their policies.

### *Scope of scrutiny*

The consultation suggests extending the scope of scrutiny so that:

1. Scrutiny committees will be able to cover all the issues that matter to the local community, and not be limited to issues that fall within the priorities set out in the LAA.
2. A wider range of bodies will be captured, beyond the range of organisations responsible for contributing to local improvement targets.
3. Committees will be able to require officers and board members from external organisations to appear before them.
4. Organisations will be required to have regard to and to formally respond to the reports and recommendations of scrutiny committees.

### *Organisations subject to scrutiny*

The government believes that scrutiny of health and of crime and disorder issues has not yet had sufficient impact: there will be new statutory guidance on improvements in health scrutiny and a White Paper on policing during the autumn.

Scrutiny will encompass organisations responsible for police strategies, fire and rescue, probation, public transport and transport infrastructure, job centre plus and employment related services, and utilities.

It also appears probable that the models of partnership working proposed in the Schools White Paper, such as federations, trusts and 'Accredited Schools Groups' will be subject to scrutiny, as will learning and skills for young people.

The new regime will need to strike a balance with the operational independence of organisations subject to scrutiny, and will be confined to local service delivery issues.

No mention is made of the major quangos, such as the Environment Agency, or the Homes and Communities Agency.

### *Strengthening scrutiny roles within the Council*

Proposals for strengthening the authority given to scrutiny within councils include:

- measures to ensure leadership support

- a possible duty on chief executives to ensure that scrutiny committees have adequate resources
- chairs of scrutiny to be treated on a par with Cabinet posts, and to receive comparable special responsibility allowances
- additional further support for scrutiny, and provision of advice and training.

The introductory section of the consultation paper considers the role of elected members in this framework, with the aspiration that they 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 have been delivered". In the context of entitlements, discussed in the next chapter, it is intended that elected councillors 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".

### **Strong local government operating in the local interest**

This somewhat complex chapter attempts to explain how local government might operate in an environment that moves away from centralised inspection towards an emphasis on the social entitlements for individuals and communities outlined in the recent policy paper, *Building Britain's Future*.

The concept of entitlements will cover an expanding range of requirements on public services, some enforceable by individuals, some statements of principle by which service providers can be held to account. A long-term process is envisaged, in which a move away from reliance on inspection (including a reduction in LAA targets) is accompanied by more extensive local authority scrutiny of these enforceable entitlements.

The scheme envisages the retention of external intervention, either by ministers giving formal directions or by taking responsibility for functions of non-compliant local authorities. The necessity of ministerial intervention will be reduced by maintaining sector led support for local authorities.

#### *Formal powers*

The recent Court of Appeal decision, striking down the London Mutual Assurance scheme, has necessitated consultation with local government on whether any action is needed to strengthen councils' general power to promote the well-being of their areas.

Government plans to create a specific power to set up a mutual assurance scheme. The consultation asks if additional specific powers are needed to establish similar complex arrangements, and more generally to consider whether further action should be taken to strengthen councils' formal powers.

It appears likely that the provision of additional powers will be linked to a demonstrable growth in confidence in councils on the part of the general public. The consultation asks how a growth in confidence can be best achieved, and be supported by central government.

#### *Co-operation and partnership*

Overall, the paper maintains the government's commitment to supporting local and sub-regional cooperation. Space will be allowed for greater innovation in the delivery of health services, and closer relationships between local authorities and primary care trusts, particularly sharing staff and developing joint accountability and scrutiny arrangements. Ideas are sought on any further changes that are needed following the extension of integrated transport authorities.

The government is considering whether a full review is needed with a view to rationalising the structure of local partnerships.

### **Local authorities tackling climate change**

The consultation asks whether councils have the right powers and responsibilities to help address climate change, and invites views on proposals to give local authorities a greater role in tackling climate change through local carbon budgets or other mechanisms. It recognises the importance of involving local citizens in activities that will combat climate change.

The government wants 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. In addition to responsibilities for planning, building control and management of waste, authorities will be encouraged to introduce entirely new roles and services.

Local authorities' activities and performance in this area should be transparent and accountable, encourage local solutions and innovation, and ensure fairness. Initiatives will include the council's role in:

- meeting local carbon budgets
- ensuring that communities benefit from low carbon economic development.

Views are sought on a number of significant issues, which will be used to shape specific policy options, including:

- coordination of funding streams to support low carbon activity in local areas
- innovative financing and investment in energy efficiency and renewable energy
- powers needed to give effect to publicly supported infrastructure plans.

Government is also looking at a range of possible incentives to reward progress, and wants to learn from the LGiU-led voluntary carbon trading scheme.

The intention is that new freedoms and responsibilities will be delegated to councils putting in place plans that add value to national climate change policy, and demonstrate local support.

Specific questions focus on the value of current national indicators, how local authorities can add value to national climate change aims, and what measures are needed to ensure that national policies reinforce local efforts.

### **Sub-regional working**

Local authorities are currently testing the possibilities of sub-regional partnerships through voluntary multi-area agreement and city region pilot schemes. It will be possible, when the Local Democracy, Economic Development and Construction Act comes into force, for local authorities to put sub regional partnerships on a more formal basis through economic prosperity boards. At regional level, Leaders' Boards will be responsible for devising a regional strategy, in cooperation with regional development agencies.

A number of measures are planned that will introduce an element of accountability into sub regional arrangements. These include:

- public access to meetings and documents.
- the "duty to involve" to apply to statutory authorities and boards
- a duty on councils to promote understanding of sub-regional arrangements
- joint overview and scrutiny arrangements that would be able to examine sub regional partnerships.

Future options include strengthening requirements on sub regional partnerships to participate in scrutiny arrangements, and applying a duty to respond to petitions to Integrated Transport Authorities, economic prosperity boards and combined authorities.

The consultation raises the question of whether sub regional structures are sufficiently visible and accountable to citizens. Suggestions include:

- Elected representation at sub regional level
- establishing "city region leaders"-an individual elected from among member authorities to act as a figurehead for the partnership
- new sub regional local authorities
- mayors for city and sub regions, directly elected by the population
- a combination of a directly elected executive mayor and directly elected sub regional scrutiny body, similar to the model of the mayor and assembly established in London.

### **Clear relationships with local government**

The consultation provides a set of principles for the role of local government and for central-local relations, and asks whether this should be put on a formal basis, and if so how. Views are also sought on how best to ensure the accountability of other central government departments and local bodies to these principles.

The government has already concluded that including a set of principles in legislation "could prove inflexible and limit the room for manoeuvre by councils and government in the future". It therefore proposes:

- an ombudsman arrangement which would enable citizens to raise their concerns with an independent arbiter if unhappy with compliance with the principles by either local or central government
- a joint Parliamentary select committee to scrutinise broad adherence to the principles and make strategic recommendations for future policy.

## **Comment**

### **Introduction**

The starting point of the consultation is the right one, recognising that the key way in which local citizens are able to influence the decisions that affect their lives and their communities is their ability to elect a strong local council with sufficient powers with which to lead and shape their area, and act on behalf of citizens.

Proposals to put scrutiny of local service provider on a stronger basis and to create some real powers to have an impact on climate change (building on LGiU's carbon trading project) will be of real importance.

Yet while it makes a number of practical proposals, and raises some issues of principle, the consultation does not provide the basis for direct decision-making by local authorities in key areas of local interest.

The consultation provides the opportunity to make the case for stronger local government powers and recognition as part of the broader constitutional renewal debate triggered by a Prime Ministerial statement in early June, and it will be important that councils make a direct contribution.

LGiU is considering its response to the consultation and will be interested to see affiliates' own responses as they are agreed. Please send these by email to [hilary.kitchen@lgiu.org.uk](mailto:hilary.kitchen@lgiu.org.uk).

### **Local government at the centre of decision-making**

There must be questions as to how far scrutiny in itself places councils at the centre of decision-making. Scrutiny cannot be as effective as real decision-making powers, as for instance, in providing councils with powers to commission primary health services, or for councillors to make up a majority of the membership of Trust Boards.

It will also be necessary to make a clear distinction between the role of the individual councillor in their ward, and in their role as a member of a council's overview and scrutiny committee. Without this strategic distinction, there is a risk that elected members will be regarded more as case workers than playing a unique representative role.

That said, broadening the scope of scrutiny to cover all issues relevant to the local area would be a wise move, particularly as it would allow consideration of issues which could then inform the future development of LAAs.

The implications of extending scrutiny to additional organisations will vary over time and local circumstances. For example, there is likely to be real value for councils with significant flood risk management responsibilities in



being able to examine the policies and preparedness of utilities, including water companies.

It is suggested that councils can join forces to scrutinise services provided across boundaries, to avoid over-pressurising the resources of external organisations. Elected members and officers will want to consider whether councils themselves are likely to have the resources and capacity to manage this significant extension of scrutiny in a way which will prove to be effective and influential.

Despite the risk of increased pressure on scrutiny capacity, councils may wish to consider whether other significant organisations responsible for local services are missing from the list.

### **Strong local government operating in the local interest**

While the consultation paper provides some indication of how the government foresees the introduction of a scheme of social entitlements, in order to make a real judgment of these proposals much greater clarity is needed about how entitlements will be identified, how they will be enforceable and how citizens and communities can seek redress.

On the question of formal powers, any action to resolve the unsatisfactory outcome of the London boroughs' efforts to engage in a mutual assurance schemes must be welcome. It is not sufficient, however, to apply a sticking plaster to each instance where the well-being power is found to be insufficient to support the higher degree of cooperation that will be demanded by the increasing reliance on partnership arrangements that can be expected in coming years. A thorough re-assessment of the terms of the well-being power is needed: the necessity for councils to have a power of general competence seems proved.

The government asks whether granting further powers to local councils should depend on rising public confidence in the local council: nothing better encapsulates the chicken and egg metaphor. If councils are to command greater confidence they need to be able to demonstrate they can act effectively on behalf of local people and need powers to do so.

### **Local authorities tackling climate change**

LGIU has already responded to the request for information on what powers local government would need in order to deliver on climate change, in particular local carbon budgets. The note sent to the Secretary of State, attached to this briefing, outlines the scope, governance, information, and finance requirements that will enable them to play an effective role, and is LGiU's first thoughts on the proposals. If you would like to know more or contribute to this debate contact Gemma Bradshaw by email at [gemma.bradshaw@lgiu.org.uk](mailto:gemma.bradshaw@lgiu.org.uk)

### **Sub regional working**

Setting on one side what appear to be some improbable sub-regional arrangements in the current economic and political climate, there is merit in considering what measures might introduce an appropriate level of public

awareness and understanding of sub-regional responsibilities and decision-making. The new arrangements need some time to bed in, providing the opportunity to test measures for ensuring that a public profile is established for these partnerships.

### **Clear relationships with local government**

The government has ratified the European Charter Local-Self Charter, and agreed a Central-Local Concordat with the Local Government Association, but there are real issues about what these commitments mean in practice.

LGIU has consistently questioned whether the UK is in compliance with the European Charter on Local-Self Government, particularly in relation to its financial status, and the level of administrative oversight by central government. The decision of the Court of Appeal in the case of the London Mutual Assurance scheme calls into question whether the UK is in compliance with the Charter's requirement that local authorities have full discretion and initiative, and underlines the need for a power of general competence.

There is also a powerful argument for setting in statutory form a set of principles that would underpin a maturing central-local relationship. The lack of transparency and lack of impact of the Central-Local Concordat between ministers and the Local Government Association underlines the value of formal recognition, and would strengthen accountability to parliament, rather than government.

## Strengthening Local Democracy Consultation

Local Government at the Centre of Decision Making - Extending the scope of formal scrutiny arrangements

Question 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?

Scrutiny is and always will be a limited resource. This is because there is a finite limit to the time that scrutiny members can devote to it whilst still attending to their other duties and responsibilities as elected members of the local authority. The Councillors Commission report 'Representing the Future' published in 2007 shows how the time councillors spend on their duties has nearly doubled from 52 hours per month in 1964 to just under 95 hours by 2006. Councillors already have a large demand on their time through case work from their local constituents, attending local forums, ward and group meetings as well a range of scheduled and unscheduled council meetings. Member capacity will therefore play a significant part in the ability of members to scrutinise further areas and public bodies.

A primary objective of scrutiny is to add or gain value. To do this scrutiny needs to concentrate on areas of recognised importance such as performance against defined objectives. If scrutiny powers are extended to allow scrutiny committees to scrutinise matters that are not directly related to the LAA performance of partners there is a danger that the some of the limited resources of scrutiny will be expended on matters that are not of primary importance.

If scrutiny powers are extended in the manner proposed there is also the danger that the partner organisations will view scrutiny on non-LAA issues as an unnecessary intrusion and that this may in turn result in resentment and in a reduced level of co-operation with the scrutiny committees.

If it is decided to extend the powers of scrutiny in the way suggested, there will need to be a duty on the partner to respond and scrutiny will need additional resources and teeth to make it more effective.

Question 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?

The terms of reference of the Council's scrutiny committees already includes powers to 'consider any matter affecting the area or its inhabitants'. This means that the committees can already scrutinise expenditure by the Council on the delivery of local public services and there would seem to be little to be gained from making these powers more explicit, indeed it could be counter-productive to do so.

The main problem with the scrutiny of expenditure is the lack of members' expertise in the field of financial scrutiny. This can result in them failing to challenge statements presented to them and in a reluctance to thoroughly question officers.

Effective financial scrutiny requires a group of scrutiny members who have a good level of financial expertise and confidence and can meet with finance officers on something approaching an equal footing. Without such members it is difficult to see how the scrutiny of expenditure can be made any more effective.

Question 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 that would benefit from scrutiny from local government?

Local authority Crime and Disorder committees can already scrutinise the police and fire authorities and it is understood that there are plans to include the probation authorities in this regime. There would seem to be little to be gained in offering powers to scrutinise these authorities to other scrutiny committees. Indeed it might result in duplication and prove counter-productive.

The delivery of educational provision and young people's education and skills issues are already within the remit of the existing 'education' scrutiny committees (in Derby's case the CYP Commission) and there seems to be no need to extend these powers.

The remaining areas are:

- The provision of public transport and transport infrastructure
- Utility companies
- Jobcentre Plus

Currently these are not covered directly by scrutiny and there could under certain circumstances be benefits in including them in under the scrutiny regime. However the issues would be:

- The usual one of limited resources and the need to find the member time to carry out the scrutiny
- The diversion of such scrutiny effort as is available away from 'core' areas
- The resentment and consequent reluctance to co-operate that is likely to arise if scrutiny is imposed on an independent organisation that does not consider it has a clear link to the local authority.

Question 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?

Current practice is to 'invite' officers, board members, etc, to attend scrutiny meetings to give evidence as witnesses. In most cases the invitation has been accepted, albeit sometimes reluctantly. On the rare occasions where invitations have initially been declined it has usually been possible to persuade the witness to attend the meeting.

It is considered that the introduction of powers to require witnesses to attend will move scrutiny into a more confrontational role and is likely to encourage an uncooperative attitude on the part of some witnesses.

Consideration should also be given to what action will be taken if witnesses who have been required to attend do not come to the meeting. If no action is taken the powers are worthless and will soon be ignored by anyone who is not inclined to cooperate. Conversely, it may be costly and time consuming to take sanctions against the non-attending witness and thereafter the witness' opinion of the scrutiny committee and scrutiny in general is never likely to be good.

Question 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?

In order to ensure that councils adequately resource and support the scrutiny function it will first be necessary to define what it is that scrutiny is expected to do. Unless this is done it is impossible to define the resources that will be required.

If scrutiny is to be a member led process the resources it requires fall into two categories. These are:

- The number of elected members who are available to conduct scrutiny and the amount of time that those members can commit to scrutiny
- The personnel and resources that the available members need to enable them to conduct the scrutiny that they are able to do

As an example, there are 51 elected members in Derby but only 30 of them are currently members of scrutiny Commissions. Assuming that each of those members spends an average of 25 hours per week on Council business and, optimistically, that 10% of that time is devoted to scrutiny, a total of 75 hours per week of member time (2.0 FTE) is available for scrutiny.

It is this resource that will be the factor which controls the work that scrutiny can achieve. The scrutiny member resource can be spread widely across a relatively large number of scrutiny committees or it can be concentrated on a small number of committees. The type of output that is achieved - widespread but shallow or narrow and deep - will very largely depend upon

the way in which it is decided to utilise the available scrutiny resource.

It is considered that all local authorities will need full time scrutiny support officers if they are to achieve worthwhile scrutiny outputs. However the size of the support function cannot be defined unless the scale of the scrutiny member resource is known and the local authority has decided how that resource will be employed.

Question 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?

Council Leaders can do this by:

- Ensuring the necessary status of scrutiny within all Council processes
- Emphasising the importance of officers attending scrutiny meetings when invited to give evidence
- Making reports and other information easily available to scrutiny committees before they are the subject of executive decisions
- Ensuring that the executive:
  - Gives proper consideration to scrutiny committee recommendations
  - Gives its reasons decisions are to the scrutiny committees in a timely fashion
  - Recognises the scrutiny committees as a valuable resource rather than a brake on the decision making process and uses them as such
- Publicising the work of the scrutiny committees and the outcomes of their work
- Involving the public in scrutiny
- Seeking knowledge of areas of public concern that may then be reviewed by the scrutiny committees

Question 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?

There should be greater publicity of the work of the scrutiny committees and of how that work has benefited local communities

The public should be encouraged to suggest topics for review by the scrutiny committees and to take part in the reviews

Local citizens may be important witnesses in scrutiny reviews but it is considered doubtful if many of them could act as expert advisers to the committees