

Committee on Standards in Public Life Consultation: *Accountability in Local Government*

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I have worked at INLOGOV for nearly 25 years, working previously as a local economic development officer for Sheffield City Council, then led by David Blunkett. For 14 of those 25 years I was also a councillor on Birmingham City Council, and for the last three of them served in the Cabinet with responsibility for Regeneration. I have written extensively about local government following the Local Government Act 2000. Currently, much of my time is spent on matters relating to Overview and Scrutiny, including the successful launch of a post-graduate assessed module on scrutiny, open to members as well as officers, and part of a process of legitimating scrutiny as a matter for serious study and understanding.

The comments which follow relate to Chapter 2 of the consultation document. They focus first on the apparent failure of the Government to recognise councils as corporate bodies representing the varied interests in their areas, with the legitimacy that comes from universal elections, secondly on the roles of non-executive councillors in the post-2000 system, and finally on what can, or cannot, be expected from Overview and Scrutiny.

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Local and Central Government in 2008: Challenges and Choices

Central government's interest in local government has never been more apparent than in the past three years, with the "local government white paper" *Strong and Prosperous Communities* (October 2006), the "health white paper" *Our Health, Our Care, Our Say: A New Direction for Community Services* (January 2006), the *Police and Justice Act 2006*, the *Local Government and Public Involvement in Health Act 2007*, the "empowerment White Paper" *Communities in Control: Real People, Real Power* of July 2008 and the *Community Empowerment, Housing and Economic Regeneration Bill* now before Parliament which includes proposals to abolish the indirectly elected regional assemblies in England, handing many of their powers to the Regional Development Agencies or to ministers at Westminster given responsibility for particular regions, held to account by regional select committees. Alongside these, there have been a wide range of consultation papers, guidance notes, and proposals for secondary legislation – including *inter alia* detailed prescriptions for performance management and targets, and for partnership working.

A striking feature of all these is ambiguity over the position of councils as elected corporate bodies, with a mandate, which comes from elections, to work and lobby for the good of their areas, and to hold to account all who take decisions that will affect them, especially those who spend public money.

In the main, in this central government documentation, councils are characterised as deliverers of services, or, for example in social services, as *commissioners* of services. The services will increasingly be delivered by other agencies, but the councils which commission them will have executives headed by directly elected mayors, or strong council Leaders expected to deliver efficiency gains and effectiveness. Councils in this discourse are little different from quangos, whose board members happen to be councillors chosen by the mayor or leader rather than individuals appointed by a Secretary of State or appointments commission. They are expected to work well at scales larger rather than smaller – as shown in proposals for unitary councils, where the government shortlisted giants such as North Yorkshire (with a population of over 580,000, running from Scarborough to Settle, and "from the edge of Teesside to South of the M62"), or most recently Norfolk with parts of Suffolk added and total population over 800,000, and approved single unitary councils in Cornwall (100 miles long, 20 miles wide, a series of very distinct communities, and only 82 councillors) and five other whole counties.

Councils are required to develop their thinking through Sustainable Community Strategies approved by Local Strategic Partnerships, which, in association with their local government regional offices, have prepared and set targets enshrined in Local Area Agreements. These involve a slightly wider but still small elite – a handful of senior councillors and council officials and leaders from other organisations influential in the area. Councillors not in this elite will approve documents in meetings of their councils, and have powers of scrutiny which include the right to require council officers and outside partner agencies to supply evidence. The challenges implicit in making this a reality are discussed later in this submission.

The government documentation does not recognise the full council as *a parliament for its local area* – a place where matters of importance can be opened up, where questions can be asked and answered, and policies refined – and where the public at large can gain an understanding of whether an Executive is fully on top of the issues.

An illustration of this is the position of Overview and Scrutiny. The Westminster Select Committees are creatures of Parliament, with estimates separately identified and voted on, and chairs chosen by MPs on relatively free votes. In local government a disturbing number of councils either resource the scrutiny function barely at all, or have removed senior officers who were serving their scrutiny committees with little or no warning or consultation. The 2007 legislation had to specify that Executives must receive scrutiny reports within a reasonable time, and explain why they are accepting or rejecting their recommendations.

There is a major omission in the plethora of legislation and consultation documents: clear proposals to reform and stabilise local government finance. Traditionally, local government was financed through rates on property, the only regularly-paid property tax in the UK. Since the amount paid was proportionately higher for higher value properties, and many well-off and older people make little use of council services (hardly surprising when about half of all council income funds education), they had a grievance, which Mrs Thatcher recognised when she replaced the rates and with a head tax or poll tax. That was widely disliked and condemned for its inequity the other way round – that the poor (other than the very poor, who got rebates) paid nearly as much as the rich. It also produced less total income than the rates, because it did not produce large contributions from those owning expensive properties. John Major as Prime Minister produced a compromise – a property tax called the Council Tax which retains elements of the poll tax, notably a ceiling on how much owners of large properties pay. As with the original system of property rates, and with the poll tax, this lacks buoyancy – the sums received do not automatically rise with rising incomes - since the amounts levied are based on property valuations made in 1991 and no government since has had the courage to revise the valuations. Sir Michael Lyons, asked to look at this, produced a set of modest proposals for reform, but even these have, so far, proved too much for the Labour governments.

The Government has also not resolved its thinking on place-shaping. It has committed itself to giving councils – and city regions – and sub-regions – powers to influence the land-use, employment, transport and the built environment, without clarifying how these will work together or where the real discretion will lie. There is no clear definition of a city-region – an idea modelled on Greater Manchester, but which lead to opportunistic proposals for an M62 city region also including much of West Yorkshire, or a Birmingham, Coventry and the Black Country city region which happens to include Telford. The sub-regional concept makes good sense in some regions, especially the South East, where four sub-regions are the effective units of government administration (the region is a doughnut around Greater London, with a gap for Essex, Hertfordshire and Bedfordshire, so has very little natural coherence). But much less sense in the West Midlands where many towns outside the built up conurbation are important commuter centres.

All this is confusing, and somewhat disquieting, for non-Executive councillors. They are being asked to take on diverse tasks, ranging from scrutinising a Local Area

Agreement, or their councils' Sustainable Community Strategy at one extreme, to taking the lead in "place-shaping" their local suburb or village, or carrying out effective casework relating to the local environment, housing or crime at the other. Many councillors have the skills and experience to do some or all of these tasks. But all too often they are not given the time or resources, to do them effectively.

These contradictions can be found in the influential government-sponsored *Councillors Commission*. On the one hand it refused to endorse the professionalisation of councillors, expecting all but an elite few to remain lay and part-time. But on the other it (correctly) commented that the majority of councillors are far from representative - over 55, white, male - and often far from well equipped for the tasks they are required to perform.

The final comment on this period of non-stop activity of central government in relation to local, is that legislation is not always the best way to influence behaviour. The Local Government and Public Involvement in Health Act has 261 pages, with 246 sections and 18 schedules. Was this really necessary? Previous local government reorganisations were successfully carried out under earlier provisions; the strengthening of powers of leaders, and easing the path for directly elected mayors are minor strengthening of the 2000 Act; Local Area Agreements, and a wide range of partnership working, was successfully introduced ahead of the new legislation; the new scrutiny powers could have been introduced through guidance and secondary legislation; the system for maintaining standards and probity could have been reformed without primary legislation; and much joint working was already being conducted under existing legislation, notably the Local Government Act 1972.

There are downsides in legislating. Activities are put on hold while agencies work out what they are required to do (and how to do the minimum needed to comply). It sends out a signal that if something is not specifically legislated for, then you do not need to do it. It creates standard requirements, which may not be equally applicable for very large authorities as for very small, or for one part of the country rather than another. Above all, it sends out a message that local government is the creature of central government, created to do its bidding – in contrast to the model of the *European Charter of Local Self-Government* where local government *is* the exercise of the right of the people to represent themselves, to organise for themselves, and to be given access to the resources needed to provide basic levels of services.

What is most lacking in UK local government in 2008 is vision, initiative, willingness to think and act outside the box. The legal powers of well-being are there to make this possible. But the climate of efficiency savings, concentration on core business, commissioning of standardised services, and holding down the council tax militates heavily against risk-taking and initiative. If we want better councils, we need more engaged councillors, more excitement, more discretion, more challenge to do new and different things. That requires access to resources, and the ability to take local populations with you – knowing that you will be voted out if your projects fail. It requires an understanding of local government as political, in the sense of depending on elections with initiative associated with politicians rather than officials, and as local in that the scale of activity must not be so large that ordinary voters have little contact with their local politicians.

The Challenges Facing Non-Executive Councillors

The Local Government Act 2000 brought major changes to the roles of councillors. A minority became cabinet members, meeting to take decisions and to co-ordinate their council's activities. The rest, often described, slightly disparagingly, as "backbench councillors" lost their positions in committees where legally and sometimes with real influence they took decisions and moulded their council's policies.

Committees were a very successful form of training. Newly elected councillors would observe what was happening, go on visits or to conferences, learn from the questions asked by their colleagues and the – generally helpful – answers given by the council officers. After a time, they would contribute themselves, and after a year or so, by which time they would have been involved in difficult decisions about their department's budget for the next financial year, they would have a very good grasp of what that part of the council's work involved.

This also meant that they were taken seriously by council officers – who knew that a disaffected councillor could cause them all sorts of problems in committees or full council meetings. Conversely, council officers realised that these councillors, whatever they age, background, ethnicity or colour of hair, were serious people, with something to contribute, who had not been elected by their ward for nothing.

The situation now is that the majority of non-executive councillors are less well informed than they were, while officers know that they do not need to treat them so seriously. Indeed many third tier officers and below hardly meet councillors, because it is their superiors who attend cabinet and scrutiny meetings.

The scrutiny system – considered in more detail below - works well where there are good relationships between Scrutiny Committees and the Executive and sympathetic officers. It has been able to contribute useful policy development work on narrow fronts – picking up areas where co-ordination with other departments or agencies is needed, or where policy can be improved, not attempting to keep up with the detail across the whole of a department's working. It is highly dependent on effective chairing – and often the chairs become well informed but much less so the remainder of their scrutiny committees.

Non-executive councillors are also involved in Development Control, Licensing, Environmental Health, Standards, and sometimes other regulatory committees. But much of the work of these committees is delegated to officers, and, nominally at least, they are not involved in policy development. Increasingly these committees follow the advice of officers – most notably in planning matters, where councillors are increasingly advised of the risks if they go their own ways and reverse officer advice. A performance indicator of the percentage of routine planning applications dealt with in eight weeks, and major applications in thirteen weeks, is a further disincentive to imaginative rethinking of planning proposals.

Since councillors are less well informed, and officers less inclined to take them seriously, the amount of casework coming to councillors has almost certainly declined. This is also partly because councils have opened other avenues through which the public can raise issues or get access to services, but also because the

council is now often not the provider as it was in the past, e.g. of housing services. Much advice work has been taken up by MPs – who now nearly all have local offices, regular surgeries, and often professional case-workers.

Fewer and fewer services are provided directly by councils. Housing is the obvious example. But at least 120 councils have transferred services to leisure, arts or sports trusts – and more to private companies. Schools are run by governing bodies, or their head teachers, or the private interests that support academies. Buses are run by private companies, no longer by councils. Many important decisions are taken in partnership bodies, such as Local Strategic Partnerships, or their sub-committees that agree the targets for Local Area Agreements, that involve one or two councillors at most, and are heavily influenced by the professional officers. The result of all these changes is that councillors are far less involved in the fabric and detail of local decision-making than, until comparatively recently, they were.

This is compounded by the pressure to make savings – the Gershon process – which is leading to almost identical services across the country, and is a strong disincentive to take initiative, e.g. using the well-being powers now available. And by the reduction in the total number of councillors that comes when two-tier working is replaced by unitary councils.

If we want a revival in local democracy, reflected in turn-outs in elections, enthusiasm in opinion polls, and real diversity and imagination across our country, then we have to have councils with more powers responsible for smaller geographic area. Some of the ways that this could be done are relatively clear – more investment in council housing, or purchase of houses where banks or building societies are about to evict residents who can no longer pay their mortgages; investment in youth work and facilities for young people; innovative forms of public transport; environmental wardens; means of opening up schools and other facilities to make them centres of community life. Also a much greater say over the built environment and its uses, through the planning and licensing systems. And encouragement of small-scale energy saving or creation. And other policies that do not have to be national – such as perspectives on hunting, or post offices, or opening hours of pubs or clubs.

To achieve this, the pressure for ever greater “efficiency” savings will need to be less, and councils will need more of their own resources. My preferred local taxes would be sales taxes on electricity, gas, or fuel (the latter having the advantage that those who visit an area and use its roads and other facilities will pay – as of now, people from outside an area do not pay for subsidised arts or community facilities that they use). Of course the use of new taxes may lead to some councillors and their parties being voted out of office. But if they really believe that an investment is right for their community, then they will persuade the public that it is right to pay, and the result will be the revival in community spirit that politicians from all parties talk about, while few seem to have many ideas as to how it might be achieved.

Developing and Strengthening Overview and Scrutiny

The consultation document on the "empowerment" White Paper (August 2008) starts with a definition of "local government overview and scrutiny" which confirms that

scrutiny is a political process, undertaken by councillors elected locally on behalf of their communities, that it is a process that leads to recommendations made to decision takers - all decision takers in an area, not just councils or their Executives - and that its aims are improvement in public services or better outcomes for the community:

Local government overview and scrutiny is a tool by which a community, through its local democratically elected representatives, can address any issue relating to the wellbeing of that community with the aims of:

- *highlighting past or proposed decisions by those responsible for the issues, so that the community is better able to judge the decision takers (eg through the ballot box)*
- *making recommendations to decision takers so as to influence their future actions, in particular to tackle past shortcomings, to secure public service improvements, or to obtain better outcomes for the community.*

If there is a weakness in this definition, it lies in relating scrutiny overmuch to *decisions*, when much of its best work to date has lain in *studies of activities* which overlap between agencies or departments, leading to recommendations for better co-ordination or joint working and the development of policy - not necessarily related to particular decisions. (This distinction was clearly made in the original definition of overview and scrutiny, in the Local Government Act 2000, S.21.) The definition/discussion here would also be stronger if it pointed out that a *scrutiny investigation is a form of research*, which needs careful terms of reference, integrity and knowledge of appropriate research methods - in this case primarily oral questioning but also the assimilation of background material and work done by other authorities. It would also be useful to bring out that scrutiny is a *selective process*, where a few topics are chosen for study in depth, and *to distinguish it from audit* which is undertaken by professional teams and where every area of activity is regularly and systematically looked at. Thus: audit is comprehensive, scrutiny selective; audit is conducted by professionals (accountants), scrutiny by non-specialists (councillors); audit is based primarily on written data (audit trails), scrutiny on oral questioning; audit is backed up by strong legal powers, scrutiny depends largely on diplomacy and influence; audit is primarily backward-looking, scrutiny is about developing policies or reviewing decisions or performance for the future.

More generally, the discussion/definition does not bring out, as did the Local Government Act 2000 and the Model Constitutions that related to it, that overview and scrutiny committees are part of the executive arrangements of a council - not an independent free-standing activity.

The definition of overview and scrutiny in S.21 of the 2000 Act permits an overview and scrutiny committee to do almost anything reasonable:

Overview and scrutiny committees must have power to:

- (a) review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive [i.e. call-ins - A.C.],*
- (b) make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the*

executive,

(c) review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive,

(d) make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive,

(e) make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area.

A thoughtful commentary, published by the Government as early as 2002, recognised the stringent conditions that would have to be in place for scrutiny to be effective:

- Member leadership and engagement
- A responsive Cabinet
- Genuine non-partisan working
- Effective dedicated officer support and management of the scrutiny processes
- A supportive senior office culture
- A high level of awareness and understanding of role of O & S

The Development of Overview and Scrutiny in Local Government,
Office of the Deputy Prime Minister, 2002

When these conditions are met, overview and scrutiny can be rewarding for all concerned. But every one of them is problematic. Members may not be able to lead the process: they may lack the confidence, or not be sufficiently independent; indeed it can be argued that chairing a scrutiny committee is the hardest task councillors are asked to do, because of the tact, knowledge, leadership, and ability to think quickly and steer an investigation that it involves. The cabinet may not be responsive, especially if subject to criticism, and a hostile mayor or cabinet can make life very difficult for overview and scrutiny committees, which is one reason why some of the greatest successes have been in external and health scrutiny where such conflicts are less likely. Working across the political divide, in the context of the party group system, has proved easier in some councils than others; at their best, scrutiny committees are effective means of drawing on the talent in councils, much as the select committees are in parliament; at their worst they are places where the only roles open to Opposition councillors is to make cheap political points. They are very dependent on officer background work and report-writing, as are select committees; yet not all councils provide even a single full time scrutiny officer, and there is no requirement for them to do so; several councils have had the temerity to cut the numbers of scrutiny officers. The wider council culture needs to understand and support scrutiny - supplying evidence and answering questions when required, and this high level of awareness and understanding at all levels in the organisation is needed for the process to be taken seriously.

In short, in eight years since it was introduced in 2000, scrutiny in local government has made great progress in some councils, steady progress overall. Much of the best work has been in health and external scrutiny. But it remains a fragile plant in many councils, with few safeguards or protections when things go wrong. It has made strongest impact where it researches and review policies. It has not found the processes of "holding to account" easy, partly because of party politics but also

because time and knowledge constraints limit programmes of questioning. The greatest threats to scrutiny are that it becomes overwhelmed by being given or taking on more tasks than it can handle, that it loses the space to be selective, i.e. choosing a few topics of strategic significance and studying them in depth, and is falsely expected to be a kind of audit process, or a means of achieving quick action when other mechanisms have failed. When scrutiny is poorly chaired, does not have effective office support, or good working relationships with senior councillors and senior officers, then scrutiny members become demoralised. Its successes depend on competence and goodwill, with few remedies with things go wrong.

The Reinvigoration of Local Government

The first part of this paper surveyed the Government's legislation relating to local government. The second part drew out some of the implications for non-executive councillors, while the third looked specifically at overview and scrutiny.

The theme running through all three parts of the paper is that councils are political bodies, run by politicians accountable to electorates that elect them locally, and by implication expected to undertake discretionary activity, to do things their way.

Yet central government pronouncements and legislation often treat local councils as if they were quangos, local delivery agents for national departments of state.

If councils are really to lead, in place shaping and response to local crises and opportunities, then central government has to be prepared to let go of much of the paraphernalia of control that it has built up during recent years. It has to adopt a mind set of treating councils as the proudly independent representative bodies for cities, town and villages which they are.

But for councils to be accepted as effective local agencies, they have to be open to discussion and criticism, and willing to explain their actions. The Local Government Act 2000, with its espousal of single party executives, and the Local Government and Public Involvement in Health Act 2007, with its strengthening of the powers of council leaders and directly elected mayors, have diminished the public accountability of cabinets, which have no wish to wash their dirty linen in public. Or to subject their members to intensive questioning in council meetings or elsewhere. As a result, councils are reducing the number of times full councils meet, increasingly to just 4 or 5 times a year, and the number of formal cabinet meetings is also reducing, sometimes to just once a month.

In the system pre-2001, full council meetings provided opportunities for Oppositions to put committee chairs and leaders under real pressure. This is harder now. The first requirement for it to happen again will be a reinvigoration of regular meetings of the full council.

This needs to be tied into a reinvigoration of the scrutiny process. This should recognise that, just as select committees are responsible to Parliament so scrutiny committees should be responsible to full councils. That has at least two implications. First that a sizable part of council time should be allocated to overview and scrutiny – including regular questioning of mayors, leaders and members of executives (which

to an extent happens at present), but also debates around the reports of overview and scrutiny committees. These would occur after they had been discussed by cabinets, on the basis that the matters researched be put into a wider public domain. Councils that have adopted this system have found that it leads to informed and interesting debates, which support both the system of scrutiny and the full council.

Secondly, scrutiny officers should be appointed by the full council, with a separate budget line for this purpose, and they should be required to report publicly each year on their programme of work and achievements. This also mirrors the select committees where the clerks are servants of parliament, not the executive.

Finally, a point made by many other commentators, means must be found to make local government finance less dependent on central government by giving new tax raising powers to local councils – subject to local scrutiny processes – so that local elections become referenda on the policy proposals of local councils. It would only be a small step further from this to require councils to demonstrate community support for new capital proposals by subjecting the borrowing, and subsequent additional taxes to pay the interest, to local referenda, normally taken at the same time as local elections – a system that works relatively well for smaller councils in the US.

Overall, and the key message for central government, it needs to take local politics seriously, to recognise that it is elected members who take local decisions, advised by well paid professional officers, and that England is too large, and too diverse, for it to make sense for policies, priorities and performance targets to be laid down from the centre.

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