

**Subject:** Update on the 'Communities in Control' White Paper  
**Date of Meeting:** 13 January 2009  
**Report of:** Director of Strategy and Governance  
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**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 23 September 2008 the Governance Committee considered a report on the governance implications of the *Communities in Control* White Paper issued by the Department of Communities and Local Government (CLG) in July. The Committee instructed officers to report back at a subsequent meeting with details of CLG's consultations and draft legislation derived from the White Paper.
- 1.2 Accordingly, this report focuses on CLG's consultations and the Council's responses; and on those provisions in the White Paper taken forward in recently announced government bills.

#### 2. RECOMMENDATIONS:

It is recommended that the Committee:

- 2.1 Notes the latest position on CLG's consultations under the White Paper
- 2.2 Notes the governance-related provisions of:  
(i) the Local Democracy, Economic Development and Construction Bill, and  
(ii) the draft Community Empowerment Bill;
- 2.3 Instructs officers:  
- to provide the Committee with a further report in March 2009, setting out more detail and analysis on the bills, and  
- to seek the Committee's input in formulating a response to CLG's latest White Paper consultations.

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 CLG states that the *Communities in Control: Real People, Real Power* White Paper aims to pass power into the hands of local communities by giving control over local decisions and services to a wider pool of active citizens. In doing so,

CLG believe that communities and individual citizens can take difficult decisions and solve complex problems for themselves.

Provisions are grouped around the seven themes of being active in your community, access to information, having an influence, challenge, redress, standing for office, and ownership and control.

3.2 The White Paper builds on the Local Government and Public Involvement in Health Act 2007 which, among other key provisions, established new rights of involvement for local people and arrangements for local authorities to work with partners on local area agreements, setting out priorities for each area.

3.3 Details of the governance-related provisions in the White Paper were set out in a report taken to the Governance Committee on 23 September 2008. Since then, CLG have issued a number of consultations relevant to the White Paper (see 3.4) and have carried forward provisions requiring legislation into the Local Democracy, Economic Development and Construction Bill, published on 5 December 2008 (see 3.6), and the draft Community Empowerment Bill (see 3.7).

3.4 CLG has issued the following consultations linked to the White Paper:

**3.4.1 Improving local accountability**

Issued: 7 August 2008; now closed

Proposals: (i) developing and strengthening overview and scrutiny  
(ii) increasing the visibility and accountability of local public officers  
(iii) facilitating the work of councillors

Response: In view of the time limit set by CLG, officers submitted a response on 30 October 2008 – see Appendix 1

**3.4.2 Making and enforcement of byelaws**

Issued: 27 August 2008; now closed

Proposals: Councils to have power to make certain byelaws without reference to the Secretary of State, and to impose fixed penalties for certain breaches.

Response: As the proposals do not significantly affect the council's governance arrangements as set out in our constitution, no response was deemed necessary

**3.4.3 Standing for office: time-off entitlements**

Issued: 25 September 2008; now closed

Proposals: Extending the right to time off (already permitted for councillors) to employees performing other public roles such as members of probation boards or youth offender panels

Response: As the proposals have no direct implications for members, no response was considered necessary

**3.4.4 Codes of conduct for local authority members and employees**

Issued: 1 October 2008; now closed

Proposals: Revising the model code of conduct for local authority members, principally to clarify its application to members' conduct in their non-official capacity, but also to incorporate a code of conduct for employees into their terms and conditions of employment

Response: The Standards Committee considered this item at their meeting on 11 November 2008 and their views formed the basis of a response made on 23 December 2008 (see Appendix 2)

#### 3.4.5 **Code of recommended practice on local authority publicity**

Issued: 17 December 2008; closes 12 March 2009

Proposals: A review of the Code, 20 years after first published, seeking views on whether it remains the right vehicle for protecting public money while allowing councils to issue effective, non-political, publicity.

Response: Officers will prepare a paper for the 10 March Governance Committee meeting, seeking members' input to the response

#### 3.4.6 **Changing council governance arrangements – mayors and directly elected leaders.**

Issued: 15 December 2008; closes 13 March 2009

Proposals: (i) reducing the petition threshold that would trigger a local governance referendum, which in Brighton & Hove would mean moving from a leader & cabinet executive to a directly elected mayor and cabinet  
(ii) permitting on-line petitions  
(iii) reducing the moratorium period from 10 to 4 years if the referendum is lost

Response: Officers will prepare a paper for the 10 March Governance Committee meeting, seeking members' input to the response

3.5 What will happen to any response submitted? For each of their consultations, CLG have undertaken to analyse the responses and to produce a summary of them within three months of the close of consultation, to be published on the CLG website [www.communities.gov.uk](http://www.communities.gov.uk). Further, the Government says it will take account of the responses received before introducing primary or secondary legislation, as appropriate, on the topics in question.

#### 3.6 Local Democracy, Economic Development and Construction Bill

3.6.1 It was announced in the 2008 Queen's Speech that the Local Democracy, Economic Development and Construction Bill will form part of the government's legislative programme for the 2008/09 parliamentary session. The Bill received its First and Second Readings in the Lords in December 2008, and Committee stage is scheduled for 19-28 January 2009.

3.6.2 The Bill takes forward some of the government's commitments from the White Paper, as well as proposals from the Review of Sub-National Economic Development and Regeneration.

3.6.3 The following provisions of the Bill have significant governance implications for the Council

Part 1 – Democracy and Involvement

Chapter 1: **Duty to promote democracy.** This chapter imposes duties on local authorities (LAs) to promote understanding of the opportunities that

exist for members of the public to get involved in and influence the work of LAs *and authorities connected to it* \*

In particular, the duty to promote democracy will require the LA to promote understanding of the following among local people:

- (a) the functions of the authority
- (b) the authority's democratic arrangements (i.e. those enabling the public to participate in or influence the making of decisions)
- (c) how members of the public can take part in those arrangements.

In relation solely to an LA, the duty set out in (c) includes a duty on that authority to promote understanding of:

- how to become member of an LA
- what members of the authority do
- what support is available to members

\* authorities connected with an LA include the following bodies whose area coincides or falls within the LA area: a parish council, the fire & rescue authority, chief officer of police, strategic health authority, Primary Care Trust, NHS trusts, and the managing or governing body of a local maintained school.

Chapter 2: **Duty to respond to petitions.** Local authorities will be required to make, publicise and comply with a scheme – to be approved at a meeting of the authority – for handling paper and electronic petitions. Authorities will have to respond to petitions which meet certain criteria and make the response to a petition publicly available.

In acknowledging a petition, the authority will have to indicate what it has done or proposes to do in response to the petition

Amongst other matters, the petition scheme must:

- specify the minimum number of signatures required to render the petition valid
- detail the steps the authority may take following receipt of a valid petition, including giving effect to the request in the petition, holding an enquiry, commissioning research, or referring the petition to an overview and scrutiny committee
- if the petitioner so requests, arrange for the adequacy of the steps taken or to be taken by the authority in response to the request to be reviewed by an overview and scrutiny committee of the authority

3.6.3 Officers will track the Bill during its passage through Parliament and will bring a report to the 10 March Governance Committee meeting, with news of significant amendments to the governance provisions, and the expected timescale for later parliamentary stages. Thought needs to be given as to how the Council will discharge its duties under Part 1. To a large extent, this will be influenced by statutory guidance expected from the Secretary of State on each of the chapters mentioned above.

### 3.7 Draft Community Empowerment Bill

3.7.1 Other governance-related proposals from the White Paper are to feature in a draft Community Empowerment Bill to be brought forward during the 2008-09 session. Although pre-legislative scrutiny will allow for comment and consultation before the substantive bill is announced in the 2009 Queen's Speech, the bill is unlikely to be enacted in the following session due to Parliament being dissolved ahead of the general election.

3.7.2 Few details are available yet, but in general terms the draft bill is planned to:

- amend the rules on politically restricted posts
- enable remote voting for councillors
- introduce voting incentives
- modernise provisions relating to parish councils
- remove barriers to directly electing mayors

3.7.3 Once the draft bill is printed, officers will brief members of the Governance Committee on its key provisions and implications for the Council.

## 4. **FINANCIAL & OTHER IMPLICATIONS:**

### 4.1 Financial Implications:

The proposals in the White Paper may have potential impact on staff time in Democratic Services, and may require extra resources to achieve. For context, the 2008/09 budget for this service is £1.786m, of which Members' allowances account for £1.057m, and staffing costs for Democratic Support Staff a further £392k.

*Finance Officer Consulted: Peter Francis*

*Date: 17 December 2008*

### 4.2 Legal Implications:

Legal implications are addressed in the body of the report. Certain provisions in the Local Democracy Bill, such as the duty to respond to petitions, will necessitate amendments to the Council's constitution, which the Committee will be invited to consider in due course.

*Lawyer Consulted: Oliver Dixon*

*Date: 12 December 2008*

### 4.3 Equalities Implications:

Any new activity instigated as a result of the White Paper or the Local Democracy Bill will be equality impact assessed in line with the Council's equalities policy.

### 4.4 Sustainability Implications:

The development of any new activity is likely to relate to one of the four priorities in the UK's Sustainability Plan: sustainable communities using engagement and partnership to reduce poverty and environmental degradation

#### 4.5 Crime & Disorder Implications:

Any new activity instigated will be planned and delivered to ensure it meets the Council's obligations under section 17 of the Crime and Disorder Act 1998

#### 4.6 Risk and Opportunity Management Implications:

The White Paper presents opportunities to help the Council achieve one of its five corporate priorities: open and effective city leadership. However, there are associated risks in terms of likely resource implications and organisational change.

#### 4.7 Corporate / Citywide Implications:

Implementing proposals under the White Paper and discharging duties under the Local Democracy Bill when enacted will have corporate and citywide implications as they relate to the governance of the Council and how the Council works with its partners to deliver its vision for Brighton & Hove

### **SUPPORTING DOCUMENTATION**

#### **Appendices:**

1. Response to the consultation paper 'Improving Local Accountability'
2. Response to the consultation paper 'Code of Conduct for Local Authority Members and Employees'

#### **Links to relevant publications:**

1. *Communities in Control: Real People, Real Power* White Paper, CLG, July 2008  
<http://www.communities.gov.uk/publications/communities/communitiesincontrol>
2. White Paper consultation papers  
<http://www.communities.gov.uk/communities/communityempowerment/communitiesincontrol/consultationpapers/>
3. Local Democracy, Economic Development and Construction Bill  
<http://www.publications.parliament.uk/pa/ld200809/ldbills/002/2009002.pdf>
4. Draft Community Empowerment Bill  
<http://www.commonleader.gov.uk/output/page2669.asp>

## Response to the White Paper consultation on Improving Local Accountability

This is a response from Brighton & Hove City Council to the consultation issued by Communities and Local Government on 'Improving Local Accountability', part of their series of consultation papers on the *Communities in Control* White Paper.

### Chapter 2: Developing and strengthening overview and scrutiny

#### **Implementing the Local Government and Public Involvement in Health Act 2007 provisions**

*Q1. Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?*

Through the Local Strategic Partnership, a considerable amount of cross-working and information sharing already exists between partner authorities in Brighton & Hove. Any statutory requirement on partners to provide information, of the sort envisaged by the consultation document, to overview and scrutiny is broadly consistent with our existing ways of working and unlikely to cause any significant concern to our partners.

The additional information that could be required of partners should assist local authority members in dealing with questions and concerns raised by their constituents relating to city-wide issues that are beyond the specific remit of council functions. In that regard, the proposal is to be welcomed.

*Q2. Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?*

It seems to us logical to apply the same criteria on the exclusion of confidential or exempt information to local authority executives as currently applies to information provided by the overview and scrutiny committee and the local authority.

That said, our standard approach when preparing any executive response to a scrutiny report or recommendation is to maintain openness wherever possible.

*(Questions 3-5 do not apply to Brighton & Hove as we are a unitary authority)*

## **Taking forward the 2008 White Paper commitments**

*Q6. What issues should be considered as part of any new power to establish area scrutiny committees?*

An area scrutiny committee would only be warranted where it is clear that each participating authority has a shared or joint interest in the matter under consideration.

Further, the composition of any area committee would need to be politically proportionate, as is the case with existing scrutiny committees (in accordance with section 21(11)(b) of the Local Government Act 2000)

*Q7. How might the requirement for dedicated scrutiny resource be put into practice?*

If dedicated resource were applied at officer level to support the scrutiny function, some controls also need to be imposed to ensure that overview and scrutiny operates in the ways outlined in paragraphs 2.1-2.3 of the consultation document, which seems to us to reflect best practice. Without such controls, there is a risk that dedicated scrutiny resource is seen as an opportunity to pursue agendas that do not maximise the effectiveness of local government scrutiny.

*Q8. Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise?*

If the facility to petition a local authority is given wide publicity, a large number of petitions might be generated. In turn, these may result in a high volume of appeals where petitions are not dealt with to the satisfaction of petitioners. We have concerns over the capacity of overview and scrutiny to hear these appeals. In Brighton & Hove, the appropriate forum to hear an appeal would be the Overview & Scrutiny Commission, but they have existing duties to perform, and we would not want their time monopolised or effectiveness damaged by appeal hearings.

It is not clear from the proposals what criteria an overview and scrutiny committee might apply in evaluating the merits of an appeal. For instance, should more credence be given to those appeals for which the underlying issue has strategic or city-wide importance to the local community?

We assume that an appeal could be made on a number of grounds, based on the way in which an authority has responded to an appeal (e.g. an unreasonable delay) as well as the substance of the authority's response. Clarification or guidance would be welcome on this point.



Lastly, the consultation suggests that a successful appeal might trigger a debate of the full council. It would be helpful to receive further guidance on the range of options open to an overview & scrutiny committee once they had concluded that an appeal was valid.

### Chapter 3: Increasing the visibility and accountability of local public officers

*Q9. Do you agree with this approach that those responsible for the job descriptions should determine the precise arrangements by which the chair or chief executive will attend regular public meetings?*

In principle it makes sense for those responsible for the content of the Chief Executive's job description to determine arrangements for the jobholder to attend regular public meetings. However, there is a risk of being over-prescriptive here. Whilst the job description could prescribe a minimum level of performance in relation to public meetings, the Chief Executive should be trusted as a senior manager to determine the more detailed arrangements.

*Q10. Do you agree with the proposals to require the local authority with its strategic partners to agree a local scheme for petitions to hold officers to account? What practical issues might arise?*

We have strong reservations about whether it is even appropriate for senior officers to be held publicly accountable in the way suggested in the White Paper, given that the role of council officers is to give effect to the plans, strategies and budgets set by others, in particular by the members.

Holding senior officers to account in a public forum may be appropriate in public bodies where they have direct authority to make decisions, but not where they are operating – as they do in councils – under delegated powers.

Hence any scheme enabling petitions to hold local officers to account must recognise the different governance arrangements that exist across different public bodies.

*Q11. Should the government provide some minimum standards for local schemes to hold officers to account? What should they be? Which, if any, local service providers and agencies must, or must not be, in any scheme?*

(See response to Q10)

*Q12. Do you agree that the scope of the scheme should be agreed locally subject to any statutory minimum standards and whether this would be an effective means of empowering communities?*

(See response to Q10)

## Chapter 4: Facilitating the work of councillors

### *Q13. Do you agree with the proposed approach?*

For a number of reasons, we do not agree with the proposal to allow remote attendance and voting.

Firstly, we believe it is incumbent on all members to commit to attending council meetings in person, and to make the necessary arrangements to do so. It is important for the local electorate to witness democracy at first hand; this would not be possible if one or members participating in a council meeting were in touch merely by an audio link.

Secondly, the cost of creating and maintaining reliable, secure connections between remote members and the council meeting room would result in additional costs, despite the assertion made in paragraph 4.10 of the consultation. Not all our meeting venues are webcast enabled, nor are members currently equipped with the hardware required to receive and transmit information to and from the meeting location in real time.

Thirdly, any member participating remotely would be unable to sense or engage effectively with the mood or atmosphere of the actual meeting; it is important to be able to do so when a controversial or politically charged issue is being debated. Difficulties would also arise for the remote member in keeping track of the order of speakers, engaging in real time with colleagues from the same political group over a possible negotiating position or over an amendment moved from the floor.

## **Response to the White Paper consultation on Codes of Conduct for Local Authority Members and Employees**

Following its meeting in November when the above consultation paper was considered, I [Liz Woodley] have been instructed by the Council's Standards Committee to forward the following responses to you:-

### **Question 1: Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?**

Yes. Members should inspire trust and confidence in those who elected them. Poor behaviour can adversely affect that trust. It is appropriate that the members' code be extended to apply to members acting in their non-official capacity, as long as the term "non-official" is carefully defined.

### **Question 2: Do you agree with this definition of "criminal offence" for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details**

The proposed definition of criminal offence, "any criminal offence for which the member has been convicted in a criminal court" seems to serve its purpose.

If consideration is to be given to including cautions, the term police caution should be avoided, unless it is proposed to limit it to cautions imposed by the Police. The term police caution is not a term with which the Council is familiar - it recognises simple cautions and conditional cautions, as defined in relevant Home Office Circulars. It should also be noted that other enforcement bodies use cautions. For example, the Council uses them for Housing Benefit offences, which action is compatible with DWP guidance. The imposition of a caution is not a matter of public record. Sanctions against a member for accepting a caution run the risk of making a private matter public.

Members noted that there was no discussion in the paper of whether civil infringements, comparable to a criminal conviction, should be covered by the new code. The making of an Anti-social behaviour order (ASBO) against a member would not be covered, even though the behaviour necessary to justify the making of the ASBO would be likely to bring the member's office or authority into disrepute. For an ASBO to be made, the person concerned must have acted in an anti-social manner, that is to say, in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself (Section 1(1)(a), Crime and Disorder Act 1998). However, Members did appreciate that only behaviour amounting to a criminal offence was covered by the Local Government and Public Involvement in Health Act.

With regard to the proposal to exclude offences capable of attracting fixed penalty notices from the scope of the Code, Members felt that such offences may be relevant when considering a particular member's role. A series of

fixed penalty notices for parking and motoring offences may be of more concern to a Cabinet Member for Environment, as opposed to a Cabinet Member for Adult Social Care & Housing.

**Question 3: Do you agree with this definition of “official capacity” for the purpose of the members’ code? If not, what other definition would you support? Please give details**

The definition is considered clumsy, although we recognise that a tighter definition would be difficult.

**Question 4: Do you agree that the member’s code should apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

It seems right that a conviction abroad should only be considered where the same behaviour would amount to a criminal offence in the UK.

**Question 5: Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

It is proposed that investigations into allegations of misconduct should automatically be put on hold where the allegation involves a criminal activity which at the time the allegation is made is being investigated by the police or prosecuted through the courts. This approach is inconsistent with current Standards Board guidance on deferring investigations. That proposes that investigation should normally be deferred where there are other proceedings pending, but where the investigation will not prejudice the police investigation or court case, the investigation can proceed.

Our preference is that the way such investigations should be handled is best decided on a case by case basis.

In cases involving a member’s honesty, integrity or conduct which has a bearing on the discharge of their official duties, a precautionary suspension, akin to that used for employees could be considered.

**Question 6: Do you think that the amendments to the members’ code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?**

The proposed revisions to the Code are pedantic, but otherwise unobjectionable. Paragraph 12 (2) already applies to Rottingdean Parish Council. While the Code is being reviewed, consideration could be given to revising (upwards) the £25 limit. The current level means that the most of the functions attended by the Mayor have to be registered.

The following clarification could usefully be provided in connection with prejudicial interests: does the interest have to be the member’s interest, or that of a body to which the member belongs?

**Question 7: Are their aspects of conduct currently included in the members' code that is not required? If so, please could you specify which aspects and the reasons why you hold this view.**

All aspects of conduct currently included in the code are required.

**Question 8: Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.**

No

**Question 9: Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to observe the code?**

It is proposed that a member would have two months for the adoption of the new code to give an undertaking to abide by it. Two months has proved adequate in the past, and there is no obvious reason why it would not in the future.

**Question 10: Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?**

A duty to uphold the law is not a 'principle', but rather a rule or requirement.

**Question 11: Do you agree with this broad definition of "criminal offence" for the purpose of the General Principles Order? Or do you consider that "criminal offence" should be defined differently?**

This broad definition is considered appropriate.

**Question 12: Do you agree with the definition of "official capacity" for the purpose of the General Principles Order?**

Yes.

**Question 13: Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment is needed**

This is to be welcomed as it establishes a stronger national local government professional identity and gives the public confidence that there is a minimum standard of conduct for local members and public servants.

**Question 14: Should we apply the employees' code to fire fighters, teachers, community support officers and solicitors?**

Yes, the employees' code should apply to all local public servants regardless of any professional codes that might apply to those groups.

**Question 15: Are there categories of employee in respect of whom it is not necessary to apply the code?**

Professional codes by their nature are likely to speak to a certain area of conduct. A basic base employee code should apply to all, particularly in regard to honesty, integrity, relationships with politicians and dignity and respect at work. There may also be an advantage in the strengthening of equality and diversity elements of the employees' code as they may not have appropriate emphasis in other professional codes.

**Question 16: Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?**

In broad terms we consider that the employees' code reflects the appropriate core values. However, there is insufficient emphasis on treating colleagues, customers and members with dignity and respect. Does the code not need to mirror that of members in having a section on conduct when not officially in role?

**Question 17: Should the selection of "qualifying employees" be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?**

A two-tier, not a delegated, approach should be adopted, and junior officers (and temporary staff) should be afforded a greater degree of privacy than more senior members of staff.

**Question 18: Should the code contain a requirement for qualifying employees to publicly register any interests?**

We support a requirement for employees to register interests but do not accept that it should be a public register for all employees. Arguably, the latter should apply to senior staff only.

**Question 19: Do the criteria of what should be registered contain any categories that should be omitted or omit any categories that should be included?**

No.

**Question 20: Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code.**

Yes.

**Question 21: Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?**

This section of the code is acceptable as drafted.

**Question 22: Should the employees' code extend to employees of parish councils?**

This would be appropriate, in order to be consistent.