

# LGA Group Response to the Enquiry by the Committee for Standards in Public Life into Local Government and Public Trust

10 March 2009

## Introduction

The Local Government Association has submitted a detailed response to the enquiry by the Committee for Standards in Public Life into local government on behalf of local government in England. Our affiliated body, the Welsh Local Government Association, will be responding on behalf of Welsh local government.

In our response we are clear that local government is not complacent about the issue of trust nor can it afford to be. Public trust in the workings of government can take two forms:

- trust in probity, honesty and other standards of public life as exhibited by holders of public office
- trust and confidence that those who govern will act in the interests of citizens and for the long-term public good.

This submission concentrates more on the latter than the former and argues that diminishing public understanding of the role and functions of local government is a key barrier to public confidence. Lack of public trust in the probity of local politicians can also surface on occasions but overall comparative evidence suggests that local councillors are more trusted by the public than other elected politicians.

Cynicism and the belief that politicians at all levels 'are only in for themselves' can contaminate government at all levels. Whether it be the probity of Peers, pensions of MPs, or conflicts of interest among councillors, it remains essential that abuses are investigated and addressed. The arrangements in place for this, including the reforms of the operation of the Standards Board for England, places local government (the LGA would contend) in a strong position on this front.

In terms of wider public confidence, and trust that local councils will always act in the interests of their citizens, it is our contention that the complexity of current governance arrangements from Whitehall downwards remains a key contributor to the low levels of public trust the UK system engenders, when measured by international standards.

The fact that central and local government operate to different systems of accountability, in terms of openness, access to information, and relationships between politicians and officials, hampers public understanding. This is a concern we have raised in our document "One Nation, Two Systems", submitted as evidence to the Commons Select Committee on the balance of power between central and local government.

People want and need to understand who is making the decisions that affect their lives and how those decisions are reached. If we are to improve levels of trust then we need to see an overall system of governance that is clear and comprehensible, and local governance systems only comprise a small part of this wider issue. Many of the same issues of openness and accountability arise in relation to the workings of the health service, police, regional bodies, as well as central government.

People also want to be sure that they can trust the quality and accuracy of information given to them, in terms of data and statistics on their area, and the public service bodies working within it. The new framework for Comprehensive Area Assessment, undertaken through an independent Audit Commission and its fellow inspectorates, should help improve the flow of information to the public.



The LGA sees the Committee's enquiry as hinging upon three key, interconnecting areas.

On the issue of trust, we see any lack of public confidence as stemming, in no small part, from unresolved debates over the nature of our central/local constitutional settlement, and lack of consistency in Government policy towards devolution and local accountability. While there has been in recent years a relatively coherent narrative from the centre, as in the 2006 White Paper *Strong and Prosperous Communities*, of more devolved decision-making, there has also been a slow cultural change within Whitehall. This, combined with conflicting Government messages on next steps for accountability for the totality of local public services, leads to continued widespread lack of understanding of the various functions and responsibilities of public service providers. This deficit in understanding of the way in which we govern ourselves, and a lack of clarity as the current and future role of the local government, hinders the building of public trust of elected officials.

The second key area is that of oversight. If citizens are able to see and understand the functions of a body then they will begin to trust it. However a 'scrutiny culture' cannot be seen in isolation from the wider political and governance structure of a local authority as a whole. Scrutiny is only one part of how a whole organisation works in terms of its values, purpose and outward engagement with citizens.

Councils deploying best practice on scrutiny have shown that scrutiny can help actively engage and involve the public in decision-making, consistently across the board. There are substantial benefits for the sector, and lessons for other parts of the public sector, in providing properly supported scrutiny processes and thereby enhancing public perceptions of openness in decision-making.

This level of clarity and comprehension must apply to all levels of governance. Local councils continue to take on a wider role in scrutiny across health and policing following separate pieces of legislation in recent years. This is an important development and offers the citizen a more coherent framework for holding all local public bodies to account.

Within the parameters of local government we must look to systems of overview and scrutiny as the clear drivers for improving trust and generating openness. Our own work on giving lead members increased responsibilities in scrutiny is ongoing and we will be looking to share this with the Committee once it reaches completion. We also support the involvement of independent members in scrutiny.

Considering the third area, that of structure, the LGA Group believes that the prime requisite when considering structure is for the public to understand who is making decisions, and how they are reached.

As a general principle, local authorities should have some level of discretion in the detail of their constitutional arrangements (such as the precise arrangements for scrutiny, or levels of decision delegated to officers). The Local Government Act 2000 provides for this, albeit with a level of statutory complexity and prescription that does not help public understanding. Every local area is different and has its own set of individual circumstances. It is therefore of key importance that the detail of decisions on structure and models of governance can be made at the local level if the public are to have any confidence that their voice can be heard and their opinions acted upon.

The increase in partnership working between local authorities and other bodies has had strongly positive results. Building on the Lyons Report and ten years of public debate there is now a cross party consensus that the role of local government is much wider than the delivery of direct or commissioned services. Partnership working is essential to ensuring joined-up delivery strategies that focus on local issues.

---

# submission

---

Partnership working carries a price in terms of complexity of arrangements. But it need not blur accountability if it is clear when ultimate responsibility for decision-making lies. It is in this area that local partnerships continue to improve and innovate.

These issues are explored in more depth in the detailed responses to the Issues and Questions paper, as set out below.

Bringing these three areas together we believe that the only way in which public trust and confidence in local government can be further improved is through greater clarity and consistency of governance arrangements across central and local government and all sectors of public service provision.

Local people need to have a say over the way in which their local area is run, to understand how the functions of local government are imparted, and to have the power to affect change over the governance structures that shape their place. Democratic accountability is reinforced by trust – if people understand the functions of their council and trust the people charged with decision-making then they will feel that those people and institutions are accountable. And trust, in turn, reinforces democratic accountability, with people more willing to entrust those who they trust with powers over the direction of their local area.

---

# submission

---

## Issue 1: Local Government: leadership and decision-making

*The Committee has asked whether the changes in decision-making and accountability introduced by the Local Government Act 2000 have better supported the Seven Principles of Public Life.*

### 1. The strengths and weaknesses of new executive models of decision-making

It should be remembered that the introduction of executive arrangements was not sudden. The debate over the merits of 'cabinet government' for local authorities goes back to the DETR study commissioned by Michael Heseltine in 1991<sup>1</sup> The Commission for Local Democracy explored these themes in the mid 1990s.

The LGA supported Lord Hunt in his efforts in 1997 to introduce a Private Member's Bill (Local Government Experimental Arrangements), as a means of allowing alternative models of council decision-making to be introduced.<sup>2</sup>

The Local Government Act 2000 imposed a specific (and limited) set of options for decision-making arrangements within English councils. Government's expectation at the time was that the mayoral model would prove popular, and would emerge (via local referenda triggered under the Act) as a widely used means of building more effective leadership and visible accountability across local government in England.

This did not happen. As noted in the Committee's Issues and Questions paper, the mayoral model has been adopted in 11 authorities (with referenda being held, but lost, in 25 others). A variety of reasons have been put forward for this. Some contributory factors are suggested later in this submission.

In terms of meeting the seven principles of public life the committee system operating pre 2000 was seen by many as fundamentally weak on three of these (accountability, openness, and leadership).

Under traditional committee arrangements it was an almost impossible task for councils to make clear to their citizens who was ultimately in charge and how decisions were reached. While there were examples of council leaders who achieved visibility, recognition and public trust through sheer force of personality, the statutory and institutional framework mitigated against this.

### 2. Have the new arrangements increased public trust in local governance; if so, how?

In the period since 2000, levels of understanding by citizens in how decisions are made, by councils and other public bodies in their areas, remain disappointingly low. Surveyed levels of trust, electoral turnout, and of engagement with citizens all reflect this<sup>3</sup>. Given the complexity of public service delivery at local level it is difficult for the public to gain an understanding of who does what in terms of functions and responsibilities.

But most observers feel that the position would be even worse had traditional committee structures remained unchanged. The fact that councils have taken on a wider role in local partnership working and local area agreements is also beginning to make an impact.

The Department for Communities and Local Government published a research

<sup>1</sup> Review of the Internal Management of Local Authorities in England. Results published as Community Leaderships and Representation: Unlocking the Potential. HMSO 1993

<sup>2</sup> By 1998 a small number of English councils were exploring the scope for 'strong leadership' and executive/scrutiny models, working within the statutory parameters of the 1972 Local Government Act. Hammersmith & Fulham Borough Council put in place an indirectly elected mayor and cabinet model in 1998, with scrutiny arrangements. Kent County Council and Lewisham Borough Council developed similar approaches, followed by other councils moving to change their decision-making arrangements in advance of the 2000 Act.

<sup>3</sup> Add references to Power report and Councillors Commission?



report<sup>4</sup> in 2005 on the impact of the 2000 Act and related reforms on public confidence in local government. Unsurprisingly, it was found to be very difficult when interpreting survey evidence to disentangle levels of public satisfaction in council services generally from levels of satisfaction and confidence in their governance systems.

Before and after comparisons of level of complaints might be thought to give some clues. But use of levels of complaints as a proxy measure for confidence is fraught with problems. The researchers noted the *'fundamental ambiguity of using numbers of complaints as an indicator of untrustworthiness'*. Many local councils overhauled and improved their complaints procedures during the 1990s as part of wider strengthening of governance and customer care arrangements. Making it easier to complain was rightly seen as a key part of improving communication with citizens.

In terms of public confidence, lack of public understanding of the role and workings of local government has not been helped by unresolved debates over the nature of our central/local constitutional settlement, and lack of consistency in Government policy towards devolution and local accountability.

On the one hand there has been a relatively coherent story to tell, captured in the 2006 White Paper *Strong and Prosperous Communities*, of more devolved decision-making, a rebalanced national performance management framework, a new regional agenda, and a strengthened role for councils and local partnerships in the leadership of 'place' at local level. Governance of localities, and delivery of public services, has become a little more seamless and integrated.

On the other hand, there has been slow cultural change within Whitehall over 'letting go' from the centre, along with conflicting Government messages on 'where next' for accountability for the totality of local public services.

Home Office proposals for separate, directly-elected, Crime and Disorder Representatives were pushed hard by Ministers, and then dropped in response to widespread opposition to fragmented 'silo democracy'. Accountability for health services at the local level remains opaque to the average citizen.

Overall, our lack of constitutional underpinning of the place of local government does not make for widespread citizen understanding of the way in which we govern ourselves.

The balance of power between central and local government remains under scrutiny at the CLG Select Committee, with an enquiry running in parallel to that of this Committee. The terms of the debate have moved on only marginally from the 1995/6 House of Lords Select Committee inquiry on central/local relations, the recommendations of which<sup>5</sup> were swept aside by the 1997 General Election.

Constitutionalists continue to argue over the extent to which the UK Government in practice meets the basic principles over the European Charter of Local Self Government<sup>6</sup>. The 'Concordat' signed between the Government and LGA represents limited progress in clarifying the respective roles of central and local government, and has no profile or visibility with the public.

Against this background, it is perhaps unsurprising that levels of public confidence and trust in the way that we are governed remain comparatively low when measured by international standards.

Public trust in government requires understanding as a first requisite. The public cannot be criticised for failing to understand an English system of government and

<sup>4</sup> Meta Evaluation of the Local Government Modernisation agenda: Progress report on Public Confidence in Local Government CLG 2005

<sup>5</sup> Rebuilding Trust, Report of JHL Select Committee on Relations between Central and Local Government London HMSIO 1996

<sup>6</sup> The European Charter of Local Self Government. Council of Europe 1988, and signed by the UK Government in 1998



public service delivery that defeats even hardened experts.

While beyond the scope of this Enquiry, this wider context is important in addressing the questions posed by the Committee on local government decision-making and accountability. Accountability only works when citizens understand, broadly, which part of government is responsible for what and how central, regional, and local arrangements work within a coherent framework.

### **3. Why are there so few elected mayors? Is there any evidence to support the hypothesis that an elected mayor can help to rebuild public confidence and trust in a failing authority?**

Many people from within local government would say that the small number of elected mayors in England comes as no surprise. The directly elected mayoral model does not fit well with the type of collective leadership via a team, accountable in political terms to a party group, which had developed in many of the more successful local authorities in the decades before the 2000 Local Government Act.

It remains something of a mystery why the Government set its face against the model of an indirectly elected mayor when drafting the 2000 Act. As commentators have pointed out, before and since the Act, indirectly elected mayors are seen as an effective model in many parts of the world. The 2000 Act specifically excluded this model from the 3 permissible options for executive leadership.

With the 2007 Act, the Government has moved to two remaining models, that of directly elected mayor and cabinet, or a 'strong' leader and cabinet, indirectly elected by the council for a fixed term<sup>7</sup>. This brings the 2007 Act 'leader and cabinet' model closer to that of an indirectly elected mayor. How far the public will register this change and how much impact it will have on trust, visibility, and accountability remains to be seen.

Separate evidence to the Committee, from the Centre for Public Scrutiny, will show that current research suggests no significant differences in the operation or effectiveness of scrutiny in mayoral, or non-mayoral, authorities.

### **4. In practical terms, what are the differences between the mayor and cabinet model and leader and cabinet model?**

In practical terms the differences between the mayoral model and the new leader and cabinet model have shrunk to some extent, with the introduction of fixed terms for leaders. Directly elected mayors remain less reliant on the support of one or other of the major political parties to achieve office, and to retain it thereafter. Leaders remain subject to being deposed via party group decisions and subsequent votes in full council.

## **ISSUE 2 LOCAL GOVERNMENT: OPENNESS AND ACCOUNTABILITY**

*Local government has always been 'open' in the sense that its formal deliberations have always been held in public (for the most part) and its decisions recorded and reported as a matter of public record. In this sense, the level of openness has been higher than in other parts of the public sectors (e.g. central government departments, the health sector, and Non Departmental Public Bodies).*

*A point often made about the change from the traditional committee system to the new arrangements post the 2000 Act is that an element of public transparency was lost. Committees made most of their decisions at meetings open to the public,*

<sup>7</sup> The Issues and Questions paper states that the 2007 Act 'allows local authorities to appoint leaders for four year terms'. In fact the Act goes further in making a fixed term (the length of which depends on electoral cycles) a mandatory requirement of the 'leader and cabinet' option, rather than a discretionary choice. This requirement is being implemented in phases for different classes of authority, at their next elections. Under the leader and cabinet model, councils retain the power to dismiss a leader by majority vote of full council.

whereas most non-cabinet decisions are now made by individual executive councillors or by officers, under delegated powers.

The impact of this change on levels of public trust is hard to assess. Several facts must be borne in mind:

- since the 2000 Act, all councils have been required to publicise 'forward plans' of proposed decisions in the pipeline. This was not the case previously.
- The legislative requirements that are placed on councils to record and publish all 'key decisions' (whether to be made by individual councillors, or by cabinet), with reasons for the decision.
- The level of delegation to officers is a matter for councils to decide as part of their constitution, but the vast majority of councils continue to reserve to elected councillors those decisions involving significant expenditure or with an impact on significant numbers of local people.
- The more important 'quasi-judicial' decision on planning and licensing issues continue to be made at committee meetings open to the public.

All in all, levels of openness and public access to decision-making in local government remain higher (and underpinned by legislative requirements) than is the case for central government departments, NDPBs, and most other parts of the public sector.

Prior to the 2000 Act, it was recognised that transparency and accountability of local councils (as distinct from openness) was limited by the workings of the traditional committee system. To the public, it was not clear who was responsible for decisions made by committee, and how to pinpoint accountability.

Separation of executive and scrutiny functions has gone some way to remedy this position, albeit that fully effective scrutiny remains a high benchmark to set, at any level of government.

## **5. What are the key elements of an effective accountability framework for local government, and how well do current arrangements work in practice?**

The key elements are the same as for any form of governance:

- clarity and stability over role, responsibilities, and powers in order that the citizen can understand the context for decision-making (still lacking in the UK central/local constitutional settlement, as noted in the introduction to this response);
- clarity over who is 'in charge' and has executive authority for decisions (improved since the 200 Act);
- clarity on how decisions are delegated (in place post 2000 Act, but still complex for the public to understand);
- an open and transparent framework for decision-making;
- an opportunity for scrutiny of, and challenge to, decision-makers;
- avoidance of conflicts of interest;
- clear standards of ethical conduct, consistently applied and externally monitored;
- explicit and independent routes for citizen complaint and redress if things go wrong.

In asking "how well do such arrangements in local government work in practice?" the Committee inevitably begs the further question as compared to what other forms of governance?

When compared with central government and other parts of the public sector, the accountability framework for local government meets all the above criteria, whereas this cannot be said for most others. From the citizen's perspective, it is reasonable to

expect that levels of openness and transparency across all agencies providing public services should be broadly comparable. Local government is keen to make use of widened scrutiny powers to help make this expectation a reality.

When compared with the expanding world of 'joined-up' public service delivery through partnership bodies, such bodies fall well short of a similarly robust framework, as discussed later in this submission.

When compared with other 'regulated' functions such as the banking and financial services industry, UK citizens are now increasingly conscious that the framework for accountability and transparency lacks many of the elements listed above.

In terms of the effectiveness of scrutiny, the Centre for Public Scrutiny would argue that successful and effective scrutiny can play three roles as part of its four principles of effective scrutiny (see below). This can help ensure a clear accountability framework at local level:

- leading beyond authority boundaries - being willing to look outward, beyond scrutiny of the council executive to scrutiny of all agencies whose activities affect their local place;
- authority recognition of and support for scrutiny - the sign of a confident and mature authority and its leadership is a willingness to be challenged and to see robust (and resourced) challenge as a necessary part of good governance;
- members taking responsibility for their own effectiveness - scrutiny must be led and owned by elected members and there is much that members themselves can and should do to improve their own performance, skills and capacity.<sup>8</sup>

## **6. How should effective scrutiny be judged, and to what extent do current measures lead to effective scrutiny?**

The Centre for Public Scrutiny has developed four principles of effective scrutiny against which it believes scrutiny can and should be judged across the public sector. We believe that effective public scrutiny:

- provides 'critical friend' challenge to executive decision-makers
- enables the voice and concerns of the public to be heard
- is led and owned by independent-minded lay governors
- drives improvement in public services<sup>9</sup>

The main principles behind the separation of the executive and scrutiny functions of local political management structures are designed to ensure that those responsible for decisions or services are not the only persons to judge the outcomes. The CfPS evidence to the Committee explores these issues in more depth and detail.

## **7. Do overview and scrutiny committees have adequate powers and resources to hold the executive to account, and if not, what additional powers and resources are required?**

The evidence from CfPS's Annual Surveys of Overview and Scrutiny in Local Government clearly shows that in many authorities the scrutiny function is not highly resourced. Details of survey evidence will be incorporated in the CfPS response.

CfPS findings suggest that scrutiny works where it is adequately resourced and supported. While not identifying an 'ideal' level of support across councils of very different sizes, CfPS have found a number of principles which participants in

8 Leadership of Place: the role of overview and scrutiny, Leadership Centre 2009  
9 The Good Scrutiny Guide (2nd Edition), CfPS 2006

fieldwork believe underpin good scrutiny. These include:

- emphasising the value of maintaining dedicated officer support for public scrutiny. It was clear from our findings that where officer support is dedicated wholly to supporting public scrutiny the participants felt more able to develop expertise in the role, foster good relationships with lay scrutineers and importantly, relieve pressure on the officers themselves;
- encouraging the development of scrutiny arrangements that operate with a degree of independence from other functions of the organisation.
- ensuring that public scrutiny is supported by a discrete budget, under the control of the senior scrutiny officer, to enable independent commissioning of evidence and research of all kinds to support robust and objective challenge and conclusions;
- ensuring regular contact with lay scrutineers is seen as a fundamental part of the job as this helps achieve a more effective scrutiny process through building relationships with the lay scrutineers, understanding their aims and priorities and ensuring they can contribute effectively to the process;
- encouraging close contact between public scrutiny officers and senior management throughout the organisation being scrutinised. This cements the place of public scrutiny in an organisation and makes the 'critical friend' challenge easier and more readily accepted.<sup>10</sup>

Individual local authorities have difficult choices to make on the resources devoted to scrutiny, as a member-focused central service, as compared with front-line service demands. (CfPS evidence identifies an example of a county which has used an invest-to-save approach, resourcing an extra post through savings made via scrutiny reviews).

## **8. How effectively have local authorities embedded a culture of scrutiny into their decision-making processes?**

A 'scrutiny culture' cannot be seen in isolation from the wider political and governance structure of a local authority as a whole. Scrutiny is one part of how a whole organisation works, in terms of its values, purpose and outward engagement with citizens.

Levels of public engagement in scrutiny processes remain relatively low, and the separate CfPS evidence explores in more detail the reasons why this should be so.

From CfPS survey evidence, it is clear that smaller councils with limited scrutiny resources can often struggle with the basics of organising scrutiny sessions, with little opportunity to think creatively about trying to involve the public as well. Hence overview and scrutiny functions in many local authorities have made limited use of the powers available to them to:

- co-opt members of the public and other external people onto scrutiny committees (the average number of non-statutory co-optees on overview and scrutiny committees was three in 2007, with only 13% authorities using the powers from the 2003 Act to give such non-statutory co-optees voting rights);
- invite members of the public to suggest topics for scrutiny reviews (the average number of topics suggested by the public in 2007 was just six, with more than half of all scrutiny functions reporting no input directly from the public to their work programme).<sup>11</sup>

Councils deploying best practice on scrutiny have grasped that scrutiny can help actively engage and involve the public in decision-making, consistently across the

<sup>10</sup> Supporting Public Scrutiny: understanding and developing the role of the professional scrutiny support officer, University of Warwick and CfPS 2008

<sup>11</sup> 2007 Annual Survey, op cit



board. There is a potential win for the sector, and lessons for other parts of the public sector, in providing properly supported scrutiny processes and thereby enhancing public perceptions of openness in decision-making. Communicating the outcome of scrutiny exercises, in ways that resonate with the public, is also important and local councils are always looking for innovative and cost-effective means of doing this.

The role of the media in reporting on local government, and the impact this has on public trust and confidence, is a whole subject in itself. The LGA devotes much effort to ensuring that the work of local councils is generating the profile that it warrants, in terms of impact on our everyday lives, and secondly that such coverage is balanced and fair.

It remains a concern that the routine but important scrutiny work by local councils receives little media attention. One reason for falls in public confidence is that there is much less local coverage of the town hall, with many local papers removing local news and councils launching council newspapers to fill the gap. It is only when major incidents of performance failure arise that press interest becomes focused. Local authority scrutiny bodies which undertake serious and thorough reviews of issues of importance to citizens (such as alcohol and the night-time economy in town centres, or options and solutions for long-term care of the elderly) find it difficult to generate media interest. Media recognition of the long-term significance of the division of executive and scrutiny functions, since the 2000 Act, has been slow in coming. This may yet change, as (for example) public and media interest in the work of Select Committees at national level has grown over time.

## **9. Do certain models of local decision-making provide for stronger accountability and openness: if so why are they more effective?**

As covered above, the LGA Group believes that the prime requisite is for the public to understand who is making decisions, and how they are reached. As a general principle, local authorities should have some level of discretion in the detail of their constitutional arrangements (such as the precise arrangements for scrutiny, or levels of decision delegated to officers) within a framework that applies nationally. The Local Government Act 2000 provides for this, albeit with a level of statutory complexity and prescription that does not help public understanding.

Under the revised (and more limited) options for leadership now being put in place following the LGPIH Act 2007, the LGA group sees limited difference between the 'strong leader' and mayoral models, when it comes to openness and accountability. The LGA Group continues to believe that choice between these options should remain a matter for local decision.

## **10. Is there a role for standards committees in promoting openness and accountability in local government, and if so what should their role be?**

The 2006 White Paper Strong and Prosperous Communities proposed the devolution of most aspects of the conduct regime to local authorities, with a streamlined Standards Board at national level refocused as a light touch regulator.

The Standards Board for England view this as a 'natural progression', following on from the Tenth Report of this Committee on *Getting the Balance Right*<sup>12</sup>.

The framework for ensuring high standards of conduct and ethical behaviour in local government is now firmly embedded via local standards committees, with independent members. The 2007/8 Annual Review by the Standards Board for England reports continued improvement in perceptions of standards of conduct in local government<sup>13</sup>

<sup>12</sup> Getting the Balance Right: Implementing Standard of Conduct in Public Life. 10<sup>th</sup> Report of Committee on Standards in Public Life. July 2005

<sup>13</sup> Standards Board for England Annual Review 2007-8, based on survey work by BMG Research





Guidance issued by the Standards Board for England encourages councils to consider a wider role for local standards committees. Suggested areas for involvement include review of protocols for member/officer relationships and oversight of Local Ombudsman findings.

Hence many local standards committees already make a wider contribution to openness and accountability, through the review of elements of a council's constitution. While there appears to be little national research available on the scope of such activity, a brief review of the activities of a number of local standards committees shows that they have been looking at wider issues such as:

- *corporate governance code for the authority*
- *anti-fraud and corruption arrangements*
- *whistle-blowing procedures, including annual monitoring of these*
- *responses to Government consultation on the on the code governing publicity*
- *supervising the registers of members and officers interests*
- *response to relevant sections of the White Paper Communities in Control*
- *oversight of local complaints*
- *managing customer feedback*
- *standards for members of the public (volunteers) involved in council activity*

The LGA Group supports the view of the Standards Board for England that the involvement of local standards committees, in issues such as those listed above, can help to increase public trust and confidence in the workings of local government.

## **11. How effective are the arrangements for giving certain elected members lead member responsibility and accountability in practice?**

This issue has come into sharp public focus as a result of the Baby P case. The LGA commissioned research from the National Foundation for Educational Research on the role of the Lead Member for Children's Services<sup>14</sup>. This explored whether members undertaking this role have enough information and support to carry it out effectively, especially their corporate parenting role.

Key findings were:

- There is diversity in the ways the Lead Member for Children's Services role is undertaken in different authorities
- The effectiveness of the LMCS role involves three core elements: the relationship between an LMCS and DCS (Director of Children's Services), political skills and experience and an LMCS's ability to 'make things happen'
- LMCS tended to feel adequately supported in their role, but there is scope for further improvements

The statutory framework for lead members in children's (and more recently adult) services remains a relatively recent innovation<sup>15</sup>. The concept of assigning an individual elected member with political accountability across the breadth of children's services, and with particular responsibility for corporate parenting, raises issues of accountability and public trust in a very stark way.

More generally, the creation of executive roles for cabinet members and portfolio holders in local government is seen by many to have helped in terms of visible leadership, and hence greater accountability and transparency. But solid evidence of cause and effect, when looked at alongside wider societal changes and trends, remains hard to pin down.

<sup>14</sup> White, R., Harland, J., Kendall, S. and Kinder, K. (2008). *The Role of the Lead Member for Children's Services. Final Report* (LGA Research Report F/SR268). Slough: NFER.

<sup>15</sup> Childrens Act 2004 with subsequent DfES Guidance 2005

The UK suffers from unusually low levels of trust in government, ranking 22<sup>nd</sup> in the EU 25.<sup>16</sup> But while only 43 per cent of the public trust councillors to tell the truth, local politicians are more trusted than government ministers, business leaders, or broadsheet journalists. These IPSOS Mori figures quoted in the Lyons Report look likely to shift further, in relation to business leaders in particular, as a result the 2008/9 financial crisis.

A study by Demos<sup>17</sup> notes that individual local politicians are in a unique position to build trust, through acting as 'this missing link between trust in people and trust in decision-making'. Levels of institutional trust in councils depend on improved services. Improved levels involve convincing a sceptical public who base judgements on personal experience over time as much as external accreditation and inspection.

Politicians are uniquely placed to help on a further necessary prerequisite – trust in fair and effective choices and decision-making. This in turn requires visibility of leadership. Executive decision-making arrangements introduced with the 2000 Act are part of wider changes in English local government, which should help to build levels of public satisfaction and trust.

## **12. What is the role of external bodies – including for example regulatory bodies or the media – in holding local government to account and how does this impact on public trust?**

The Demos study<sup>18</sup> identified three different factors involved in building public trust with local authorities. These are additive and trust as a whole emerges only when all three are present:

- quality of personal interactions and trust in those providing services
- trust in services, based on visible and measurable outcomes
- trust in a councils capacity to make fair choices about policy and spending

The impact of the work of regulatory bodies, including regimes of inspection and assessment, has made itself felt largely on the second of the above. As measured by such assessment, service performance across local government has improved markedly.

The 'performance paradox' (whereby this improvement has not been translated into rising public satisfaction) can be explained to an extent by the challenges council face in achieving all three of the above factors simultaneously.

The drive for efficiency, and for high CPA scores on use of resources and value for money, can reduce the quality (as perceived by service users) of the personal interactions taking place as services are delivered. Personal interactions become impersonal, as increasing numbers are conducted online or through other than face-to-face channels. Convenience and 24 hour access may be achieved, but at a cost in terms of reduced trust.

The impact of the media makes itself felt across all three of the above, but has probably the most damaging consequences in relation to the third. Unlike decision-makers in local government, the media do not have to consider choices, trade-offs, and rationing of resources, when commenting on the actions of local councils.

The media do not have to consider the bigger picture, or the long-term versus the short-term. Their concern is the issue of the day and the human interest of the story. Hence when covering everything from rubbish collection, through to gritting of roads in snow or closure of an old persons homes, the wider context can be set aside.

<sup>16</sup> State of trust; how to build better relationships between councils and the public Simon Parker et al Demos 2008

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

Local councillors have long accepted that the media, along with single-issue pressure groups, will find fault with much of their decision-making. The same tensions apply to the difficult balance between participatory and representative democracy, given that many of those keen to 'engage' as citizens wish to do so from a single-issue perspective.

Building public trust in such a context, across a population made up of 'haves' and 'have nots' (as analysed in more depth in the Demos publication), can never be an easy task. The aspirations that councils set for themselves on trust-building (and the targets set for them by others) should be placed in this context.

### **13. Is there a tension between openness and getting things done? If so, how can this be reconciled?**

This remains a question that has challenged governments of all forms through the ages. When applied to 21<sup>st</sup> century English local government, the tensions continue to have to be reconciled through effective arrangements for governance and leadership.

As commented above, the statutory framework under which local government operates places more weight on openness than those applying to other parts of government. The access to information regime (under the Local Government (Access to Information) Act 1985) remains more stringent than that governing central government decision-making, although the FoI regime has created a more level playing field.

In terms of 'getting things done' the 2000 Act reforms have speeded up processes of formal decision-making, although significant checks and balances towards openness remain.

Overall, the view of the LGA Group is that the current legislative framework achieves a reasonable balance. The remaining obstacles for local government in 'getting things done' lie not so much in requirements for openness, but in an overly centralist financial regime that denies councils any buoyant source for raising revenue locally, and some continued uncertainties over powers (despite the welcome introduction of the 2000 Act wellbeing power). Both these last issues lie outside the scope of this Inquiry, and the LGA Group continues to pursue them elsewhere.

## **ISSUE 3 THE ROLES AND RESPONSIBILITIES OF SENIOR OFFICERS**

### **14. How clearly is the role of senior officers understood by the public?**

The Issues and Questions paper asks whether new arrangements for executive decision-making, following the Local Government Act 2000, may have led to '*a lack of clarity about roles and responsibilities, which in turn could adversely impact on accountability*'.

Some lack of clarity is widespread and can exist in the minds of councillors and senior officers, let alone amongst the general public. The idea that there was ever in local government a '*clear dividing line with elected councillors responsible for strategy and senior officers responsible for operational matters or implementation*' is probably more myth than reality. Similar 'lack of clarity' can apply to real-world relationships between Ministers and civil servants.

Some views are given below, in response to question five under this issue, on the impact of new arrangements for local government on member-officer relationships.

As a general statement, that LGA Group would hold that the roles of senior officers in local government are no better understood, and no worse, than those of civil servant, chief executives of NDPBs, and senior NHS managers. All involve

ambiguities which require an understanding from the citizen of complex institutional arrangements and accountabilities.

### **15. How successful are the mechanisms currently in place to hold senior officers (such as chief executives) to account for their actions?**

It is not clear from the Issues and Questions paper whether the Committee feels that different standards of accountability should apply to local government officers, as compared with the senior officials who work for other public bodies such as the local and regional offices of Whitehall-sponsored agencies (or indeed Whitehall departments themselves?).

Since local government officers already have to account for their actions in public to democratically elected councillors through a range of existing mechanisms (cabinet, scrutiny and regulatory arrangements in local authorities), they are arguably already more accountable than most.

It does not make sense to rehearse arguments for greater personal accountability of senior officials using sector-based definitions. In relation to scrutiny, CfPS has long argued that using the definition from the Data Protection Act 2000, based on carrying out "functions of a public nature" would be more appropriate when seeking to enhance public accountability arrangements.

This could bring organisations such as registered social landlords, transport providers, utility companies, others providing public services under contract and government agencies under the ambit of enhanced public accountability arrangements.

Senior officers in local government, including chief executives, are, in legal terms, more constrained in their actions and decisions than many of their counterparts in NDPBs, government agencies, or the NHS. Their delegated authority and scope to take decisions as individuals is determined by their own local authority within a written constitution. If acting outside specific delegated powers, their actions are rendered invalid in law by the ultra vires principle.

The 'holding to account' of senior officers in local government therefore usually relates to sins of omission or failure to apply, monitor or enforce standards, rather than positive decisions seen as excessively risky, unreasonable, or an abuse of power.

In relation to their employing local authority, mechanisms for holding to account by the council as employer revolve around normal employment law. The council as employer is generally responsible for the actions of its employees (unless specific indemnities apply).

In terms of accountability to the public, most senior officers in local government are likely to be more accessible to citizens (by letter, phone, and personal visit) than their counterparts in central government. Senior officers will more frequently attend public meetings and neighbourhood forums than their Whitehall equivalents. This is simply a factor of the scale on which local authorities operate.

In terms of formal accountability, senior officers will routinely attend scrutiny meetings, as well as committee meetings for regulatory functions (planning, licensing etc). At such scrutiny sessions, the extent to which officers are questioned or cross-examined directly by members of the public will be for the committee to decide and will depend on the subject matter involved and whether relevant decisions have been taken at managerial or political level.

The White Paper Communities in Control posed the question of whether new measures should be introduced, ensuring that those responsible for defining senior roles in local public bodies set requirements on attendance at public meetings. In its response to consultation (Jan 2009) CLG concluded that the Government should place on hold pursuing further legislation on this issue.

Where public concerns surface on a local issue, elected members and senior officers are already visibly accountable. Existing legislative frameworks on access to information, and local authority decision-making give little or no scope for contentious issues to be hidden away from public debate, particularly in comparison with other sectors or parts of government.

The LGA Group see no evidence of senior officers sheltering themselves from public scrutiny. It is appropriate that where decisions are formed and made by democratically elected members, it should be members responding to public scrutiny. Far more of the 'policy advice' behind council decisions is in the public domain than is the case for central government, the NHS, or NDPBs, as a result of the more stringent access to information regime that applies to local government.

**16. Does the fact that senior officers are required to support both the executive and scrutiny give rise to a conflict of interest, and if so, how should this conflict be addressed.**

It is not clear why any greater 'conflict of interest' should arise for local government officers than for any other public servant subject to processes of formal questioning and scrutiny (as at Select Committees). Local government officers now have to balance their responsibilities as advisers to the executive, along with their responsibilities to all councillors and wider duties to citizens, in much the same way as civil servants.

One way of tackling the potential 'conflict of interest' issue lies in the government's current proposal (included in the local Democracy, Economic Development and Construction Bill) to create a legal requirement for a dedicated scrutiny officer post with a responsibility to support and promote scrutiny. The LGA has not supported this. We recognise the need for scrutiny to be properly supported to be effective. However, it is for councils to decide how to allocate their resources to staffing and other possible forms of scrutiny support. We do not support the proposal for a statutory officer with responsibility for scrutiny. We believe councils should be free to determine their own arrangements. The development of overview and scrutiny since the Local Government Act 2000 has shown substantial capacity for development and innovation, based on councils learning from each other, and sector-led support. Increased central prescription would not help this progress.

Despite our objection to legal prescription, there is no doubt that specific staffing contributes to effective scrutiny. It is also important that the chief executive and other senior managers are not excessively focused on the executive members, but also have an understanding of the positive role of scrutiny as a tool of openness and improvement, and take responsibility for its success. This needs to be part of the managerial culture of the organisation, but clear powers for scrutiny within local constitutions and national legislation are also vital.

**17. What impact, if any, have the new arrangements for local government had on member-officer relations?**

Many would argue that the 2000 Act brought member-officer relationships in local government closer to those that apply between Ministers and civil servants. This had the benefit of improving consistency, and hence a degree of clarity, across both layers of government.

Not that either set of relationships is easy to define. That between Ministers and civil servants has had to evolve to cope with changing times (the expanding role of Special Advisers, FoI legislation, Select Committee inquiries, and media interest in the inner workings of Government).

Relationships in local government have evolved also. When introducing new models of executive decision-making, many councils changed their protocols at the same

time. A few introduced new guidance and protocols drawn more explicitly from the civil service code, reflecting the different ways of working with executive councillors and cabinets.

There is no reason why the roles of senior local government officers should be capable of simpler, or clearer, definition than those of officials in central government. Or why similar pressures and possible conflicts of interest should not make themselves felt. These issues are in the nature of any political management process.

## **ISSUE 4: LOCAL GOVERNMENT ACCOUNTABILITY AND PARTNERSHIPS**

### **18. How do partnerships ensure effective accountability and open decision-making?**

Increasing reliance on 'partnership working' has been a notable feature of UK public service reform in the past five years. Much that is positive has been achieved through the strengthened roles assigned to local strategic partnerships and crime and disorder partnerships, along with the expectations placed on Children's Trusts and health/social care partnerships. But the downside has been widespread public confusion as to the accountability and transparency arrangements for such bodies.

The Audit Commission in 2005 drew attention to the growing volume of public funds being routed through partnership bodies<sup>19</sup>. In its response to the ODPM review of the future of local strategic partnerships in 2005, the LGA provided an analysis of the significant differences in statutory requirements for accountability and open decision-making, when comparing local authorities and local partnership bodies<sup>20</sup>.

The present position is that standards for ensuring effective accountability and open decision-making by local partnerships rely almost wholly on the partnership bodies themselves.

The LGA Group continues to believe that ways must be found to strengthen levels of transparency and accountability in local partnership bodies (including the increasingly important LSPs).

Most local partnerships remain voluntary (i.e. non-statutory) bodies free to determine their own governance arrangements, protocols on openness and transparency, and codes of conduct for their members. The LGA Group does not favour a profusion of different statutory bodies, and local councils will continue to exert influence on local partnerships in their area, to ensure high standards of transparency, along with open and regular communication between partnership bodies and local citizens,

Some key local partnership bodies operate in fields affected by legislation. But this does not mean that the partnerships bodies themselves have a statutory status under which accountability or legal redress can be pursued by the citizen, or standards of transparency and openness enforced by Parliament through legislation or regulation.

This is a source of much confusion to the public (and sometimes to those inside government), who see such partnerships as taking decisions and allocating public resources, with a consequential expectation that their accountability and governance standards will conform broadly to those of local government or other public sector bodies.

Crime and Disorder Reduction Partnerships were established by the 1998 Crime and Disorder Act. The key players have statutory duties to fulfil in working as partners,

<sup>19</sup> Governing Partnerships Bridging the Accountability Gap, Audit Commission October 2005

<sup>20</sup> LGA submission to CLG on the future of Local Strategic Partnerships (2005) (available from LGA on request)

but the partnership itself is not a statutory body over which legislative requirements for transparency and openness can be enforced.

A similar situation applies to local strategic partnerships, now the key 'partnership of partnerships' expected to oversee the preparation and delivery of local area agreements in 150 first-tier local authority areas in England.

Since the 2007 Local Government and Public Involvement in Health Act, the public sector partners sitting on a LSP have various statutory duties to fulfil, in 'co-operating' to achieve agreed outcomes for the area and (in some cases) in 'involving' the public in service improvement. But the LSP as a body remains a non-statutory partnership. Government issues guidance in terms of transparency and governance of LSPs but this is not enforceable against what is no more than a voluntary partnership.

In practice, most local strategic partnerships operate to relatively high standards of openness in that they routinely publish their agendas and minutes. This reflects the fact that many LSPs are serviced and supported by the local authority for the area with their activities publicised via the council's website.

But levels of openness and transparency remain a matter for the partnership to decide (albeit one on which the local authority can apply leverage). There have been a small number of instances of public dissatisfaction and complaint over the actions and decisions of LSPs and other local partnership bodies.

These issues have been well explored by the Local Government Ombudsman<sup>21</sup>. The Ombudsman's suggested solution is that the partner bodies making up such partnerships make clear to the public where ultimate responsibility for decision-making lies, and how to seek redress when needed.

### **19. How do local authorities reconcile partnership working with the principle that individual public office holders should be accountable for their decisions and actions?**

Local authorities would generally view partnership working as a necessary (if imperfect) solution to the complex and fragmented arrangements for public service delivery pertaining in the UK.

UK local government continues to look, often with envy, at other countries where local authorities have a wider range of functions and competencies and where institutional divides between (for example) health and social care do not exist in the same way.

The need for 'partnership working' on the scale now relied on in the UK is in part a product of institutional divides that are self-imposed at national level.

Partnership working need not blur or dilute accountability provide all are clear where ultimate responsibility lies. Arrangements for local area agreements, which require named partners to take lead responsibility for specific targets and outcomes, are beginning to help to clarify accountabilities, even on complex issues requiring a multi-agency response.

There has been some concern, however, that in some cases councils have been the only bodies prepared to commit money to a Local Strategic Partnership. Whether that will change with the new duty to co-operate in the 2007 LGPIH Act is unclear as neither the Act nor the statutory guidance explains satisfactorily the definition of 'co-operation' and there is seemingly no legal sanction for institutions that fail to co-operate.

<sup>21</sup> Local Government Ombudsman Special Report *Local Partnerships and Citizen Redress* July 2007.

## 20. What if any improvements could be made to ensure the principles of openness and accountability are further embedded in partnership working?

It may prove that the limits of 'partnership working' have been reached, in terms of the responsibilities, demands and expectations that can sensibly be loaded onto voluntary, non-statutory, and non-executive bodies such as LSPs and their related partnerships.

A more fundamental reform of the landscape of local governance would look at current institutional divides across the current sectors of local government, the criminal justice system, the NHS, and employment and welfare services. This goes well beyond the brief set by the Committee.

In terms of scrutiny, a more joined up system of governance and accountability would enable more radical options, eliminating the inconsistencies that currently apply across different parts of the sector and making better use of resources. In ten years time it is not impossible to conceive of a local governance unit existing in an area comprising officers who would:

- provide support to elected councillors, non-executive directors, school governors, police authorities, tenants housing boards, standards committees, audit committees and other lay decision-makers or scrutineers involved both in a range of individual local bodies and the partnerships that may bring them together
- manage a joined-up local accountability framework, with common standards of good governance around interests, openness, accountability, ethical behaviour standards, scrutiny and values.

More immediate and straightforward measures could include:

- achieving greater public understanding and awareness of the role and status of local partnership bodies, including the limits of their executive capacity to take final decisions.
- wide availability and dissemination of good practice guidance on basic standards for partnership governance and transparency (as already provided via many sources such as the IDeA, LGA, Centre for Public Scrutiny, national third sector bodies).
- continuing building of the knowledge, skills and capacity of local partnerships, such as is already being undertaken by the IDeA and the nine |Regional Improvement and Efficiency Partnerships
- clearer public information from key partner agencies involved in LSPs (including health, police and others) explaining their own roles and duties as partners within the various partnership bodies in which they take part.
- clearer information on routes for citizen redress, on the website material and other information published by LSPs and related partnerships.

This remains uphill work for all public bodies involved given the complexity of the legislative framework within which local partnership activity takes place.

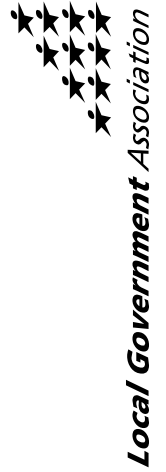
For example, upper tier local authorities are the 'responsible authority' charged with preparation of a LAA, but district councils are not. Most public bodies on a LSP are now under the same 'duty to co-operate'. Local authorities and fire authorities are under a 'duty to involve', but other public authorities on the LSP are not. This position is due to change further under the Local Democracy, Economic Development and Construction Bill.

It is a lot to expect of the general public to learn, and keep up with, this level of detail. As argued previously in this submission, *citizen understanding* is a

prerequisite for trust, openness and accountability.

Citizen understanding is hard to achieve under a central / local constitutional framework built on layers of primary and secondary legislation, with no enduring statement of core principles and subject to continuing change.

Unless and until Parliament (and the government of the day) is willing to address more fundamental issues of constitutional reform, as argued for elsewhere by the LGA<sup>22</sup>, the impenetrable complexity of current arrangements will continue to impact on levels of public trust in local governance and public service delivery.



---

# submission

---

Local Government House, Smith Square, London SW1P 3HZ  
DX 119450 Clerkenwell 3 Email [info@lga.gov.uk](mailto:info@lga.gov.uk)  
Tel 020 7664 3000 Fax 020 7664 3030  
**Information centre 020 7664 3131 [www.lga.gov.uk](http://www.lga.gov.uk)**

---

<sup>22</sup> One Country – Two Systems; LGA December 2008

