

Response from Birmingham City Council

Committee on Standards in Public Life – Local Leadership and Public Trust

Birmingham City Council is pleased to respond to the Committee's Issues and Questions Paper published in December 2008. The Committee's Paper has been considered by the Council's Business Management Committee and the response has been finalised by the Corporate Director of Governance, as after consultation with Group Leaders, Members of the Standards Committee and other senior members of the Council. The Group Leaders were, of course, free to submit their own responses, if they so wished, and the City Council does not object to the publication of this response.

A Context of Birmingham City Council's Governance Arrangements

The City Council established its Leader and Cabinet Model of Governance from December 2001 and, in May 2003, it was revised so that the Cabinet Members were appointed by the Leader of the Council, instead of the whole of the City Council. The Leader is appointed on an annual basis by the whole City Council and the City Council will be considering, later this year, whether to make that a four year appointment in accordance with the Local Government and Involvement in Public Health Act 2007. Any proposed change will be effective from May 2010.

In addition to the Leader of the Council, there are the maximum number of Cabinet Members permitted by the Local Government Act 2000 (i.e. 9), with 85 non-executive Members serving on Overview and Scrutiny Committees. Overview and Scrutiny Committees have, to date, mirrored the Executive Portfolio arrangements and there are also a few additional Overview & Scrutiny Committees to deal with local circumstances (i.e. Health and vulnerable children). In addition to the Executive and Scrutiny arrangements, there are specific Regulatory committees for Planning, Licensing and Public Protection. The City Council also has, as required by law, established a Standards Committee (from 1998) and, in keeping with best practice, it also has an Audit Committee.

In terms of officer support to the various parts of these Governance arrangements, the City Council has dedicated Cabinet Support Officers, Scrutiny Officers and administrative support to Political Group Offices. The City Council has never appointed any Political Assistants and it also has a number of Protocols governing Member / Officer Relations. The City Council's Constitution is available on the Council's website, along with the essential documents supporting the same. This has been based upon the Modular Constitution produced by the relevant Government Department, but suitably amended for Birmingham's needs.

As required by law, the elected Members are subject to a local Code of Conduct, which is also based on the national model Code of Conduct for Members and duly supplemented by voluntary local provisions. The City Council also has an Officer Code of Conduct which will be updated as and when the Government issues its national Code of Conduct for Officers. Both of these codes of conduct are available on our website under the Constitution. In addition, the website also includes a Local Code of Governance, with appropriate hyperlinks to key documents relating to the Governance of the City.

The City Council was the first local authority to establish a Standards Committee (i.e. before being required to do so by law) and was also the first to adopt a 'Good Governance Statement'. It was also a National Pilot for the Audit Commission's Good Governance Diagnostic and is currently another National Pilot for the Audit Commission

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with regard to Equalities, Diversity and Human Rights Diagnostic. Should you experience any difficulty in obtaining any of the governance information on the Council's website, please do not hesitate to contact our Corporate Director of Governance, who is also the Monitoring Officer.

B. NOLAN and Ten General Principles

In terms of the Seven Principles of Public Life established by the Nolan Committee, the City Council has adopted the same and, as required by law, also has the 10 General Principles prescribed by the Secretary of State which have been annexed to the Code of Conduct for Members for completeness and ease of reference. Whilst a breach of the ten General Principles will not be considered to be a breach of the Code of Conduct for Members, it is clear that the Standards Committee will have regard to the 10 General Principles in determining whether or not there has been a breach of the Code of Conduct for Members.

Elected Members have received regular training and development opportunities from the Monitoring Officer on the Codes of Conduct for Members – especially when they have been revised / updated by statute - and the General Principles are part and parcel of this training. In addition, Members receive general advice on the Code, as and when required, from the Monitoring Officer. The City Council has a good record of compliance with regard to the Code of Conduct for Members and, in keeping with the Council's open and transparent arrangements, the Statutory Register of Members Interests, along with declaration on Gifts and Hospitality received by the same, are available on the Council's website.

C Specific Responses to the Issues and Questions Paper

The remainder of this submission does not systematically address each and every question raised in the Committee's Paper, but follows the format of the Committee's Paper, with appropriate paragraph numbers, where relevant.

Paragraph 1.14 – It is the City Council's view that the new executive structures have promoted better leadership and more streamlined, effective executive decision-making at the political level, whilst also improving accountability to local people as local people are clearly able to see who is taking an executive decision and who is holding the decision-maker to account.

It has to be accepted, however, that not all members of the public will readily understand the distinction between an Executive Member and a non-Executive Chairman or Member of a Committee who might be seen as 'speaking for the Council'. From a visibility point of view, therefore, many spokespersons speaking on behalf of the Council may cause confusion to members of the public who might not fully understand the governance arrangements of the City Council. In an effort to assist members of the public and the elected members, the Monitoring Officer recognised this during the drafting of the Constitution in 2001/2 and specifically included within the Constitution a 'Frequently Asked Question' and 'Layman's Guide to the Constitution'. These are also available on the Council's website.

In addition, when a new Executive Member is appointed, the Monitoring Officer offers a 1-1 meeting with the same as a matter of good governance and so as to ensure the new

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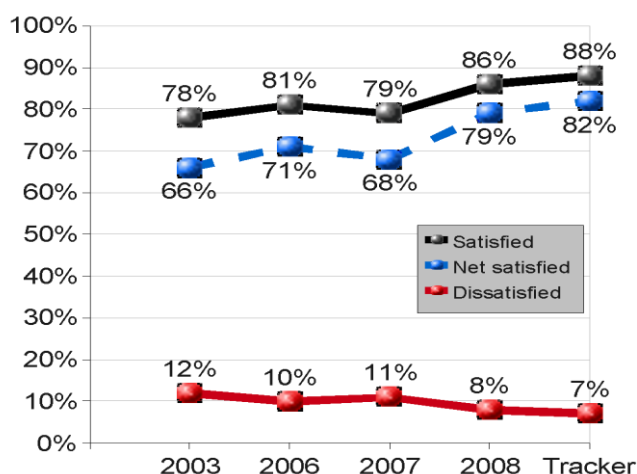
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Executive Member understands the requirements of the City’s governance arrangements. A ‘Cabinet Member Briefing’ is also included in the Supporting Documents to the Constitution for ease of reference of the Executive Member, other members and the public.

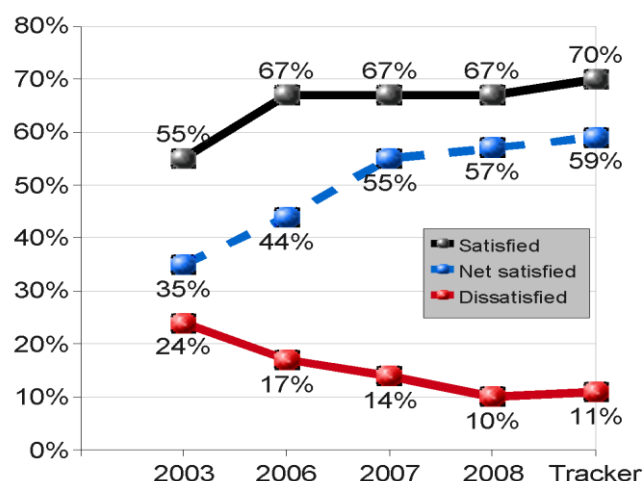
Paragraph 1.19 - The City Council believes that the arrangements put in place since 2001 remain fit for purpose and have proved effective in raising the City Council’s performance under the Audit Commission’s Comprehensive Performance Assessment from a weak/ zero stars Council to a three stars and improving well Council. This would not have been possible without effective Member and Officer working relations to achieve Council objectives.

Paragraph 1.20 – Public perception is, of course, important in determining whether an organisation continuously improves to deliver the services that its customers require / need. Accordingly, if customer satisfaction of Council services is a reliable barometer of determining the level of the public’s confidence and trust in the City Council, then Birmingham’s customers have been demonstrating their confidence and trust as evidenced by the following independently and objectively obtained survey data from BMG Research in Birmingham:

Customer satisfaction levels with local area & BCC, respectively - Survey results:



[Figure 1: Satisfaction with local area]



[Figure 2: Satisfaction with BCC]

“Birmingham City Council is considered trustworthy” – Survey results:

Survey	A great deal	To some extent	Not very much	Not at all	Unsure	Aggregate: Great deal/ some extent	Aggregate: not very much/ at all
2008/9 Birmingham Tracker Survey: 12 months for Financial Year	5%	55%	20%	6%	14%	60%	26%
2008 Annual Opinion Survey	13%	55%	21%	4%	7%	68%	25%
2007 Annual Opinion Survey	7%	47%	27%	8%	11%	54%	35%
2006 Annual Opinion	7%	54%	20%	6%	13%	61%	26%

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Survey							
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The foregoing graphs and data, therefore, provide clear and demonstrable evidence about the increasing level of public satisfaction, confidence and trust in Birmingham's improving services, since 2003, which are directly correlated to the desire of the Executive and non-Executive Members to improve services, through a determined focus on financial discipline, fiscal prudence, improved performance management and service transformation, value for money and effective member/officer relations.

In terms of that wider improvement agenda, therefore, the City Council has also continued to improve its Governance arrangements. For example, the Monitoring Officer carries out an annual review of the Constitution (and the other Governance arrangements of the City) and makes recommendations to the Council Business Management Committee for onward consideration of the Full City Council at Annual General Meetings. In addition to the annual review, the Council's Cabinet and the Council Business Management Committee have the power to make 'in-year changes' to the Executive and non-Executive arrangements, respectively, of the Constitution to reflect emerging needs instead of waiting for the annual review.

The other side of the issue would be to consider what has adversely affected the public's perception of local government. Whilst there is no firm evidence, in Birmingham it is likely that the most damage to public trust and confidence followed central government's decision to open up postal voting on demand.

Paragraph 2.19 - The City Council believes that the Leader and Cabinet Model enshrined in the Constitution have certainly helped to codify all that the City Council does in relation to Governance. The Constitution is readily accessible by all and sets out for all the various relationships between the different elements of the City's Governance arrangements. The Constitution also includes Roles and Responsibilities of senior Members, Cabinet Member Portfolios and powers, along with the Terms of References of the various Executive and other Committees. All of the same, therefore, are kept up-to-date and provide clear accountability and responsibility for all concerned.

The City Council's Cabinet includes opposition Members – who also receive public and private reports being considered at Cabinet - but they are not, of course, entitled to exercise any voting rights in accordance with the law. They are, however, invited by the Leader of the Council, from a good governance perspective, to contribute on each of the reports before the Cabinet.

The Chairman of the Co-ordinating Overview and Scrutiny Committee is also invited to and attends Cabinet - again, with no voting rights in accordance with the law - and he is also invited by the Leader to contribute on any report before the Cabinet. In addition to the opposition and Scrutiny members, Chairmen of relevant Overview and Scrutiny Committees and the Regulatory Committees attend Cabinet on an 'as and when required' basis on Cabinet reports that might relate to their Terms of Reference.

The Nolan and the Ten General Principles have, as indicated earlier, been enshrined into the Code of Conduct for Members and, as such, lived on a daily basis by members. The system, therefore, does work effectively and efficiently with appropriate decisions from the Cabinet being recorded on the relevant Executive Decisions database and subject to 'requests for call-in' and, on occasions, decisions are 'called-in' for the re-

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consideration of the Cabinet. Cabinet Members also take individual executive decisions or, collectively, in Cabinet Committees. 'Key decisions' which are beyond certain thresholds – set in the Constitution - remain the responsibility of the Cabinet, as a whole, or in certain cases such key decisions are taken - again, as set in the Constitution - by Cabinet Committees and Constituency Committees.

The City Council has devolved some executive decision-making powers to Constituency Committees, along with substantial devolved budgets for local services. Whilst Constituency Committees are entitled to make and take some 'key decisions' - which are at a different threshold level to that set by and for the Cabinet - to date the Constituency Committees have not had the need to exercise 'key decision' powers.

As indicated above, there are clearly strengths in the current Leader and Cabinet Model; in that, clear leadership is provided at the political level and appropriate politicians and decision-makers are clearly visible and held to account. In terms of a potential weakness in the executive model arrangement, the City Council argued against the limitation of Cabinet Members to ten Executive Members, but the Government of the day imposed that as a statutory limit.

A far better proposition would have been to use 10% (or a higher number) of the Council as the limit so that, in the case of the largest local authority in the UK - with an annual budget in excess of £3 Billion, with about 60,000 employees serving a population of a million citizens - Birmingham would have an option of having up to (or more than) 12 Executive Members. This point is particularly noticeable in larger authorities as many of the Executive Members have huge portfolio of responsibilities to deal with. The additional Executive Members would certainly have helped to ease the work pressures on existing Cabinet Members and the Committee on Standards in Public Life might wish to form an appropriate **recommendation** to the Government on this issue as a way of further improving governance within local government.

In terms of increasing public trust and confidence in local government, whilst the City Council has no direct evidence to substantiate its perception on the matter, it is our view that the public are more aware of the decision-makers and, whilst some Members in local government might wish to return to the Committee system, the City Council believes that turning the clock back is not a viable proposition or a sustainable option for the future.

Accordingly, the Government should continue to allow local government to make choices based on local circumstances and if the public are not entirely satisfied with the governance of a local authority then there are sufficient mechanisms under the Local Government Act 2000 to change the same. Accordingly, no further powers are needed in this area, save the flexibility of a percentage increase of Executive Members.

The Committee is interested in comparing local governance in the UK with that in other countries. We would encourage the Committee to consider how in Europe and the United States local government often has more powers than in England, with more control over the budget, and raises a higher proportion of its resources through local taxation or charges. This is more open and transparent than the case here, where it is difficult to understand the link between, say, Council Tax levels and overall spending; and because systems abroad are often more open and transparent they lead also to greater practical accountability.

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Paragraph 2.20 - Through the City Council's website and appropriate Press Releases, the members of the public know who the Leader of the Council, Cabinet Members and Chairmen of Committees are. Appropriate contact details are also provided on the website, along with details of Ward Surgeries for all members. In addition, the executive decisions taken are readily accessible from the Council's website. Clearly, private or exempt confidential information reports are not available through the website as such information is restricted to those on a 'strictly needs to know' basis.

In keeping with open and transparent procedures, the Council took a decision in 2001 to allow all of its 120 elected Members access to all private and confidential reports. The information is not, therefore, solely restricted to the Executive Members or to the Overview and Scrutiny Committee Members. This more open and transparent approach – and subject to the Code of Conduct obligation on Members to safeguard confidential information - has not caused the City Council any difficulties and is a way of ensuring that all elected Members not only have access to relevant information but are trusted with the same. This has also been helpful in terms of holding the relevant Executive and Scrutiny Members to account. At the same time, it is also right to look for improvements and enhancements are being actively sought to the executive decisions database within available resources.

Paragraph 2.25 - The requirement to publish Forward Plans of 'key decisions' and the recording of executive decisions have also been helpful in ensuring that the public and other Members understand what the Executive may be required to deal with and where the ultimate decision will be taken in the matter.

Paragraph 2.28 - With regard to Standards Committees, whilst the local arrangements to deal with the 'local assessment regime' are proving to be effective and efficient, it has to be noted that these are costly, with monthly meetings, and virtually all of the complainants, so far, are asking for a 'Review' of the Initial Assessment Committee's decision. The Review then has to be considered by a Review Sub-Committee, consisting of other Members not involved in the Initial Assessment Committee.

The cost associated with the Review are substantial and the Government should be **recommended** to change the law so as to allow local authorities to charge any person who seeks a Review of the Initial Assessment Sub-Committee decision so as to ensure effective use of resources. The Monitoring Officer is aware, for example, that the Government's cost assumptions in respect of Reviews were defect – i.e. only 'minimal costs' were considered for Reviews.

Whilst that might have been correct for the Standards Board for England - as such Reviews were carried out by its Chief Executive and not by a Sub-Committee as now required by law - the Government should act to allow Standards Committees to charge an appropriate fee from the Reviewer so as to recover its costs for Review; especially in relation to frivolous, vexatious or unmeritorious requests for Review. This disincentive is essential to protect scarce public resources.

Paragraph 2.29 brings many of these issues together in a selection of bullet points. In addition to the evidence given above, there are some considerations which directly address the issues set out in this paragraph.

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When considering an effective accountability framework the Committee may find it beneficial to consider the framework as a whole, i.e. Executive, Scrutiny, Regulatory and indeed the role of the Full Council. Indeed, the often used phrase “checks and balances” implies that the system as a whole must be in balance, rather than each individual element.

One way of assessing effective scrutiny is to seek the considered views of those elected Members directly involved, as indeed is done in the City Council. Some other aspects of effectiveness include openness and accessibility of meetings, having well-informed and skilled elected Members carrying out the scrutiny, and looking behind, say, performance statistics by Members seeing and hearing for themselves the public’s concerns and experiences. Training is important, but it needs to be accessible, engaging and purposeful if it is to be attractive to Members.

Powers for scrutiny are gradually moving in the right direction. Scrutiny is evolving, and gradually increasing its engagement with partners as of right. This is a positive development for democratic values and the promotion of the principles of public life. As far as resources are concerned, Birmingham City Council saw the potential benefits of scrutiny very early on and has resourced its scrutiny function well, with both the engagement of 85 elected Members and their supporting officers. Whilst the officer support is currently adequate, in practice the size of the budget is not controlled by Scrutiny Members and the Executive has the power to alter it.

In the City Council’s experience, one key to developing a culture of scrutiny is for the Scrutiny function and work to be demonstrably independent. This includes, as is the case here, Scrutiny setting its own work programme within the priorities of the City Council, the wider partnership and the public. It is important for this work to be carried out in a manner appropriate to the phrase “critical friend”; and for the dedicated officer team to be headed by a senior scrutiny officer with direct access to the Chief Executive. Equally a culture of scrutiny is reliant on the political Executive, and their senior officers, welcoming that critical friendship, whilst again openly clarifying how particular decisions have been reached. In regard to developing a culture of scrutiny in authorities generally, it has often been remarked that the various inspection regimes do not explicitly assess the contribution of scrutiny in authorities. One suggestion from Scrutiny Members is that no authorities should be assessed as performing well unless they demonstrate good scrutiny. This would provide more authorities with an incentive to develop their scrutiny functions and culture.

As a final comment to issues raised in this paragraph, it is certainly not the view of Scrutiny Members in Birmingham that there is a fundamental tension between openness and “getting things done”. A more fundamental contribution to any failure to take timely action comes from the culture of bureaucracy which is still too pervasive in central and local government.

Paragraph 2.30 - As respects local authority officers, whilst officers do provide dedicated support to Executive and Overview and Scrutiny arrangements, the City Council remains one organisation and the officers are required to ensure they act accordingly. Some local government officers and Members may, of course, seek total independence between the Executive and Scrutiny arrangements at the officer and member levels, but that is not a sustainable position in the current arrangements or totally necessary.

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If the Government were to go down that line and insist on a hard split between Executive and Scrutiny officers, the City Council will regard that to be retrograde step as it will only serve to polarise local government with little or no tangible benefits in terms of improving public perceptions on trust and confidence or lead to improvements in accountability or services.

Paragraph 2.32 - As respects the Chief Executive and other Chief Officers, they have specific and dedicated Schemes of Delegations which are incorporated in the City Council's Constitution. If any officer takes decisions under the Scheme of Delegation they are required to abide by the recording mechanisms necessary and to ensure relevant Cabinet Members or other Members are kept informed of such decisions.

The Chief Executive appears before the main Scrutiny Committee on an annual basis, as does the Leader of the Council. Other Cabinet Members and Chief Officers appear before Scrutiny Committees, as and when required, or when the Committee is looking to 'Call-in' an Executive decision of a Cabinet Member. Formal accountability opportunities are shared between the full City Council meetings and the Scrutiny Committees. Each Cabinet Member presents, and is questioned on, an annual report to the full Council; six months later the same Cabinet Member makes a progress report to the appropriate Scrutiny Committee. The Monitoring Officer, of course, provides legal and constitutional advice in all aspects of governance to the whole of the Council.

The Government's proposal of a right for local people to petition to hold senior officers to account risks confusion and a loss of transparency. Senior officers are accountable to elected Members, in executive, scrutiny and regulatory roles. This accountability is exercised properly and appropriately in Birmingham. Elected Members are of course accountable to local people through the democratic mandate. The Government's proposal is unnecessary.

The working relations between Members and Officers in Birmingham City Council are good and these are based on mutual trust and respect. Members provide the appropriate strategic leadership of the Council, with officers providing the appropriate managerial and operational support necessary to achieve the shared objectives of the Council. The Executive Members and the Corporate Management Team, along with other senior Members of the Council, for example, have joint Awaydays to deal with the strategic or budgetary issues facing the Council.

Looking further into the future, Scrutiny Members see some causes of concern and risks to the quality of Member/Officer relationships. For Executive functions, the move away from committee-based decision making may well continue to be wholly beneficial. But many officers may now have their formative interactions with non-executive councillors in the scrutiny arena, where the approach can on occasions be adversarial. This is a risk we in Birmingham are aware of and try to minimise, but intend to address further with both Members and Officers.

Paragraph 2.36 – reference has already been made in this response to the importance of the City Council acting as "one organisation". Within that, roles have to be made clear to the public. That is why there is strong support for the proposal to require by law an officer, other than one of the current statutory officers, to be designated as the scrutiny

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officer. Scrutiny Members would also support a requirement for authorities to go further, and to provide that officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow those duties to be performed.

Paragraph 2.40 - With regard to local government partnerships, it is recognised that there is a need for more effective and efficient partnership working at the local government level. The Governance of the same must be clearly and easily understood by all. Currently, there can be a lack of clarity in the minds of many local government officers and, potentially, Members dealing with partnership working, which cannot be a good sign, collectively, for local government or good governance of those partnerships.

Not all partnerships are, of course, legal entities and, as such, each constituent body of the partnership will have to take its own 'executive' decisions through its own constituent body arrangements. In the context of local authorities operating Executive arrangements, the Executive Members must ensure his/her Executive decisions are properly recorded in the Council's executive decisions database, so that they can be the subject of the Scrutiny arrangements.

Clarity of thinking at officer and member levels operating in partnerships is, therefore, paramount and the City Council is using the SOLACE / CIPFA Good Governance Guide, along with its own Partnerships Toolkit, to drive improvements in such areas. The Government could, however, be clearer in the issuance of its guidance and consultation papers so as to stress the need, at the local level, for such partnerships to carefully think about their legal status and their governance arrangements, including in particular their executive decision-making and recording processes.

With regard to the openness and transparency of such partnerships, the picture is a mixed one and, no doubt, more can be done in this area to ensure that the local public understands what all these partnerships are doing 'in their name' and with the public's money. In addition, the scrutiny of 'other partners' on such partnerships can be difficult – although potentially valuable in promoting accountability and openness - and some of them will, invariably, not be subject to the high standards of ethics and conduct expected of elected Members in local government. The Committee on Standards in Public Life may wish, therefore, to **recommend** that all partners working on local government partnerships are subject to a Code of Conduct - that is similar to elected Members - and any breaches of the same could then be referred to the Standards Committee for consideration / investigation, as necessary. Such a recommendation will require a change in the law.

Chapter 3 - With regard to the London Government, the City Council offers no comment or advice to the same, save to note that Birmingham City Council - as the largest local authority in the UK, and possibly Europe - has far more powers, roles and responsibilities than the existing Mayor of London. Accordingly, the Leader of Birmingham City Council has far more power and clout, in legal terms, whereas the public may perceive the Mayor of London as having more power.

In conclusion, the Leader of the Council (and other leading Members), including the Corporate Director of Governance, will be delighted to appear before the Committee on Standards in Public Life, if required, to clarify or otherwise elaborate on this submission.

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For ease of reference, the three recommendations mentioned in our submission for the Standards Committee on Public Life to consider making to the Government are repeated as follows:-

1. An appropriate percentage is **recommended** on determining the maximum number of Executive Members for an Authority as a way of further improving governance within local government;
2. A change in the law is **recommended** to allow local authorities to charge any person who seeks a Review of the Initial Assessment Sub-Committee decision (especially in relation to frivolous, vexatious or unmeritorious requests for Review) so as to protect scarce public resources; and
3. All partners working on local government partnerships are **recommended** to be subject to a Code of Conduct - that is similar to elected Members - and any breaches of the same could then be referred to the Standards Committee for consideration / investigation, as necessary.

Should you require any other information, please do not hesitate to contact:

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