

Local Leadership and Public Trust:

Openness and Accountability in Local and London Government

Response by ACSeS to the Issues and Questions raised by the 12th Inquiry of the Committee on Standards in Public Life

Introduction

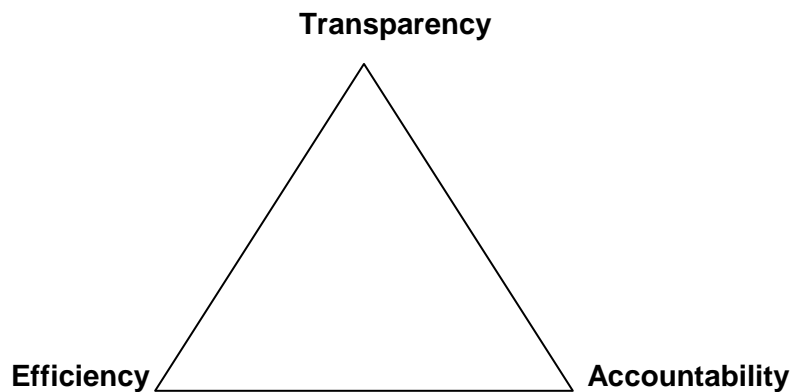
1. The Committee on Standards in Public Life has called for evidence on how decisions are being made in local and London government under the governance arrangements introduced by the Local Government Act 2000 and whether, in practice, the standards of openness and accountability embodied in the Seven Principles of Public Life are being met. This paper forms the written response from ACSeS, the body which represents monitoring officers and other senior legal and democratic officers across England and Wales.

Decision-making generally

2. There are some general points which are worth making before turning to the particular issues that the Committee raises. First, from a general perspective, there is a great deal that is positive and healthy in the local governance system as this paper sets out.
3. Second, we note that the Committee has focused on the 388 local authorities (Chapter 1, para 1.5). There are, as the Committee will know, a wide range of other authorities to which the Seven Principles of Public Life apply. ACSeS has a particular interest in the parish and town councils (and community councils in Wales), as monitoring officers of district, met district and unitary councils have specific responsibilities in relation to them. Rapid changes are taking place in the decisions these are making and how they are making them. Several spend in excess of £1m pa. And there is now an option to extend parishes to urban areas.
4. We have concerns about the quality of these local councils' decision making processes, and welcome the efforts of the National Association of Local Councils and the Society of Local Council Clerks in seeking improvement. Parish councils provide a learning ground for councillors and are the grass roots of democracy. Openness and accountability apply to this layer of local government as well as the other authorities mentioned above. We would welcome the Committee considering parish councils within their Inquiry . Bad lessons learnt in parishes may be taken by councillors up the political career path into principal authorities. Parish councils have different rules relating to accountability from those of principal authorities (eg exclusion of public from meetings and public access to documents) and it is

difficult to see the justification for those being out of line with the rest of local government.

5. Third, as the Committee recognises, particularly at 2.29 of its paper, while local authorities are concerned to make decisions in ways which support the standards of openness and accountability, the quality of decision-making also has to take other factors into account. In particular, decision-making must also be efficient. There is a model which some authorities use in considering any amendments to their formal and informal decision-making process which considers the three factors of openness, accountability and efficiency, and acknowledges the tension between all three. This is simply expressed as a triangle against which one can attempt to assess any particular decision-making process.



6. This model does not contain any value judgments about where on the triangle any decision-making process should sit, but provides a basis for assessing decision-making in the round. It is possible to add a third dimension to it so that in addition one considers also the lawfulness/ethical integrity/probity of any particular decision.
7. Generally, and in contrast with non-legislative decision-making in central government which is largely done by ministerial submission, the local authority models score very highly on openness and accountability, at least at a formal level. In relation to **openness**, the Access to Information rules require: forward plans to be produced showing what decisions will be taken by whom and when; notice to be given of decisions; reports to be published and background papers to be accessible; all with limited exemptions for confidentiality. For example, legal advice is given in reports and openly in public meetings unless to do so would waive legal professional privilege which needs to be maintained. In contrast, within central government legal advice has historically been protected and has only recently become

more available with the advent of Freedom of Information legislation.

8. In relation to **accountability**, the decision-maker is clearly identified through the formal decision-making process, either as a body (the Executive, the Planning Committee, etc.) or as an individual decision-maker (usually an Executive member but in some cases a chief officer). There are strong and potentially highly effective mechanisms for holding those decision-makers accountable : the local media, the electoral process, opposition and front-line councillors individually and through overview and scrutiny and full council meetings, and active residents groups (many of which will be supported by the local authority), not to mention the oversight of the various regulatory bodies (the Audit Commission, Ofsted etc.). The effectiveness of these mechanisms will in practice vary across authorities, but our perception is that elected members who are on decision-making bodies within their local authority feel a very strong sense of accountability, as do senior officers. It does appear that members feel a stronger sense of accountability to their local constituents while senior officers will have a greater concern with the regulatory bodies which assess them.
9. This strong sense of accountability can both support openness and undermine it. On the one hand, no member likes to be accused by any of those holding them accountable of “covering up” a problem. On the other hand, the very strong public criticism from those bodies when things do not go smoothly can create a temptation to present only the most positive side of a story or to “close” information that is embarrassing rather than confidential. As the proper officer in many authorities for judging what information should and should not be released, ACSeS members will find themselves called on to make judgements on these issues. While there can be considerable pressure for our members in exercising these judgements, in those authorities with a good commitment to ethical governance from the Chief Executive and the Leader (the majority of them), this can be and is managed effectively.
10. In relation to **efficiency**, the formal processes work adequately, although they require informal preparation to support them. The main tension between this and the principles of openness and accountability arises where there are time pressures on decision-making. This is particularly the case where the decisions relate to formal procurements or where there is partnership with a third party which is able or desires to move more quickly than the process of forward plan, report, decision, call-in period allows. Even where there is no external deadline, officers and members involved in decision-making often find the formal procedures

designed to ensure openness and accountability slow and cumbersome.

11. It should be acknowledged, however, that although these tensions exist, they are inevitable in any system which is seeking to balance these goals. Whereas management of them is often challenging for officers in the legal and democratic teams who are charged with running the processes, thousands of decisions are taken across local authorities every year where these tensions are not only resolved satisfactorily but result in good, robust decision-making.
12. Finally, the level of openness and accountability depends heavily on the quality of leadership of the authority. The role of leader or executive member is an extremely pressured and difficult role. Leaders and executive members are challenged, often extremely robustly, though all the mechanisms for accountability mentioned in this paper. They are in addition constrained by the law, code of conduct, precise decision making processes and procedures, external budget and strategy constraints, national performance indicators, the obligation to work within agreed strategies and the knowledge that anything they might say publicly or privately is likely to be thrown back at them. They are expected, as the leading democratically elected persons, within complex, untested and opaque partnerships to negotiate and broker community strategies with widely differing organisations having widely different interests, and then sell them and deliver them. Support for the leadership to be the best it can possibly be is an essential element in delivering the quality of decision-making within local authorities.

Specific issues raised by the Committee

Local government: leadership and accountability (2.19)

8. The new executive models of decision-making are relatively young, and are still changing (eg with the imminent move to the strong leader model), and the response of members, political groups and officers appear to us still to be evolving. That having been said, at this stage they appear to have succeeded in the aim of increasing accountability for decision-makers. As mentioned in the general comments above, it is very clear who is responsible for each decision and there are many effective mechanisms for scrutiny of that decision. The rules on openness and the constitutional requirements within each local authority identify clearly where and how each decision must be made, and there is great transparency in the documentation provided to support formal decision-making processes.

9. If, however, the aim behind the 2000 Act was, as the 1998 White Paper indicates, to avoid informal decision-making, then we do not believe that this has been fully achieved. Formal reports to Executive, being public documents, are used not only to support decision-making by the Executive but also as the public explanation for that decision-making. There is therefore a legitimate political interest in the presentation of the argument which has to be managed by officers. The complexity and sensitivity of many of the decisions to be made makes it inevitable, in our view, that there needs to be informal briefing of the Executive before the formal meeting that decides on the officer recommendations. It would be highly inefficient if the first time the Executive had the chance to see reports on which they are making decisions was when the agenda was formally despatched, with their only opportunity to think about it collectively and ask questions being at the meeting. It is therefore generally the practice among local authorities for some form of prior briefing to be held, either of the Executive as a whole or of the individual member who holds the portfolio. It should be recognised that decision-making by Executive means that decisions are usually within the gift of one ruling political group (or a coalition of groups) and that there will therefore be political management of meetings quite apart from any officer briefings.
10. In our view, an element of informal briefing, if managed appropriately, supports rather than undermines good decision-making. It assists if there is a strong overview and scrutiny committee which will provide a challenge to decision-making that is unlikely to be found on a one-party Executive.
11. We do consider, however, that unless a local authority does have a strong scrutiny (and audit committee) function, the strength of the clear and visible leadership of the executive is counterbalanced by the weakness of a much reduced role for non-executive councillors. We have seen excellent examples of cross-party working between scrutiny and the Executive in order to produce effective decision-making. However, there are also examples where the only real role left to opposition parties is criticism of the decisions of the Executive and their implementation. This is an important and valid role, but it tends to undermine public trust in the institution as a whole rather than reinforce it. Our members also note increased alienation of backbenchers, who often do not feel ownership of council decisions taken by the Executive.
12. For those authorities who have elections every 3 years out of 4, there is, we consider, an impact on efficiency and effectiveness. The pre-election period and the post-election adjustment take a large chunk of time out of each year when the decision-making

process is limited to essential decisions. Linking the election periods to the 4 year term of the strong leader model would link accountability more directly to the ballot box.

Local government: openness and accountability (2.29)

12. As mentioned in the general comments, effective accountability comes from a number of mechanisms. The role of opposition and backbench councillors, individually and through overview and scrutiny and audit and governance committees is a very important factor in ensuring accountability. But equally important is the electoral process itself, the influence of the local media, and active residents groups. The latter will sometimes have influence through the local strategic partnership structure, and sometimes through other mechanisms that the authority supports, for example tenants associations, community of interest forums, and third sector groups.
13. The experience of overview and scrutiny varies enormously between authorities. It now has to be seen alongside the audit and governance committees which many good authorities have and which provide particular scrutiny for financial and corporate governance matters. The resourcing of these functions varies widely across authorities, and the power of the committee within the authority will also vary with the political composition of the authority and the extent to which the group in power (which ultimately controls the resources) is prepared to support a strong scrutiny function.
14. We consider that the scrutiny model, where it is used effectively, provides a good model for accountability. We agree that the provision of officer resource to scrutiny supports this, although we would support authorities' ability to make their own decisions about the level of resource appropriate. We also consider that successful scrutiny is helped with strong chairmanship of the overview and scrutiny committee and its sub-committees, and that an element of cross party chairmanship can be helpful in achieving this.
15. Standards committees should also have a role in promoting openness and accountability. As with scrutiny committees, their involvement in this agenda and their effectiveness varies enormously between authorities. One of the key factors relating to their effectiveness is the authority's ability to attract a high calibre of independent members, particularly for the chair of the committee.
16. One point that has emerged in recent years is that there now appears to be quite a crowded ground of governance committees

within authorities, with overview and scrutiny, audit and governance and standards all looking at potentially similar things. In particular, the audit and governance committees have been created as a response to good practice guidance, whereas overview and scrutiny and standards committees have a statutory basis. Some audit and governance committees have independent members, while others are limited to councillors. There is some question as to whether the three committees should be reviewed so there is clarity as to their respective roles. Authorities appear to manage this in an ad hoc way so that there is no unhelpful duplication of agendas, but the varied responses to this mean that the effectiveness of these three committees in promoting openness and accountability really need to be considered in the round.

17. The Committee is interested in the effectiveness of the arrangements for giving elected members lead member responsibility. In our experience, this increases the clear lines of accountability for that member, although as the Committee recognises this may lead to some members wanting to take roles in implementation that have traditionally been the preserve of chief officers. It seems to us that this is an understandable development: where the media, residents and other councillors expect the lead member to be answerable for failures at an operational level within their portfolio it creates a real incentive for the lead member to become more involved with the detail of those issues. This does, however, risk the lead member becoming overwhelmed with detail at the expense of taking a more strategic role, and there is some evidence of this occurring in some authorities. We therefore consider that it is important that Executive members are properly inducted into their role when they take it up. Chief officers also need support in managing this relationship, which works best when the Leader and Chief Executive have a strong relationship with a shared understanding of the roles they want their respective teams to play.
18. One example for managing this that we have seen is a performance review system for Executive members led by the Leader (supported by officers from the performance team) which helps to focus the Executive member on their role.

Local government officers; role and accountability (2.37)

19. Officers have an obligation to be neutral, supporting all councillors. Their role is, on the whole, well understood by the public and officers appear to manage their dual function of supporting both the executive and scrutiny effectively.
20. Where there is a leader and cabinet model, there is a risk that senior officers who are in close contact with their lead member

identify so strongly with their shared agenda to deliver things for the authority that dealing with other councillors is not given time and energy. However, this risk has always existed in authorities where one administration has been in power for any length of time. Strong and clear leadership from the Chief Executive and chief officers should address this issue.

Local government accountability and partnerships (2.40)

21. There is a very wide network of partnerships that local authorities engage in. Although there is a focus on the local strategic partnership and its themed sub-partnerships, there are many more formal and informal types of working which could be described as partnership. Many local authorities have long term contracts with out-sourced providers of call centres, payroll, revenues and benefits etc, and are therefore working in partnership with commercial companies. Many services are now commissioned from third party providers in the commercial or voluntary sector rather than being provided directly, which creates a different set of partnerships. Regeneration requires partnership with developers, registered social landlords and transport authorities. Local authorities will also work with different groups of residents and businesses on different matters: with tenants and leaseholders on housing issues, with local chambers of commerce and traders associations on regeneration projects, with voluntary sector umbrella groups on community cohesion, and so on. There are often councillor members on local charities, which is a much looser form of partnership.
22. All these different ways of working with other parties have different governance arrangements, and in our experience those are often opaque for those outside the partnership to understand. Arrangements based on contracts may be commercially confidential, and other arrangements may be based on custom and practice rather than publicly available documents and rules. This means that although partnership has excellent results in creating greater openness between the authority and those who are involved in the partnership, there can be considerably less openness for those who are not directly involved.
23. As authorities seek to work even more with each other, sharing services and sometimes senior management teams, the complexity of the picture will increase. The lack of clear governance structures undermines a clear sense of who is responsible for decision-making. We appreciate that for partnerships in their various forms there must be room for some types of informal decision making, but we consider that at the moment there is too great a negative impact on openness and accountability. We consider that governance has lagged behind the development of partnerships which have otherwise been very successful, and that

there is a need for most authorities to review their partnership arrangements with a view to making it clear for all where and how decisions are made through those structures.

London Government: Greater London Authority

24. The Greater London Authority has many unique features all of which need to be addressed when assessing the success or otherwise of mayoral government and which makes it hard to use the same criteria by which one might assess mainstream mayoral local government.
25. These features include: a geographical area covering 32 London Boroughs plus the City; the largest constituency for a single politician in the UK and one of the largest in Europe; limited but very significant 2nd tier powers; 4 functional bodies of which only two are a form of local government; a single person executive; a single function assembly whose only power is to scrutinise the mayor, his policies and the implementation of them; 12 directly appointed Mayoral staff, not subject to direct scrutiny by the assembly; and it is not required to have a Constitution.
26. The set up of the GLA predates the 2000 Local Government Act and did not include any arrangements for an ethical framework although the GLA had set up a voluntary 'Nolan style' Standards Committee in any event.
27. In practice, the purity of the Executive/Scrutiny split is blurred because the mayor appoints assembly members to represent him on functional and other bodies in addition to appointing some of his 12 staff to do so. The Officer /member split is also blurred as there are both assembly members and officers carrying the title Deputy Mayor.
28. None of these issues mean that the model is flawed necessarily, indeed some argue that London Government has been able to deliver huge quality of life changes in London that no other type of government would have been able to achieve.
29. What it does mean is that consideration should be given to aligning rules and procedures to facilitate even more efficient government and more efficient regulation of the GLA.
30. We would argue for three things specifically:
 - a. That the status of the 12 mayoral staff is clarified, particularly when they are acting on behalf of the mayor.

- b. That consideration is given to allowing the Mayor to establish a cabinet which would include both assembly members and officers.
- c. That the GLA Standards Committee, which has a correspondingly complex and demanding role, is freed from the constraints of procedural guidance by the SBE which can only be seen as one size fits all and prevents a reasonable committee from reaching its own conclusions about procedure, types of decisions etc and prevents rather than enables transparency and accountability. Any local decisions will of course be subject to legal review and appeal in any event.

Response on behalf of ACSeS
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Contact: deborah.collins@southwark.gov.uk