

Local Leadership and Public Trust 12th Inquiry of the Committee on Standards in Public Life

Evidence of Steve Leach, Professor of Local Government, Department of Public Policy, De Montfort University

Introduction

1.1 The topics within the Committee's remit which it is within my competence and experience to respond are as follows:

- (i) New models of political leadership and the differences between them (2.19).
- (ii) The role and effectiveness of overview and scrutiny (2.29).
- (iii) The role and accountability of local government officers (2.37).

1.2 My evidence will relate to England **outside** Greater London (on which I have only limited experience)* and will focus on the principles of accountability openness and leadership, rather than the other principles of public life. Although the evidence does not incorporate a recent 'random sample' of local authorities in England, is based on eight years of in-depth research on different aspects of the post-2000 Act political management arrangements.

* Nor does it cover experience in Scotland and Wales

Local government: leadership and decision-making

2.1 **Strengths and weaknesses of the new executive models**

Two key strengths (compared with the system which the new executive arrangements replaced) are the improvements in the **speed of decision-making** (see DCLG (2003)) and (in principle) the increased **clarity of accountability** involved. Accountability was more diffuse in the old committee system. Executive models involve a clarification of accountability, which now rests firmly with the executive either collectively or with individual executive members (including the elected mayor or council leader).

2.2 Weaknesses (compared with the previous system) include a reduction in the **openness** of decision-making and a problem of councillor motivation, for those councillors who are not members of the executive. These problems are discussed in turn below.

2.3 In the previous system, there was more scope of decision-making in full council than there currently is (although authorities varied in the scope of decision-making which they allocated to full council). Otherwise decisions were delegated to a range of committees, including a Policy and Resources Committee which in most authorities operated as a 'de facto' cabinet, particularly in relation to corporate issues of strategy and resource allocation.

2.4 These committees, including Policy and Resources, were open to the public and were required to be politically balanced. As a result, although the party (or coalition) in power invariably discussed and agreed the decisions it intended to

make in private before the formal committee meeting, the presence of opposition members at the latter meant that members of the ruling group (or coalition) had to defend and justify their intended decisions, in the face of scrutiny and questioning from opposition members in a public forum.

2.5 This degree of openness is less easy to achieve in the new system. As was previously the case, executives have invariably established a pattern of meetings whereby agendas are discussed first at a private ‘briefing’ meeting, attended by senior officers of the council, and then, a week or so later, at a formal public meeting of the executive. Deliberative discussion takes place at the former, but much more rarely at the latter, where the decisions which are made formally in this arena will actually have been agreed within the executive at the private ‘briefing’ meeting which preceded it.

2.6 The formal public meeting of the executive is rarely attended by members of the public (unless there is a particularly contentious decision to be made). Opposition members who choose to attend have no rights to participate (although a few councils permit questions from opposition members, in certain circumstances). Meetings are often brief rubber-stamping exercises with little or no deliberative discussion, from which, if members of the public did choose to attend, they would learn very little. There has been, on this basis, a net loss in the openness of decision-making, which overview and scrutiny can counterbalance to some extent, but rarely does (see Section 3 below).

- 2.7 The decline in motivation of non-executive members has been widely-reported.* It reflects a widespread belief (amongst those who have experienced both) that the pre 2000 Act Committee System was stronger in democratic terms, and more satisfying an activity for non-executive members, than the new executive arrangements which have subsequently been introduced.
- 2.8 The democratic advantages of the old committee system were typically more limited than has often been claimed. Committees were typically dominated by their chair, who enjoyed privileged access to the relevant chief officer(s). Party groups often met before the final committee meeting, to be guided through the agenda by the chair/chief officer partnership. If there had been a prior discussion in a party group meeting to agree a line, members would be reminded of this. There was decision-making process, but it was not one in which ordinary committee members played a significant role.
- 2.9 Opposition members rarely enjoyed a prior briefing from the chief officer concerned. The quality of responses to specific questions varied depending on the political traditions of the authority. At the meeting itself questions could be raised and criticisms made, but such interventions would rarely be informed by evidence which had been sought from and provided by the officer structure. In any event, in a politicised authority with a dominant party, interventions from the opposition only very rarely changed a pre-determined stance from the majority party members.

* See e.g. Snape S (2004) *Liberated or Lost Souls. Is there a Role for Non-Executive Councillors?* In G Stoker and D Wilson (eds) British Local Government into the 21st Century, Palgrave/Macmillan

2.10 However they did provide an opportunity for non-executive members to develop expertise in a particular area of council responsibility which appealed to them (e.g. education) and the opportunity to contribute to discussions about decisions and policy, even where these had in effect been agreed beforehand within the dominant group.

2.11 The expectation was that overview and scrutiny would provide an acceptable (and equally motivational) alternative for non-executive members under the new arrangement. For various reasons (see Section 3 below) and with some exceptions, this outcome has not materialised. Those authorities which have introduced devolved systems of decision-making, within which local councillors have delegated decision-making and resource allocation powers for a sub-area of the authority, have generally experienced higher levels of non-executive councillor job satisfaction and motivation than those which have not, and where overview and scrutiny provides the main opportunity for involvement.

2.12 **Public Trust**

There is no evidence of which I am aware that the new arrangements have either increased or decreased public trust in local governance, and even if survey evidence of decline in public trust became apparent, the decline could not necessarily be attributed to the change in political management arrangements. There would be other possible explanations.

2.13 **The sparsity and impact of elected mayors**

There are two main reasons for the relatively small number of elected mayors who have been introduced. The first is the perceived impact of an elected mayor on the power of the party group. A party group of the same political persuasion as an elected mayor cannot hold him or her accountable in the same way that they can a non-mayoral leader, nor can they vote a mayor out of office (but see 2.25 below). Given that the main opportunity until recently for a council to adopt the elected mayor model has been for it to initiate a referendum, the lack of enthusiasm of party groups generally for the mayoral option has resulted in relatively few referenda taking place.

2.14 The second reason is that of the referenda which have taken place, around 60% (20 out of 32) have resulted in a 'no' vote. It would appear that the public has yet to be convinced of the benefits of a mayoral system over a non-mayoral system. Indeed in the most recent referendum carried out (in Stoke-on-Trent) the public voted to dispense with the elected mayor model and replace it with the council-and-leader alternative.

2.15 The main advantages that the elected mayor model involved (in relation to the Committee's agenda) is a much higher degree of public recognition than council leaders (57% c.f. 25%) a higher level of influence with local partner organisations, and in one sense a clearer model of accountability, given the fact of his or her direct election. However a 2004 survey*, showed little or no

* Mayors Mid Term : Anna Randle NLGN 2004

difference between elected mayors and council leaders in respect of following criteria:

- * performance ratings of mayors and council leaders
- * turn out at mayoral/non-mayoral council elections
- * satisfaction with area as a place to live
- * better understanding of local issues
- * scope of discussion of local issues
- * speed of action on local issues

2.16 There is no evidence that mayoral authorities have performed better as a group than non-mayoral authorities, using Comprehensive Performance Assessment (CPA) ratings as the basis for comparison. There have been examples of failing authorities showing significant improvement following the adoption of an elected mayor (e.g. North Tyneside, L B Hackney) but also examples of elected-mayor-led authorities whose performance has declined (Doncaster MBC). In both cases the reasons for the improvement or decline are not necessarily a reflection of the effectiveness or otherwise of the elected mayor. In general, under the current legislative framework, some mayors have been more effective than others at exploiting the opportunities inherent in the position. The experience of elected mayors (outside Greater London) has been one of diversity, which has owed as much if not more to the individual than the position.

2.17 Differences between mayoral and non-mayoral executive models

In many ways, the practical differences between these two models have been diminished by certain provisions of the 2007 Local Government and Public Involvement in Health Act, which can be seen (inter alia) as an attempt to ‘strengthen the position of non-mayoral council leaders.

- * council leaders now enjoy a 4-year security of tenure similar to that of elected mayors (but which however can be terminated by a vote of no confidence in council – unlike the elected mayor model)

- * council leaders now have the formal authority to select cabinet colleagues and allocate portfolios similar to that enjoyed by elected mayors. Previously council constitutions could and often did restrict the capacity of council leader to exercise either or both of these functions

2.18 In reality, most elected mayors have chosen to delegate responsibilities amongst a group of portfolio holders they have selected from council colleagues, in much the way that non-mayoral councils have done. Given the range of responsibilities a unitary or upper-tier council has, it would in any event not be feasible for a mayor to allocate all executive responsibilities to himself or herself individually. There is thus a similarity between the two models here also.

2.19 Many councils have chosen to organise executive decision-making on the basis of **collective** responsibility for all (or the vast majority of) executive decisions, and have declined the opportunity for individual decision-making responsibilities, which the 2000 Act permits. There is nothing in the 2007 Act

which requires any change in these arrangements, which are likely to persist (not least because of the fear of individual surcharge associated with individual responsibility). It is likely* that elected mayors will have assumed a greater degree of individual decision-making responsibility than council leaders, given the legitimacy and authority which stems from direct election. If this is the case, it could be argued that elected mayors do demonstrate a stronger degree of accountability (in terms of ‘the buck stops here’ metaphor).

2.20 The case for strong leadership?

Some more general reflections on the government’s approach to leadership may be helpful to the Committee. It’s enthusiasm for elected mayors – and subsequent strengthening of the authority of council leaders – is based on a belief in the benefits of strong individual leadership. This belief can be contested.

2.21 There are two possible justifications for the government to prescribe the form and tenure of local political leadership, as they have done in the 2006 White Paper and the subsequent Bill. The first would be if there was credible evidence that a particular approach to leadership resulted in *better performance*, assessed by indicators such as Comprehensive Performance Assessments (CPAs) or ‘public satisfaction’ measures. The second would be if there was credible evidence that a particular approach to leadership resulted in an *improved quality of democracy*, as assessed by measures such as public support, voter turnout, or

* The ODPM Manchester University project on New Constitutions (2003-07) may be able to cast some light on this

accountability. If neither of these justifications is present then such prescription could reasonably be regarded as unwarranted interference in the right of local authorities to decide their own way of working. In fact neither of these justifications can be made on the basis of the evidence.

2.22 No one would dispute that local leadership is important. The problem with the government's analysis lies in its use of the misleading term 'strong leadership'. First of all, it is something of a tautology – is anyone going to advocate 'weak leadership'? But what does strong leadership actually mean? The government's view emphasises qualities of individuality, visibility, and executive power, with implicit expectations that strong leaders are high profile, charismatic and entrepreneurial (the American examples typically cited always seem to have these qualities).

2.23 But a more helpful characterisation of leadership is that it should be *effective*, i.e. that it should succeed in articulating and delivering a clear vision for an area, leading to good performance and effective partnership working (or whatever outcomes are felt to be desirable). The reality is that such outcomes can be and are achieved by leadership styles which are not congruent with the government's ideal type. In the recent Joseph Rowntree Foundation research project on political leadership, examples were found of different leadership styles proving remarkably effective (in CPA terms) in different circumstances (see Leach *et al* 2005).

- * an authority – fast improving – where there is a political commitment to shared leadership and where the council leader deliberately adopts a low profile
- * an authority where there is a clear division of labour in relation to the different leadership tasks. The leader focuses on internal issues, whilst his/her able deputy leads on partnership working
- * a highly rated authority where the leader is by no means high-profile or charismatic, but has proved adept at working behind the scenes to generate coalitions of support for key projects, both within the authority and outside it.

2.24 As Lowndes and Leach (2004) point out ‘New structures and associated formal powers were by no means a decisive influence on political leadership. Context and capabilities proved equally influential’.

2.25 As a recent article by myself and Professor Wilson (Leach and Wilson 2008) argues, the attempt by the government to implement its enthusiasm for strong individual leadership has resulted in a series of potential mismatches between the role of the leader and the reality of political culture and change in local government. In particular:

- * the four year ‘security of tenure’ provision in the 2007 Act is unsustainable if an authority changes political control
- * a political group unsympathetic to the security of tenure provision can easily develop informal mechanisms to subvert it.

The role and effectiveness of Overview and Scrutiny

3.1 As the Committee will be aware, there are a range of different accountability mechanisms operating in local government, some imposed by central government (e.g. the wide range of performance measures required), some designed to ensure appropriate standards of behaviour (Standards Committees and Board) and some which operate internally as a means by which a wider body of councillors can hold the executive to account*.

3.2 Overview and scrutiny arrangements as set out in the 1999 Local Government Bill were seen primarily as a vehicle for holding the executive to account. In the government's initial intentions, the parliamentary model of executive authority tempered by the 'holding to account' role of the select committees was to be replicated at the local level. That would have provided a clearer focus for scrutiny than the version which emerged as a result of concessions made in the House of Lords, which added a 'supportive' function (overview) to the 'holding to account' function (scrutiny). Scrutiny committees were expected to support executives, to carry out pieces of work which they would find valuable, as well as to challenge them. The term 'critical friend' came to be used as a metaphor for the role of overview and scrutiny. In this move, the clarity of the 'holding to account' role has been lost, and in many authorities a mode of operation has been established which places a far greater emphasis on the support role than that of challenge. Select Committees in Parliament do not experience a similar blurring of priorities. Their function is clearly to challenge and 'hold to

* This local authority role is increasingly developing in relation to holding external partner organisations (e.g. PCTs, Police Authorities) to account

account', although they may, as a result, make recommendations for change. Supporting the executive is undertaken elsewhere, in the standing committees which amend parliamentary bills. In local authorities, there is every reason to provide an equivalent 'support' opportunity. However to merge the 'challenge' and 'support' roles in a single institutional mechanism has often proved counterproductive. (Leach 2009 p5).

3.3 In these circumstances, the effectiveness of overview and scrutiny can be judged on the basis of two principal criteria; the extent to which the function

- * influences the executive in positive terms by undertaking in-depth studies which contribute to improvements in policy (policy review) or new policies (policy development) the recommendations from which the executive wholly or partially accepts
- * holds the executive to account by challenging its decisions, policies or performance in which case we have to distinguish between situations where the executive decides to make changes, and those where it does not do so, as a result of scrutiny representations

3.4 In cases where the executive does not change its mind, following challenge, it does not necessarily mean that scrutiny has been ineffective. Accountability has, it can be argued, been strengthened if scrutiny has generated a public debate about a particular issue, and required the executive to justify its position. In practice, the detail in which the executive responds to such challenges varies considerably.

3.5 It is likely that it is experience of the challenge or holding to account role of overview and scrutiny, rather than the supportive role, which will be of interest to the Committee. In reality the effectiveness of scrutiny in relation to holding to account, has been restricted, by three key factors:

- * the traditions and expectations of party group working
- * the insecurity of executives (whether one-party or coalition) particularly in circumstances where the council is vulnerable to change in party control
- * the tendency for opposition groups to use overview and scrutiny for what the Centre for Public Scrutiny has termed ‘petty party political points scoring’.

3.6 An important part of the culture of party group behaviour in local government is that disagreements amongst group members are expressed in private rather than public. This tradition inhibits the predisposition of non-executive members of the same party (or parties) as that constituting the executive to challenge their party colleagues in the executive or criticise in public arenas such as overview and scrutiny committees.

3.7 In many (although by no means all) local authorities there is also a tradition of oppositional politics, in which members of opposition parties seek to score political points vis-à-vis the party in power (not unlike the way party politics operates at Westminster) and take every opportunity to demonstrate the incompetence of the executive. This tradition too can and often does inhibit effective scrutiny. If the majority party feels that overview and scrutiny is being

used for this purpose, its non-executive members will either ignore or counter in similar party political fashion the tactics of opposition parties.

3.8 Majority parties (or coalition) have in these circumstances developed strategies for rendering overview and scrutiny ineffective, or diverting it into harmless channels. Two such strategies in particular can be identified.

3.9 **Marginalisation**

If a cabinet feels threatened, for whatever reason, by the overview and scrutiny process, it can (virtually) ignore it. It can choose not to meet with scrutiny chairs (of individual panels, or as a co-ordinated collective). It can develop mechanisms for policy development which in effect by-pass the overview and scrutiny process. A cabinet with this attitude to overview and scrutiny will nonetheless have reports (with recommendations) directed to it as a result of the work of task-and-finish groups. However even where there is a protocol which requires the cabinet to respond to such reports (as in most cases there is) it is difficult to develop guidelines which ensure that a considered and detailed response is provided. There are authorities where a few lines of response is felt to be adequate. There are authorities where the cabinet delays its response in a way which in effect puts the report 'on the shelf' and minimises its potential influence. These practices are extremely frustrating to the councillors who have contributed to a series of meetings of a task-and-finish group, often with a considerable degree of enthusiasm.

3.10 There is rather more subtle approach on the part of the cabinet, which involves a superficially positive attitude to the work of overview and scrutiny, but seeks to control what it does in a way which steers its activities into relatively 'safe' (as far as the cabinet is concerned) activities. In principle, of course, overview and scrutiny is supposed to be 'independent' of the cabinet, but there are ways of making it the cabinet's de facto accessory.

3.11 A key ingredient of this approach is to ensure that the overview and scrutiny structure is controlled by one or more cabinet sympathisers. Clearly if all the chairs are from the majority party, then the requisite responsiveness on the part of overview and scrutiny can be greatly facilitated. But even where chairs are shared, if there is a coordinating committee with a relatively strong role (e.g. the power to set the scrutiny work programme for the year) then the appointment of a senior member of the majority party as the chair of the co-ordinating committee can produce a similar effect. In this situation he or she can act as a 'go-between', checking out with cabinet colleagues which pieces of work they would welcome, and which they would not.

3.12 A variant of this approach is to use overview and scrutiny panels as advisory sub-committees to the cabinet, channelling through to them items which will be considered at future cabinet meetings for comment and advice. With a built-in majority for the administration on each panel, it is likely that many of the comments made will be accepted by the cabinet, thus creating the impression of a positive, influential role on the part of overview and scrutiny. In a sense it is, but very much on the margins, and possible only on an understanding that the

overview and scrutiny accepts the implicit deal of not embarrassing the cabinet, in return for this limited degree of influence.

3.13 **Openness to challenge**

In principle, and to a limited (although increasing) degree in practice, there is a third possible broad strategy towards overview and scrutiny on the part of a majority-party or coalition-led administration, which is one where the executive is open and responsive to the work of overview and scrutiny, whether it is critical or whether it involves policy recommendations. In an early (2001) interview, this approach was epitomised by an able council leader who explained that he expected and indeed welcomed challenges from his own party members, as well as the opposition in overview and scrutiny committees. Challenge he recognised, was what overview and scrutiny was there to do, and it was up to him either to justify his own position, or to change his view if convinced by the argument. Sadly his predisposition to be challenged did not meet with a response from his party colleagues in the council, who wouldn't have dreamt of departing from the long-established tradition of 'not criticising your leader in public'. Thus even where the formal or informal guidelines within a party group permit public challenge of this nature, group members may choose to operate a process of 'self-censorship' which discourages such challenges.

3.14 If overview and scrutiny is to become a more effective accountability mechanism, there needs to be a cumulative move on the part of majority parties towards this third option.

3.15 Given these problems, there might be seen to be a case for the reintroduction of the pre 2000 Act committee system. In reality, however the committee system never matched the glowing perception which have been accorded to it retrospectively. It did have some advantages, in particular the way in which it allowed a group of councillors to specialise and develop knowledge and expertise in a service of particular interest to them. But comparisons made frequently in the first few years of the new system between committees as genuine decision-making bodies and scrutiny committees as powerless irrelevancies always reflected an illusion rather than a reality. Committees were dominated by their chair, who enjoyed privileged access to the relevant chief officer(s). Party groups often met before the final committee meeting, to be guided through the agenda by the chair/chief officer partnership. If there had been a prior discussion in a party group meeting to agree a line, members would be reminded of this. There was decision-making process, but it was not one in which ordinary committee members played a significant role.

3.16 Opposition members rarely enjoyed a prior briefing from the chief officer concerned. The quality of responses to specific questions varied depending on the political traditions of the authority. At the meeting itself questions could be raised and criticisms made, but such interventions would rarely be informed by evidence which had been sought from and provided by the officer structure. In any event, in a politicised authority with a dominant party, interventions from the opposition only very rarely changed a pre-determined stance from the majority party members.

3.17 In essence, the new executive/scrutiny system has provided a real opportunity to ‘break the mould’. In practice, due to the opportunities provided by revisions in the legislation and the strength of the traditional institutions of committee and party group this opportunity has been only sporadically realised.

3.18 **The role of call-in**

The main opportunity for overview and scrutiny to challenge executive decisions, and in doing so, hold the executive to account in the call-in procedure. In an environment less constrained by party political traditions, call-in could be a very effective accountability mechanism. The system could in principle work as follows. Any non-executive member (or specified minimum number of members) if they wished to challenge an executive decision would be required to provide an explanation as to why the decision was flawed (e.g. on the grounds of inadequate justification, or public consultation, or because relevant information or a viable alternative had not been considered). The member(s) concerned would then present a case to the relevant scrutiny committee. The arguments would be considered ‘on their merits’ and if found by a majority of the committee to have substance, a report expressing and justifying the committee’s view would be submitted to the executive, who would then be expected to either accept the Recommendation or explaining in an appropriate level of detail the executive’s reasons for not doing so.

3.19 The reality is usually very different. Call-ins generated by opposition members can be avoided by the use of a clause in the constitution which sets impossible conditions for opposition members seeking to initiate a call-in, either by

specifying that a majority party member must be a signatory to the call-in request, or that a number of signatories is required in excess of the opposition membership in any one panel. Another device for preventing call-ins is to restrict them to ‘key decisions’ with financial and policy requirements which precludes the possibility of call-in of smaller-scale decisions, (but which may nonetheless be of real significance).

3.20 Even if the call-in procedure is successfully invoked by an opposition member, the dominant party with a majority on every scrutiny panel can ensure that any call-in goes no further than the panel itself. All it takes is the majority party members to vote that the executive decision concerned is to be supported and that no rethink on the part of the cabinet is required. Even if, as a result of an unforeseeable absence, a call-in which advocated a change of decision did actually get as far as the cabinet, they can of course reject the advice involved. (In some cases with only a minimal requirement to explain its reasons). It is not surprising therefore that in authorities where the administration wishes to minimise the scope for opposition challenge, the practice of call-in may often come to be regarded by opposition members as a waste of time.

3.21 A key requirement for effective overview and scrutiny is that the function is properly supported. Mainstream officers* are unlikely to provide information which facilitates challenge of a policy or decision already agreed with (or destined for) the executive. Using the pretence that the officer structure can serve both executive and scrutiny functions with ‘equal effectiveness’, there are

* i.e. those not attached to a dedicated scrutiny support unit

still authorities which argue that there is no need for a dedicated scrutiny support unit. Even where such units exist, they may find their role as sources of briefings to scrutiny committees which challenge mainstream officer advice to the executive constrained by the organisational culture of the authority. This problem raises issues about the appropriateness of traditional (unified) officer structures under the new arrangements, where there is a clear distinction between ‘executive’ and ‘scrutiny’ functions. It is discussed in detail in Section 4 of this evidence.

3.22 Standards Committees have not concerned themselves with the problems relating to overview and scrutiny, nor are they necessarily the right vehicles for doing so (unless there is evidence of blatant attempts to exclude opposition members from carrying out their role effectively – e.g. by making it impossible for opposition members to make call-in without the support of at least one majority party member). The problem is not to do with maladministration or impropriety. It is much more a reflection of the role of party politics in local government.

3.23 The question is then raised as to whether the problem is better dealt with by legislation, or by the use of ‘good practice’ guidelines to encourage political groups to change their behaviour, or by some combination of these two approaches.

3.24 There are real dangers in attempting to strengthen overview and scrutiny through legislation. Local authorities have been subjected to a stream of

legislation since the early 1980's, some of it focused on particular services, some on processes of decision-making. It has already been argued (see 2.25 above) that the value of central government specifying in detail the political management arrangements which local authorities should adopt is difficult to justify and potentially counterproductive. It is not unreasonable for central government to set out a set of performance requirements for local councils. How councils organise themselves to meet those requirements should be left (all other things being equal) up to them. Only if there is a demonstrable link between organisational structure and performance is there a case for legislation. If, for example, it could be shown that there was a casual link between a particular type of leadership model and performance then there might be a case for requiring authorities to adopt that model. But there is no such evidence. In any event, local authorities are skilled at circumventing (within the letter of the law) the intentions of legislation which they do not support. There are similar dangers in seeking to introduce new legislative requirements to 'strengthen' the role of overview and scrutiny.

3.25 In my recent CfPs report, I set out to identify a series of requisite conditions for an effective form of overview and scrutiny which accepts the reality of party politics in local government, but which seek to channel it in a more positive direction. A selection of these conditions are included in Appendix 2 to this report. The challenge, in my view, is to identify a way of persuading all major parties that the legitimacy of local government would be strengthened if there was an agreement to operate overview and scrutiny in the ways suggested.

The role and accountability of local government officers

4.1 There have been two major influences on the relationship between leading politicians and senior officers in local authorities since 2000. One has been the introduction of local executive government; the other has been the pressure of outside inspections, in particular the ‘performance’ culture introduced by central government and epitomised by the Comprehensive Performance Assessment (CPA) to which all authorities have been subject since 2002.

4.2 Impact of the 2000 Local Government Act

The 2000 Act introduced an executive system of local government which parallels that of central government. Policy and the budget have to be agreed by full council (just in legislation has to be passed by Parliament). The executive (whether led by a mayor or council leader) then has the authority to take executive decisions within this policy/budgetary framework.

4.3 However the major difference between the two systems of decision-making is that in the case of Parliament, it is the government of the day to whom the civil service is responsible. M.Ps who are not members of the executive have no rights of access to civil servants, beyond the right to table questions or seek information through Parliament. In contrast, the officer structure in the past 2000 local government system is expected to support both the executive and non-executive councillors, whether of the same or different party (or parties) from that of the executive. This system is known as a ‘unified’ officer structure.

- 4.4 A research report by Fox and Leach (1999) pointed out the inconsistencies in this situation. In their judgement, after reviewing the research evidence and considering the detailed implications of the new legislation, it is important at the very least, that a wider agenda on officer roles and structures should be explored. There is an apparent mismatch between the radical nature of the proposed changes on the member side and the status quo (or at best incremental changes) perceived as appropriate on the officer side. As we argue below officers at all levels will be politically in a position of real role conflict. The ‘two-hatted’ analogy from the experience of CCt is relevant here. A ‘two-hatted’ approach to client/contractor roles has only really been possible in authorities which politically have wished to blur the two roles (that is, they have not accepted the logic of the client/contractor split).
- 4.5 The report goes on to identify three contrasting models of officer support for the local executive system.

Three Models of Officer Structure: Key Features

Model A Status Quo	Model B Limited Split	Model C Total Split
All chief officers serve	All chief officers serve	Most chief officers

Responsibilities of Chief Officers	both executive and assembly functions (including scrutiny)	both executive and assembly, although work programme dominated by executive agenda.	(including chief executive) are directly responsible to cabinet, both for policy advice and implementation.
Support for Cabinet, Scrutiny or area Functions	Administrative support to scrutiny and area functions allocated to individual officers as part of their workload. Officers provide reports and advice for cabinet/scrutiny/area functions on request	Cabinet supported by small but powerful 'cabinet office', whose key tasks are research, briefing, progress-chasing, speech-writing and networking. Scrutiny and area functions serviced and supported by parallel dedicated 'office'.	Assembly has a separate officer support system, with a chief support officer. The 'monitoring officer' and 'financial proprietary' roles are attached to the assembly, as are the planning and regulatory officer structures (and the Standards Committee).
Appointments of Senior Officers	All appointments made by assembly (or panel thereof)	Cabinet makes appointments to cabinet office; assembly makes senior appointments to scrutiny and area offices, and all other senior officer appointments.	Cabinet appoint chief officers. Assembly appoints chief officers who support their functions
Career Implications	Pattern of career opportunities and paths remains unchanged	Relatively unaffected, although officers may choose to specialise in cabinet/scrutiny/area support roles, or move into and out of such roles from mainstream.	Major implications, e.g. fixed term contracts attached to duration of administration for officers appointed by executive

4.6 The reality is that almost all local authorities have retained the status-quo. Some (although not all) elected mayors have a mayoral support unit which works exclusively for the mayor (Greater London provides the most elaborate

example). A majority of local authorities now have dedicated scrutiny support units (of between 1-6 middle ranking officers) but these are not formally separated from the mainstream officer structure and are typically responsible to senior officers in the council whose major responsibility is to the executive. A few authorities have a similar unit (of de facto secondees) who play a similar dedicated support role to the cabinet, under similar circumstances.

- 4.7 In more recent research projects, some of the potential conflicts of ‘two-hattedness’ predicted by Fox and Leach have become apparent. In particular, the (understandable) tendency of directors (and senior staff within directorates) to give priority to the agenda and requirements of the executive, means that providing the kind of support which overview and scrutiny needs in its task of challenging the executive is problematical. My recent report for the Centre for Public Scrutiny explains the problem in the following terms.

‘The crucial political relationship for a director is of course with the one or more portfolio holders whose responsibilities match those of the director. All directors have a ‘professional’ view of what should be done in their field of expertise. They will seek to convince these portfolio holder(s) whom they brief of the appropriateness of policies and decisions within their remit, within the context of the political priorities adopted by the majority group or coalition concerned. It is a process of negotiation. Once the negotiation has been resolved, portfolio holder and director have a common interest in maximising the probability of the acceptance of the outcome at cabinet/directors

board level. In this context, the possibility of challenge from an overview and scrutiny panel is likely to seem as an obstacle, rather than potential benefit’.

4.8 It might be argued that support for scrutiny from service directors is unnecessary, so long as there exists a (relatively) well-resourced dedicated scrutiny support unit. In a recent report (CfPS 2009), I challenge this view.

‘If scrutiny initiatives such as call-in or a select committee style review of poor performance are to be effective, they must be properly supported. If, as will often be the case, the initiative has been set in motion by an opposition party member, this may pose major problems for mainstream officers. The tradition prior to the move to executive government introduced by the Local Government Act 2000, was that information provided by officers to key members of the dominant party – i.e. leader, deputy, committee chairs – was of a different quality to information provided to opposition members (or indeed to ‘backbenchers’ of the majority party or parties). Clearly information had to be provided, if sought, unless it was subject to commercial confidentiality or was not yet in the public domain (e.g. a draft report to an ‘informal’ meeting of the de facto cabinet). However what mainstream officers certainly did not do was to provide opposition members with helpful briefings which would enable them to challenge proposals made by the administration, in a well-informed evidence-based way. The avoidance of

potential embarrassment to the administration was a principle widely (if informally) adhered to in all politicised authorities.

This differentiated approach to the provision of information (and the importance of the avoidance of embarrassment principle) has if anything been accentuated under the executive arrangements introduced under the 2000 Act. The primary loyalty of directors is to the cabinet member(s) they serve. The work of their directorates is primarily oriented towards briefing cabinet members in a way which will encourage them to reach sensible decisions to develop sensible policies and then (assuming this outcome is achieved) to support them in ensuring that these decisions or policies are implemented effectively. The ‘challenge’ role of overview and scrutiny, particularly if it is led by opposition members, does not fit easily into this set of assumptions and ways of working. The idea of a service-based directorate producing a report for overview and scrutiny which challenges a proposal made by that directorate to the executive, or requires them to develop an alternative proposal (a town centre traffic management scheme for example) to one they have agreed with the cabinet member concerned, is probably unrealistic.

Yet for scrutiny to be effective, this is exactly the kind of support that is needed. In some circumstances a dedicated scrutiny support unit may itself be able to provide the material to enable a

convincing challenge to be made or alternative to be developed. But this source cannot be relied upon. Even a well-resourced scrutiny support unit of say 5 or 6 cannot be expected to have a range of professional/technical knowledge and expertise to enable it to carry out this role on a comprehensive basis. There will remain, on a regular basis, the need to draw an objective professional/technical advice within directorates or (failing that) elsewhere’.

4.9 In the majority of authorities I have worked in over the past 3-4 years, this limitation in the capacity of a unified officer structure to give equivalent weight to the executive and ‘scrutiny’ respectively has been apparent. There is an unresolved tension in this model, which in the majority of cases results in overview and scrutiny finding it difficult to carry out its ‘challenge’ and ‘holding to account’ roles effectively.

4.10 New challenges arising from a changing pattern of central expectations

The other new influence on member-officer relations, particularly at leader/chief executive level, has been the growth of the performance culture to which local authorities have been subject since 2001, together with wide ranges of more specific government requirements placed on local authorities, which the chief executive typically has to explain to members who may not welcome the implications of the messages involved.

4.11 For example, local authorities are now required to work in partnership made in relation to a wide range of services. Local area agreements (LAAs) are the most recent manifestation of this trend. Many councillors, however, resent this new emphasis on partnership working, and would prefer a continuation of the situation where the local authority had a wider range of responsibilities which did not require collaboration with other agencies. There are similar centrally-initiated pressures relating to public participation (which some councillors may see as a challenge to representative democracy). In addition there are central government pressures and incentives to switch the responsibility for managing council housing to 'arms length' agencies, to develop new city academies and to follow central government priorities in relation to a range of service areas.

4.12 The inspection regime covers both individual services (education, child protection, adult social services) and the overall performance of the local authority (the CPA). The chief executive faces a number of challenges in this context. First he or she will want to advise the executive as to what action it needs to take to increase the chances of a good or excellent CPA result. This advice might include elements such as a 'more enthusiastic approach to partnership working', 'a greater emphasis on public participation' or a closer reflection of central government priorities in the council's budget. Any or all of these messages may be unwelcome to the executive, who may (in certain circumstances) develop a tendency to blame the messenger.

4.13 The second potential dilemma is who carries the can if a poor report is received. A 'weak' or 'poor' CPA result, for example, can lead to speculation as to who

(officers or members) is primarily responsible and who therefore should carry the blame.

4.14 Neither of these pressures was wholly absent before the cumulative development of the performance culture. However there is no doubt that they have had a much stronger and more wide-ranging influence on leader/chief executive relationships since 2001.

4.15 A further tension in the relationship has developed as a result of the whistleblowing responsibilities of the chief executive (although there is some potential confusion of role with the monitoring officer here). This is not a topic of which I have much knowledge, but there is a good discussion of it in the SOLACE Report.*

4.16 I will now attempt to relate the analysis set out in this section to some of the list of questions posed by the Committee in 2.37 of its Issues and Questions Paper.

4.17 How clearly is the role of senior officers understood by the public? Probably not at all clearly – but I suspect that the 2000 Act has not made a great deal of difference to the level of understanding, nor that it is a problem of significant concern.

4.18 How successful are the mechanisms currently in place to hold senior officers (such as Chief Executives) to account for their actions? I'm not aware of any mechanisms which explicitly do so. If a chief executive (or other chief officers)

* SOLACE (2006) Leadership United : Managing in a Political Environment

has delegated responsibility for key decisions (as defined in the constitution) these decisions can be ‘called-in’ and examined by an overview and scrutiny committee. Otherwise decisions delegated to officers can rarely be scrutinised in this way. If there is evidence of departmental failure – such as a major budget overspend – then this can also be examined through overview and scrutiny (with an assumption that the director can be ‘held responsible’ – although it could be argued that the relevant portfolio holder should share this responsibility).

4.19 Does the fact that senior officers are required to support both the executive and scrutiny give rise to the conflict of interests?

The answer is yes it can (although the conflict of interests is not always apparent particularly in relatively consensual authorities). I have explained why in para 4.7 – 4.9. Some of the proposals set out in Appendix (link officers, scrutiny champion) would help to limit this ‘conflict of interests’. But in principle it could be argued that a unified officer structure will always create problems for the executive/scrutiny split.

4.20 The new arrangements have had an effect on member-officer relationships, although there have been other important influences in operation also (see the ‘performance culture’ discussed in 4.13 – 4.14 above). This latter pressure has resulted in a number of well-publicised disputes between leaders and chief executives (for example in Lincolnshire, Cheltenham, Doncaster, Nottingham, Worthing, Kingston-upon-Hull). It may be helpful for the Committee to try to

identify details of the origins of these disputes from those who were directly involved.

Appendix 1

Research Projects (and Reports) carried out which are relevant to the Committees Agenda.

(1) Officers and Members in the New Democratic Structures : A Research Report

Pam Fox and Steve Leach

Local Government Information Unit, 1999

(2) The Development of Overview and Scrutiny in Local Government

S Snape, S Leach and C Copus

Office of the Deputy Prime Minister 2002

(3) Strengthening Local Democracy : Making the Most of the Constitution

S Leach, C Skelcher et al

Office of the Deputy Prime Minister, 2003

(4) Local Political Leadership in England and Wales

S Leach, J Hartley, V Lowndes et al

Joseph Rowntree Foundation 2005

(5) Party Politics and Scrutiny in Local Government : What are the Problems and How Can They Be Overcome?

S Leach

Centre for Public Scrutiny 2009

Appendix 2

Proposals for improving the effectiveness of overview and scrutiny in local government (taken from Steve Leach 'Party Politics and Scrutiny in Local Government' Centre for Public Scrutiny 2009)

Set out below are the requisite conditions for an effective form of overview and scrutiny which accepts the reality of politics (including party politics) but which attempts to channel it in a positive direction. The conditions are summarised below under four headings: attitudinal; processual; structural and support. Their existence cannot guarantee effective overview and scrutiny, and their degree of feasibility will vary from authority to authority. But they can all be seen as initiatives which, all other things being equal, are likely to facilitate effective overview and scrutiny.

Attitudinal Conditions

- ❖ a commitment on the part of all parties not to use overview and scrutiny for 'petty party political points-scoring'. (The council meeting is the right place for points-scoring of this nature – petty or otherwise!)
- ❖ an all-party recognition that there may be a limited number of high profile politically-divisive initiatives which – at their current stage of development – may not be appropriate for an in-depth overview and scrutiny review (they could of course be debated at full council)
- ❖ an all-party recognition that although **overt** party politics is not compatible with effective scrutiny, the choice of topics for scrutiny and the arguments

developed on the basis of the evidence will be (and indeed should be) influenced by political values and priorities

- ❖ an openness of the part of the executive to take seriously recommendations made by overview and scrutiny, so long as they are based on evidence-based policy analysis; and to provide a proper justification for the reasons for its response
- ❖ an acceptance on the part of overview and scrutiny that it will only be influential if it operates in a way which assembles and interprets evidence in a responsible way....
- ❖ ...an outcome which is only possible if overview and scrutiny is properly supported, not just by a dedicated unit but also by mainstream officers

Processual Conditions

- ❖ To ensure that call-in is used responsibly it is important to ensure that it cannot be invoked too easily. Valid reasons must be given from a list of specified criteria.
- ❖ Call-in should not be limited to key decisions. They should be permitted for any decision with political significance, even if formally the responsibility of an officer.
- ❖ Once the legitimacy of a call-in submission has been established the ability of scrutiny committee members will be heightened by two key factors:
 - The appearance of the executive member responsible for the decision at the ‘call-in hearing’ to justify the executive’s decision and to answer questions
 - A timetable which enables the scrutiny support to unit to collect evidence which gives weight to the concerns of those invoking the call-in.

- The effectiveness of a call-in procedure is facilitated by carrying it out in a setting which is different from the normal ‘committee room’ layout. The House of Commons Select Committee arrangements provide one possible model.
- ❖ The Select Committee model is also appropriate for certain types of scrutiny review, for example.
 - Services where performance information suggests poor or declining performance and where the scrutiny committee concerned is not satisfied with the explanation of the cabinet member as to how the performance deficiencies are being remedied.
 - Current policies where there is significant evidence of public dissatisfaction, but where the executive is not prepared to carry out its own review.
 - Recent decisions which have clearly been problematical, either in their impact or the manner of their implementation and where although they cannot be reversed, there is felt to be potential value in ‘learning from what went wrong’, so that similar future decisions can avoid the mistakes.
 - A serious overspend in the budget of a particular service.
- ❖ In reaching a view as to whether an in-depth review of a topic of concern is required, the use of ‘Spotlight Reviews’ is helpful
- ❖ The ability to submit a minority report is a further mechanism for encouraging opposition members to play a proactive part in overview and scrutiny.
- ❖ The capacity of overview and scrutiny to influence will be strengthened if there is scope, in appropriate instances for the chair involved (or the lead

member in a task-and-finish group study) to present their findings to the executive, and then answer questions.

Structures and Support Mechanism

The ability of overview and scrutiny to challenge and ‘hold to account’ effectively can be enhanced by the following structural mechanisms.

- ❖ a sharing of chairs of the scrutiny panels amongst all parties with significant representations on the council, not necessarily proportionately
- ❖ the establishment of a overview and scrutiny ‘co-ordination committee’ to operate as a counterbalance to the existence of the executive
- ❖ a structural separation between the ‘scrutiny’ and ‘overview’ roles
- ❖ the capacity for overview and scrutiny panels to draw on a wide range of professional/technical advice must be facilitated, either from within mainstream directorates or (failing that) from outside the authority. A well-resourced dedicated scrutiny support unit is a necessary but not a sufficient condition in this respect
- ❖ provision of internal advice can be facilitated by the designation of a range of **scrutiny link officers** part of whose job description requires them to play this role
- ❖ Overview and Scrutiny would benefit from the designation of a **Scrutiny Champion** at a relatively high level of seniority within the authority, and ideally with access to the management board

Overview and scrutiny provide a major challenge for party groups. It is unrealistic to expect councillors to forget which party they are affiliated to when they attend a scrutiny meeting, but not unreasonable to expect them to modify the way in which they express party-based concerns and differences when they do so. Parliamentary select committees, at their best, can demonstrate a capacity for evidence-based challenge of government policy to which all members of the committee, whatever their political alignment makes an important contribution. If it is possible at Westminster, it is surely possible in Manchester, Kent and Milton Keynes.

References

(in addition to the research reports set out in Appendix 1)

- (i) Rethinking Political Leadership
(with David Wilson)
Public Administration Vol 81 No 1 January 2003
- (ii) Executives and Scrutiny in Local Government an Evaluation of Progress
Public Policy and Administration Vol 18 No 1 spring 2003
- (iii) Scrutiny and the Political Party Group in UK Local Government : New Models of Behaviour
(with Colin Copus)
Public Administration Vol 82 April 2004
- (iv) Understanding Local Political Leadership : Constitutions, Contexts and Capabilities
(with Vivien Lowndes)
Local Government Studies Vol 30 No 4 winter 2004
- (v) Urban Elites in England : New Models of Executive Governance
(with David Wilson)
International Journal of Urban and Regional Research Vol 28 No 1 2004
- (vi) Of Roles and Rules : Analysing the Changing Relationship Between Political Leaders and Chief Executives in Local Government
(with Vivien Lowndes)
Public Policy and Administration Vol 22 No 2 pp 183-200 April 2007
- (vii) Diluting the Role of Party Groups? Implications of the 2006 Local Government White Paper
(with David Wilson)
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