



Association of Council
Secretaries and Solicitors

- Representing Monitoring Officers & Corporate Governance Managers -

***Firing Up The Passion For
“Leadership Excellence”***

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- ACSeS : Championing Good Governance -

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PREFACE

I am, once again, absolutely delighted to launch this A5 publication for ACSeS, which is part of ACSeS' highly successful "Firing Up the Passion" series of publications. This series continues to profile even more interesting articles on leadership excellence within Local Government and Legal Services. I am most grateful, therefore, to all the authors and sponsors of this 4th publication, which is being launched at ACSeS' Annual Conference at The Belfry, Sutton Coldfield, from 16th-18th November 2010.

This year's Annual Conference focuses, on the first day, on the leadership challenges facing Local Government and the legal profession. The second day focuses on legal excellence and, combined, the subjects covered at the Annual Conference should assist ACSeS members to elevate their outlooks and further increase their positions of influence. By doing so, I am confident they will add even more value to the Strategic / Corporate Agendas facing Local Government and ensure that the Excellence Agenda becomes a way of life in the leadership of their departments.

Being mindful of the feedback from previous publications, I am also confident that this latest publication will continue to add value to Local Government and will be read, by amongst others, leaders and Chief Executives of English and Welsh Local Authorities, major Government Departments that work with Local Government and other major stakeholders, movers and shakers dealing with Local Governance issues.

On a personal note, as President of ACSeS from November 2009, it has been an exceptional year for me and I am delighted to confirm that the Association continues to be regarded as a major player within Local Government. Initiatives such as this "Firing Up the Passion" series of publications, along with ACSeS' First Leadership Summit on Developing Future Chief Executives, have undoubtedly helped to catapult the national profile and influence of ACSeS into new heights. The publications have also played their part in profiling the immense talent that exists within ACSeS.

In terms of this 4th publication, I am delighted to profile contributions from a great number of eminent speakers within Local Government and the legal profession. I thank them all for their most valuable insights and I am sure that the reader will obtain great pleasure from reading their words of wisdom.

As in the past, feedback on the publication is encouraged and most appreciated. It is, of course, most pleasing when Ministers, Leaders of Councils and Chief Executives provide positive feedback on the publications. In fact, the second publication – which highlighted the General Power of Competence for Local Government – continues to influence major movers and shakers in Local Government and I look forward to developing the national debate when the Government publishes its Bill on the matter.

This 4th publication will, of course, be my last as President of ACSeS and I take this opportunity, therefore, to thank all of those who have supported my work and contributed throughout the year with articles, sponsorship or advertising in these publications. It has been a great privilege and honour to lead ACSeS and, in particular, to be the General Editor of this publication.

As I prepare to leave the Presidency of ACSeS in the capable hands of Susan Tovey, I know that she will do her level best to further this series of publications and, in particular, being mindful of the great success of ACSeS' First Leadership Summit, deliver even further successes for ACSeS.



History:

The Association was formed in 1996 arising from the merger of the Association of District Secretaries and the Society of County Secretaries. ACSeS became a Company Limited by Guarantee in November 2007.

Membership:

Membership is open to local government officers heading up governance, legal services, democratic services, administrative, scrutiny and standards functions, including monitoring officers and their deputies. Associate and international membership classes were introduced in 2008. Members are drawn from County, District and Unitary Councils, Police and Fire and Civil Defence Authorities, National Park and other joint committees and Regional Development Agencies.

For further information, contact the President or visit us at www.acses.org.uk



Lessons from the Comprehensive Spending Review

Senior council executives are generally half-glass-full people – they have to be in this current environment – and in the past few weeks following the spending review I have tended to encounter enthusiasm for the opportunities ahead rather than gloom at the downturn.

Is this because they are mad? Clearly not but there is no question that a sunny disposition is essential to anyone running a council or a department. Indeed some observers argue this surely proves that council managers have to be a sandwich short of a picnic to do the job.

Just look at the prospects. Local government had virtually the worst settlement out of all parts of the public sector. Capital spending was slashed, housing cut, borrowing costs sneakily put up, and in an audacious case of ‘careful what you wish for’ councils were given responsibility for determining council tax benefit – so long as they cut it by 10%. One chief executive cheerily told me: ‘This isn’t a case of weathering the storm – it’s a case of facing fiscal climate change.’

He’s right of course. This is no temporary phenomenon to deal with a short-term deficit. It is a dismantling of organisations built up over the last decade when grant-funding was generous and it requires a refocus of priorities. But it does not necessarily mean just ending library provision or transferring services to volunteers or for that matter putting up charges (a foolish idea since demand and income then drops further). Councils will have to learn to say “no” to their residents but also to government itself and they will have to stop chasing after short-term pots of money dangled by ministers and make their own decisions about spending. Cuts in local area agreement targets, ring-fenced grants and the comprehensive area assessment will free up some resources. The cottage industry built up around local strategic partnerships will have to disappear. Local authorities, having been severely kicked by ministers, should have no illusions that from now on they will need to do it their way, not at the behest of some secretary of state wanting to make their mark with a White Paper.

And in the meantime it is true that ministers have given local government more responsibilities, especially in health, and that the changes required should lead to more dynamic councils, more certain about what they can and cannot do. The so-called community budgeting vanguards hold out the prospect of more joint working.

Most council staff will keep their jobs, most services will continue to be provided and local government, as it shown countless times previously, will rise to the challenge and adapt to the new fiscal climate change.



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Leadership for Changed Times

Not one style of leadership

This article deals with the challenges faced by leadership in local government, but first it has to be understood that there are many styles of leadership, which will be called for in meeting these challenges

A misleading model

There is a model of leadership, much favoured in central government, of a single charismatic leader who by his or her drive transforms an authority, a department, a school or even through an elected mayor a city. Advocates of this model use words like “big-hitter” or “visionary” to describe the favoured leader. The model stresses the individual rather than the groups on whom the management of complex organisations depends in the multi-tasked local authority and the diversity of communities served.

The mistake often made in discussion of management in local government is to assume there is only one way to manage. Thus it is often argued that local authorities should be managed in the same way as the private sector, assuming there is just one way of managing in the private sector. Research shows effective management varies from situation to situation as it does in local government and the same applies to leadership

The model of the charismatic leader does not correspond to most leaders in the private sector, despite publicity given to the Bransons of this world who superficially appear to correspond to the model. It is significant that the individuals, who most conform to the model in launching organisations, often prove unsuited to the task of leading the established organisation.

Too often assumed private sector practice is proclaimed without regard to the tasks to be performed. A chief executive who saw himself as a new-style leader urged staff to “take risks”, believing this expressed an entrepreneurial approach. He puzzled his audience as treasurers and social workers calculated the costs of taking risks and engineers wondered why they should design a risky bridge! This approach reflected managers in television soap opera, not the reality of private sector practice.

The need for different styles of leadership

Different authorities, different departments and different times call for different styles of leadership. The leadership required from a chief executive varies with the responsibilities of the authority and its size and scale. A small district council with 200 staff will be led in a different way from a city council whose staff can run into thousands or even tens of thousands. In the former the chief executive could meet all staff regularly – impossible in the latter.

Leadership varies over time. A chief executive can be a transformational leader seeking fundamental change in organisation and culture, seeing unrealistically that task completed in four or five years before moving on. His successor should be very different. Organisations cannot be transformed every four or five years. If staff are to work effectively, stability may be as important as change. A council appointing successive chief executives made three different appointments because they judged requirements changed. The first was a transformational leader. The next focussed outward developing the council's role in community leadership. The third was a consolidator giving stability to the authority. The councillors chose leaders for the times.

The nature of leadership reflects context but also personality. The chief executive expresses her personality and should not attempt roles alien to that personality or else risk failure. If she recognises a role she cannot perform effectively herself, she can secure others play that role adding their strengths to hers. A single individual cannot play all roles - that is the fallacy of the single leader.

Leadership is required in departments as much as in the authority as a whole. The nature of that leadership will and should vary from department to department. There are differences in where most staff carry out their work:- where most work in the central office; where more work in decentralised offices; where most work outside offices; where some work in separate institutions; all creating different patterns of communication.

Leadership will vary with the extent and nature of professionalism and the dominant culture. History is relevant – past experience and past leaders live on in present culture. Departmental tasks have their own requirements. The uniformed leadership of the fire services supports a command culture because in fire-fighting time is critical and commands attended to immediately. Time has its own imperatives but is measured in different ways in different departments.

Shared requirements

There are, however, shared requirements. All leaders need a deep understanding of what she has to lead. Tasks, structures, skills, processes, relationships and above all culture have to be understood not in formal prescription, but in their actual working. It is important to appreciate where change is required but also where it is not. The totally changing organisation destroys itself.

The need is to understand the strengths of an organisation as well as its weaknesses, enhancing the former and overcoming the latter. Central government did not appreciate that there were strengths in the committee system as well as weaknesses. Understanding not only shows where change is required but how it can be achieved most effectively. It is easier to work with the grain rather than against it.

While leadership varies within local government all share one key characteristic. Leadership should express local government based on local democracy. All should understand the rationale of local government and local democracy and seek to strengthen them. Too little emphasis is given to developing staff understanding of the purpose of local government and the value of local democracy.

Local government is the government of difference, both responding to and creating it, strengthening government at local and national level by matching services to local needs and aspirations. From the diversity of local authorities, government at all levels can learn of relative success and failure. Central government enforces uniformity and all that may be learnt is of relative failure everywhere. Variation between authorities should not be

seen as a postcode lottery, but as expressing local choice. The language used should express local government rather than centralisation and uniformity.

The challenge of our times

While differences in leadership have been emphasised, overall leadership in local government faces challenge in the economy, society, and environment and from the Government's response. Three challenges stand out:-

- The era of austerity
- Localisation and decentralisation
- Community leadership

The era of austerity

Meeting the deficit involves severe cuts in expenditure for local government. Leadership in an era of austerity is very different from leadership in an era of growth. The most difficult task is sustaining morale and existing means of communication are under strain. Reducing uncertainty with many fearing redundancy is not easily achieved. Transparency and involvement for both staff and public are required from leadership.

In the difficult decisions, leadership must challenge assumptions embedded in the era of growth, including a critical analysis of assumed statutory requirements. The meaning of words has to be probed. Front-line and backroom do not fully capture the contribution of roles. Innovation and initiative should be nurtured although both are more difficult than in an era of growth.

Fundamental changes can take place in society as cumulative cutbacks have their impact. The role of the state is changing with unknown effects on the bulwarks of society. Protest and unrest already seen in Europe could develop. Local authorities need to understand the deep impact on their communities. Leadership may have to adjust approaches and to raise nationally the issues faced

Localism and decentralisation

The Government's programme contains elements which both challenge and provide opportunities for local authorities. The emphasis on localism and decentralisation promise more powers for local government and new scope for community involvement in the provision of service.

Local government is based on representative democracy, yet too little attention is given to how representation can be strengthened. Emphasis is given to community involvement as if opposed to representative democracy and can even replace it. Little consideration is given to how community involvement relates to representative democracy, yet it can strengthen representative democracy by increasing interaction between the elector and the elected, giving understanding vital to representation. If the relationship between representative democracy and community involvement is not understood and nurtured, they could be set on a conflict track which could shatter all aspirations to a Big Society. Local authorities need a clear responsibility for the development of community involvement and a commitment to it, requiring effective leadership.

There is an opportunity to be seized. Too often in the past some local authorities have seen themselves as agents of central government rather than as local government. They have sought guidance and guidance has poured out. Never ask central government for guidance! You will probably not like it when you get it. The challenge to leadership in local authorities is to be local government using every opportunity for initiative and innovation, rejecting a culture of deference.

Community Leadership

Local authorities have a role to play in community leadership that will grow in importance if the Total Place Initiative develops as Place Based Budgeting. PBB analyses the public resources available and determines how they can be best used to meet community needs. Local authorities have a clear leadership role as the only bodies clearly accountable to local people. If PBB is to realise its potential it must lead to changes in the allocation and use of resources. It calls for a style of leadership from local authorities using influence and persuasion, but that will not always be effective on public bodies which see themselves accountable to the separate departments of central government. Local authorities will need powers covering other public agencies, even though they should rarely need to be imposed given effective leadership.

Corporate leadership

The challenge of strengthening local democracy in response to the era of austerity, localism and decentralisation and community leadership involves both councillors and officers. At officer level it is for the chief executive to lead but it calls for a wider responsibility expressed in corporate leadership.

Authority Secretaries and Solicitors have an important contribution to this corporate role. They carry responsibilities for democratic services and that role should extend beyond servicing meetings and member services important though they are. The issues raised earlier should involve democratic services:- building staff appreciation of local democracy; strengthening representative democracy; supporting community involvement; enabling community leadership; developing local accountability for the complex network of community governance.

Solicitors have a role to play in meeting the challenges. I once described them as geographers of policy space and archivists of policy instruments. I now describe them as pilots guiding the authority through difficult policy seas; librarians of policy instruments making available understanding of the proposed general power of competence and the greater freedom over bye-laws; explorers of the boundaries of statutory discretion over expenditure and powers

Conclusion

There are challenging tasks in the new era, calling for leadership in and by the local authority. The response will vary with the nature of authorities and their departments, but that response is required that realises the potential of local government and local democracy.



Challenging the State – Involving the Citizen

Being a top manager in local government has never been easy. Unlike the private sector and most of the public sector local councils, their members and their officers provide a service to every member of the community every day – whether they want or know about it or not! We meet in public, take decisions in public and everyone thinks that they can do the job cheaper and better than us.

But times have never been more challenging than they are today. The words from our new Government are good for local government. Call it ‘Big Society’ or call it community politics and there can be no doubt that this Government talks localism, means localism and intends to deliver localism (unless of course it wants to dictate to councils and partners what they should do such as introduced Academies or keep Council Tax rises to zero!)

Managers have to respond to this call for more involvement at a time of shrinking budgets. Probably the most significant document that the LGA has ever presented to the Government is our call for ‘Place Based Budgeting’. This call has been accepted by the Government and by the time the conference meets we shall know what the response has been to this in the CSR. But the very act of agreeing place based budgeting turns existing structures on their heads. Senior politicians and managers will not wait to hear from on high detailed decisions from Whitehall Warriors about how spending will be undertaken. Local councillors and their staff will be able to provide real targets based on real needs and opportunities. That will mean that we can and very definitely should be more responsive to what people in our communities say to us; it gives us greater opportunity to devise delivery mechanisms for a wide range of services that have their input with advice, with joint projects, with volunteers delivering and shaping activity.

Clearly, the Government has a view that much more could and should be done to empower people to take responsibility for their own lives, areas, families. We should not underestimate the amount that is already done. I ‘guesstimate’ that 5% are prepared to actually do something for their neighbourhood, school or community. If correct this means a mighty army of 3,500,000 people who spend at least some of their time volunteering and actually doing things. On top of this will come people who only work within their Church or their Trades Union but whose effect is felt outside that institution.

On top of that we have an even greater group of people who don’t think of themselves as volunteers but who willingly and gladly give time to care for those in their own family who have greater need than others. These are the carers in our society who, if they broke the ties of family, would leave the state with an impossible task of caring through institutions. Go to an event for carers and see the wide variety. The teenagers responsible for giving medicines and keeping hey house clean for a parent; the child who has, for whatever reason to care for a younger child; the Tweenies who just as soon as they have turned their children out into the world now accept responsibility for ageing parents and then

grand children as well. Millions of these people 'volunteer' willingly and happily and we should never underestimate their value to our society as a whole.

If we want more people to volunteer we must recognise and try to accommodate the things that currently stop them:

- Social security rules limit how much voluntary productive work people can do
- Changing shift systems with people working around the clock making continuity difficult
- The complexity of the way we do our business with an over professionalisation of large parts of the public sector who interact with the public.
- The physical separation of families caused by poor planning or the mobility needed for employment.

What we do about these complex issues is beyond the scope of this article but unless we accept that there are complex reasons for changes in our society we will not accept that the answers to the problems will be complex also. Within the Council there are many things that we can do to increase the sense of citizenship - a common bonding with our neighbours. These include:


1. Explaining the cause and effect of our actions better than we do by bringing programmes and projects down to a level where we can all understand the consequences. Too often the way that all branches of the public sector have tried to inform and consult with people has been appalling. We describe in a preceding section how the public sector could do things better but there are some simple rules that we could all take to heart:
2. Consulting only if you are going to take notice of the results. Describe the parameters within which the consultation can be applied. i.e. don't consult on a new tram system if you only have money for a new bus lane! Consultation can mean different things to different people. It can mean, 'We have not made a decision yet and want to know what you want'. Or it can mean, 'We have made the decision and need to know what you object to so we can tailor some of the work to mitigate the problems you may have'.
3. Don't blind people with long words and glossy strategies. Talk to people about the things that they want to talk about not the things you think should be talked about. Give people good and relevant information before consulting. You won't get much out if you don't put much in! Take time. Rushed consultation is bad consultation
4. If there is a 'political' message that needs to be driven over then councillors should take the lead in the consultation. Only use officers who can consult face to face and on a level basis with the people who pay their wages
5. Wherever possible do not do things **for** people but do things **with** people. Some people cannot cope. Some people can't be bothered. We need to break the dependency of people on their councillors and council.
6. Tell people how to do things for themselves such as where to report a problem and how to report a problem. Make sure the contact system is genuinely accessible for people in terms of time, location, disability, language etc
7. Help people organise themselves to sort out solutions Help establish residents, tenants and amenity groups. Work with them so they so you as the 'council' side of their work and the eyes and ears for you about how the system is performing.
8. Ensure an officer takes responsibility as the entrance point into the system so that hard pressed people do not have to turn to many people to deal with complex

problems. Simplify service delivery and access points so that people know where to turn. Simplify information systems so that people get the information and advice they need in a coherent and understandable form

9. We cannot do everything that people want us to do. If there is no money – say so. If the law won't let you – say so and say what you have done or will try and do to change the law. If you think people should do more for themselves – say so. If there are better people or organisations that can help – say so. It's better to be brutally honest than to frustrate people with false hope.

Concluding remarks

An excellent service is one that delivers the service that people need or want with staff who are trained, supported and paid to deliver it. The magic that can make that work even better than at present is the involvement of the community, the user, the resident in defining the outputs and outcomes which are most relevant to them



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Hang Together or Hang Separately

It has been clear for some time that the local government will be facing major organisational change and upheaval. How you feel about this depends on your outlook. Some believe that the state has grown too large driving out enterprise and self reliance. After some collateral transitional damage a leaner, happier and wealthier Britain will emerge.

Others see this as a high risk gamble with those least able to shoulder the burden most vulnerable if the whole experiment fails. Whatever point of view you adopt there is a common interest in seeing that the changes that are introduced work. Authorities will either wish to minimise the damage to the weakest or realise the vision.

One advantage of the long lead in to the budget reductions has been that there has been plenty of time to prepare. There has been no shortage of advice. The regional improvement arrangements have played their part and the usual suspect consultancies have hawked their wares around the sector. Most councils have now looked at their commissioning strategies and are well on their way to deciding which services stay and which go. Those that are to stay will either be procured or directly provided.

Much is hoped for from improved procurement techniques. In addition there is considerable interest in shared and partnered provision and social enterprise. Those services that remain directly provided are to be subjected to efficiency reviews drawing on the learning from manufacturing, insurance and banking. To use an old Audit Commission mantra the objective is to create efficient, economic and effective services. Will these changes be successfully implemented?

Management theorists have found a myriad ways to explain how successful change programmes work. They tend to have four key components. Any organisation has to have a clear and shared sense of the problem that is faced and the need for action. This needs to be supplemented by a plan, a clear exposition of what is to be done to tackle the problem. Next the right resources need to be mobilised to deliver the plan. Finally the first steps on the journey need to be clear if the correct level of momentum is to be achieved. Without all of these elements in place the chances of real and sustained success are slim. This is easy to say and indeed even trite. It is however surprising how frequently key components of a change programme are missed out.

Even if all the elements are in place keeping people engaged with the programme can often be difficult. Local authority decision making processes are highly rational frameworks. In addition council structures are hierarchical. Both of these traits mean that there is a built in bias towards planning and policy development by a few whilst delivery and execution can often become a second order issue. This can be a significant obstacle to successful change programmes.

The four components outlined above all need to be understood and owned by the majority in an organisation.

More often than not however a plan is handed down to the organisation. The top team in an authority may well have had several days sequestered away thinking about the changes, coming to terms with the issues and crafting a solution. They will have spent time working on these matters with elected councillors and in explaining them to the organisation. A front line manager on the other hand might get an hour's briefing together with a mountain of documents and be expected to get on with it. This does not breed a strong sense of ownership or commitment.

The army tries to split planning time into thirds. In any planned engagement one third of planning time is allocated to the top brass but two thirds to the troops on the ground that actually have to implement the strategy. Through experience they have learned that success relies on the ability to respond to the real situation that is faced whilst striving to achieve the agreed objective. So those closest to the action have to know what is required and to have had the chance to think through the possibilities.

Councils that have actively listened to staff and managers whilst preparing their plans are much more likely to be successful. Providing space and time to consider not only the solutions but the problem tends to pay dividends. It is also important to be able to hear what is said. All too often senior managers anticipate difficult responses from sections of their organisation. They prejudge the motivation for the objection and then miss out on some valuable insights that may improve the whole programme. In addition staff start to feel that the key decisions have already been made and that there is no real chance to shape the programme.

Engaging people in the project, if it just feels like a cuts exercise is also difficult. Those organisations that can paint a picture of the future that goes beyond the immediate changes are again more likely to succeed particularly if staff have been involved in the development of that objective. Promises of some sunlit upland are unlikely to be believed. An honest dialogue about the problems ahead and the real future possibilities will have much more traction.

Plans are important and planning more so. But neither sets the pulse racing. Presentations stuffed full of hard data and statistics rarely enthuse a general audience and real care needs to be given to how and what is communicated. This is not to say that the real data should not be made available. The means of doing so though should be properly thought through.

As the plans roll out cynics tend to emerge. This is hardly surprising given the waves of change programmes that most local government staff have been subjected to. The temptation is to plough on with the programme and hope that your determination and its success will win round the doubters. Ploughing on is probably essential but ignoring the cynicism is a mistake. Those organisations that are actively listening will engage with the causes of the cynicism and make it more likely that some if not all of the cynics may be turned into enthusiasts for the programme.

It is not immediately obvious that the third leg of a successful change programme, resource allocation requires buy in from staff. However it is rare that there is a separate pot of money or a group of spare staff ready and available to see through the project. More often than not the project is carried by people doing it alongside the day job. Funds to support that project are shaved from other needy activities.

Without genuine commitment to the enterprise the willingness to provide that discretionary effort or to find a way to release that funding is missing. As the project rolls on resources become harder and harder to find and the pace of change slackens. Sustaining commitment to the project is key to overcoming this problem.

Conversely when staff are fully involved in preparing the change programme then deciding on the first steps becomes very easy. Engagement tends to breed enthusiasm. A head of steam builds up and action flows naturally. There is a danger at this point. The enthusiasm can get ahead of the planning and the resourcing leading to a firework effect; a fun and pleasing immediate display and no follow up.

Staff engagement is a component of successful change not a full solution in itself. Good change programmes integrate it into the fabric of the project but keep a balance with the other aspects of the programme.

The age of austerity will be a test to us all. As councils respond to it they will be experimenting with a variety of delivery models all of which will place new demands on the staff that have to make them work. Some authorities will be more successful than others and there will be a combination of reasons for the differences. Strategies will vary and managerial involvement and focus differ. Those organisations though that have built a sense of common enterprise across the whole authority are the most likely to win through.



ACSeS employs a Policy and Development Officer, Tony Kilner to, for example:-

- carry out legal research, produce reports / guidance for members of the Association;
- develop internal and external communication strategy;
- work with ACSeS officers on their respective portfolios to keep ACSeS members informed of developments in the law and corporate governance;
- assist in the preparation of responses to consultation documents from Government Departments and other bodies; and
- maintain a knowledge of legislation and policies relevant to local government and associated bodies.

For further information, contact the President or visit us at www.acses.org.uk



The Future of Regulation – where next?

We are used to regulation, and indeed it has a long history. Ancient societies regulated to combat bribery and corruption while more recently in modern Britain the professions (most particularly the Health professions) have led the way. Regulation, however, really came into its own with the 1980's programme of privatisation, as state monopolies were sold off.

What is the purpose of regulation?

We expect regulation in areas where public safety is at risk. Beyond that, we know that economic regulation is critically important in markets where there is an asymmetry between the powers of supply and consumption. Here, the role of the regulator is to exert influence on areas where market forces cannot be brought to bear, for example where there are economic dangers of market failure due to monopolies or cartels preventing proper competition.

Monopoly or near monopoly situations aren't confined to the private sector. They exist in the public sector as well, and tend now to be regulated. Relatively new regulators have taken a key role in recent years in raising and maintaining performance and improving value for money in public services, most particularly in those areas where government itself is judged if provision is found wanting.

A third group seek to influence individual behaviours, societal norms or government policy. Like economic regulators, they are dealing with market imbalance, but in social rather than economic markets. Consumer facing, they seek to protect the individual citizen's health, wealth, rights and expectations more generally, and can be viewed as 'voice' regulators, speaking on behalf of interest groups or the public at large.

Of course there are overlaps, and regulators and regulation can be categorised in any number of ways. But the future for any individual regulator may well depend not just on the type of regulator it is, but whether it meets the needs of its audience. To consider that question we need to consider what one might call the audience for regulation.

Regulators as leaders

The greatest attribute for a regulator is independence. For understandable reasons, those regulated seek to exert influence on regulators, while providers can seek to capture "their" regulator. Regulators must maintain a respectable distance from these audiences while at the same time continuing constructive engagement with them. These twin requirements necessitate regulators to display leadership with both strength and vision.

Recent developments

Responding to concerns about the ways in which regulators exercised their functions, and recognising the financial impact regulation has on business, in 2005 and 2006 the government published the Hampton and then Macrory reviews of regulation. Together these reviews proposed migrating from an emphasis on inspection (and box-ticking) to a more proportionate and risk-based approach.

The five Principles of Good Regulation were spelt out: regulation should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed. And a clutch of regulators were independently assessed on the extent to which they live these principles, with the focus initially on economic and public safety regulators. Regulators modified their approaches both in line with Hampton and Macrory recommendations, and the then government's firm commitment to 'light touch' regulation (in retrospect, seen by some not as 'light', but 'soft touch', with some accused of a failure of leadership).

These developments were welcomed by business, with government and business the two audiences particularly influential in shaping regulation at the time. The aim was to balance protection with prosperity by reducing the regulatory burden and so increasing the nation's competitiveness.

Which factors will influence the future of regulation?

Financial pressures are the obvious place to start, with all categories of regulators affected. As these pressures bear down on government, regulators represent an easy target and are well represented in the government's unprecedented package of abolitions, mergers and other changes. For those retained, government remains committed to further substantial reforms over the medium term.

So far, it seems that the voice regulators will be hardest hit by the proposed reforms. Here, government promotes transparency and, ultimately, democratic accountability (rather than regulation) to constrain and guide social markets. With a good proportion of voice regulators to be abolished, we must expect voices to be exercised in other ways, aided by greater transparency in the public sector. Losing these regulators will, however, result in a loss of champions and leaders in these markets. It will be interesting to see whether new leaders from elsewhere take up their voice.

Economic regulation on the other hand is generally accepted as necessary, as presumably is regulation affecting public safety (although here we can expect the balance between personal and public risk is likely to be reviewed in favour of personal risk). But will regulators be expected to continue to apply risk-based approaches, and live the Principles of Good Regulation? It seems so (as we can detect no other developing philosophy at present) but no doubt the regulatory approaches of regulators are much tighter than pre financial crisis, and are likely to remain that way. 'Light touch' and the related concepts of self-regulation and self assessment have a less enthusiastic, more qualified resonance, and this influences all regulators.

Localism's 'bottom-up' philosophy of local innovation seems in direct conflict with regulation's key interest in maintaining national standards, and a particular threat to public service regulators. And the proclaimed independence of regulators makes them an easy target for rhetoric that lambasts "unelected", "unrepresentative", and "bureaucratic" bodies. But it is not so clear cut, as government also recognises impartiality (in its emerging constitutional reform proposals) as a rationale for maintaining some bodies. And although we may see further rationalisation of public bodies in Scotland, Wales and Northern Ireland as the devolved administrations consider the proposed reforms, we do not immediately see the same appetite for change. Our different administrations may increasingly develop different regulatory arrangements and philosophies, albeit united by the austerity background music.

No doubt those regulators implementing fundamental changes to their organisations following the government's constitutional reform programme will need to divert management effort in that direction, and all will be seeking to reduce costs. With these pressures, regulators will do well to identify 'mission creep', and focus on the essentials of

what they are trying to achieve, but there are dangers. Short-term cost reductions do not necessarily sit comfortably with the long-term approach a regulator must take, and leaders here need to think long term. Regulators need to continue to evidence the impact they are having over time, and to track changes in societal attitudes and expectations. But research budgets will be under scrutiny and real pressure. Keeping the end consumer in mind should help to guide decision-making.

As the new government beds in, new boundaries will be drawn as between Departments and the regulatory bodies they sponsor. The ground will need to be tested, and this is particularly tricky territory for public service regulators and for those they regulate. Surviving regulators must brace themselves for the transfer of some of their established policy and even delivery functions to their sponsor Departments. Nevertheless, in a 'Big Society' in which citizens exercise personal economic and democratic choice, that choice should be well informed, and while we see a reduction in voice regulators, other regulators have a continuing role to play in informing choice. Leaders of regulators must recognise the new rules being constructed by government and react appropriately.

Government philosophy and intentions aside, regulators and those regulated will continue to be subject to EU constraints and expectations, where we see little philosophical convergence on regulation.

Beyond Europe, the financial crisis has reinforced the need for financial regulation and regulatory approaches to be decided and overseen at a global level. Already we have seen a draft version of the Basel III accords for banks, whilst the possible expansion of the International Monetary Fund's role is being discussed. We wait to see to what extent can we agree a global approach to economic regulation.

Whatever the prevailing philosophy, regulators will always need to be ready for when risks materialise. They must work closely with others and usually at an international level in order to manage the event and limit the damage – often a thankless task, but one where true ethical leadership can be seen by doing what is right and not by what is expedient.

The audience for regulation

Times are changing for regulators, and thus it becomes more important than ever for individual regulators' leaders to consider the audience for regulation.

Business will always remain a key audience. For public service regulators, business includes those providers of services or commodities (e.g. housing stock) that are in turn regulated. Providers seek to influence regulators and often work closely with them. But when public service regulators begin viewing providers as their most influential audience, they risk ending up in 'provider capture', a charge laid in particular at the doors of regulators of the professions in recent years. Regulators need healthy relationships with providers, while maintaining distance and objectivity.

What of government? Early indicators suggest that where this government believes public service regulation is necessary it will want a robust and focused approach, and it is prepared to strengthen the powers of the relevant regulators. In healthcare, the Care Quality Commission is to be expanded to be "an effective quality inspectorate by giving it a clearer focus on the essential levels of safety and quality of providers". Monitor (the current independent regulator of foundation trusts) is to be developed into "an economic regulator for the health and social care sectors to promote competition, price regulation and the continuity of services".¹ In Education, the role of Ofqual is to be strengthened to

¹ Department of Health "Equity and excellence: Liberating the NHS," Health White Paper, 2010

enable it to drive up qualification standards, while Ofsted will be retained but reformed following criticism of its approach.

These moves may be unexpected to some, but government is always a key audience for regulation. Regulating the activity of others is always more cost effective than leaving markets (economic or social) unregulated, and is profoundly cheaper than any direct intervention by government. But more than this, these moves perhaps suggest that the government recognises regulation as one way of steering matters and ensuring policy delivery, a situation more palatable in government than in opposition. A number of regulators hold the ring across a range of private sector providers of public services and are instrumental in delivering government policy through markets, ensuring that government policy objectives are met as services are delivered.

And what of the end consumer of regulation, as the voice regulators reduce in number? Regulators may do well to ask themselves to what extent they continue to recognise regulation as the champion of the consumer, and whether they serve the end consumer sufficiently well. That is not to suggest that government, business or other providers do not have an important stake, or to challenge the Principles of Good Regulation.

The key question

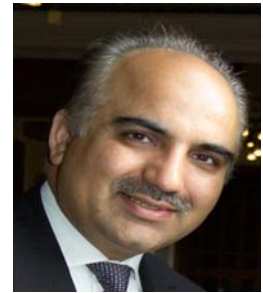
Increasingly, regulators need to steer a steady course between government, business, providers and end consumers. This is the challenge for regulators, now and in the future. While facing unprecedented financial pressures, each regulator must strike the right balance between these competing audiences. The balance will be different for the differing types of regulator, and will change to some extent as circumstances change. But the key question for the leadership of regulators is this: in all that you do, and the way that you do it, have you considered and given due weight to the end consumer of regulation? Those regulators who get the balance wrong will be straying from the path.



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Changing Landscape of Ethical Governance

The proposed abolition of the ethical framework for local government will provide a challenge and an opportunity for local leadership. Whilst it is accepted, now ‘universally’, that the framework established by the Local Government Act 2000 may well have been disproportionate, expensive, over legalistic and bureaucratic in its operation, its abolition will create a vacuum that could pose interesting ethical and corporate governance dilemmas for politicians and practitioners, alike.

Ethical Governance is, of course, part and parcel of Good Governance - see SOLACE/CIPFA publication on the subject, which I contributed in - and Good Governance is, of course, what conscientious democratically elected bodies strive to achieve. In abolishing the ethical governance framework ‘lock, stock and barrel’, there is considerable risk in throwing the baby out with the bathwater. Failures in ethical governance have the potential of damaging the roots and branches of our democratic systems and decision making processes.

It is right, of course, that local authorities should be given the freedoms to determine matters locally. I, for one, can not see any Council arguing against that principle. However, there will undoubtedly be some Councils - primarily because of their small size and potential resource difficulties – that will struggle to enforce the same, locally, and for some the local sanctions may not be sufficient enough in serious cases. All in all, therefore, this has the potential to signal a postcode lottery of ethical standards and the potential development of a cottage industry of local enforcement.

Obviously, there needs to be flexibility in terms of any ‘new local system’ as Codes of Conduct are a prime indicator of a profession and it is difficult to see why local government would want to abolish local Codes of Conduct when they have got used to the same. One accepts that some will want to ‘tweak’ the current national Codes of Conduct for their local circumstances.

The wholesale burning of local Codes of Conducts by Councillors may not be an advisable step to take, at this stage, especially when one considers the media frenzy and debacle around the MP expenses and the creation of stronger Code of Conduct provisions applicable to those in the highest public office - Parliament. If MPs can have a Code of Conduct, I am sure journalists will push Councillors to justify why they should be exempt from having a Code of Conduct.

The issue of self-regulation is, of course, one of the hallmarks of a strong professional ethos and standing in society. Local authorities will need to consider very carefully, therefore, whether they return to their pre-2000 Standards Committees or have their functions amalgamated with, for example, the Audit Committees and transformed into new Governance Committees.

The important role played by Leaders, Deputy Leaders, Executive Members, Chairmen of Committees, Chief Whips and Group Secretaries in 'living and enforcing' high ethical governance standards can not be underestimated, as the same provide strong signals - openly and subconsciously - to the rest of the Council and, of course, to those that come into contact with it.

The local government family must, therefore, demonstrate its strength of leadership and resolve in ensuring that its prevailing high ethical standards can be maintained, particularly at a time when greater tension is likely during a period of substantial change and contraction of the public sector. The Nolan Principles and the 10 General Principles of Public Life (2001) should remain untouched by the abolition process, unless the Government decides to abolish those also.

It is pleasing to note, therefore, that the LGA recognises its central leadership responsibilities in the absence of a statutory framework and will, I am sure, encourage local government to retain some Codes of Conduct by making use of what was valuable and effective from the current arrangements.

In addition, an internal Standards oversight provides a degree of oversight of ethical governance within the Council and provides a degree of independent assessment in dealing with any complaints from members of the public. Ideally, the same should be dealt with by the Chairman of the Committee, after advice from the Monitoring Officer, with a referral to the Standards Committee in the event of serious complaints. This will also act to avoid any charges of complacency under the 'new' arrangements and provide an assurance to the public that the Council was serious about dealing with complaints against Councillors.

Sanctions are likely to be a matter for each Council and, perhaps, in very serious cases, the Standards Committee could be given the power to recommend to the Council the disqualification of a Councillor and the Council given the power to disqualify a Councillor for a serious breach of their Code of Conduct. Ultimately, only the Council, under this model, will be able to so resolve, in accordance with democratic principles. Whilst the ultimate sanction could, of course, still rest in the Ballot box, that process will be long and tortuous one, especially if the Councillor continues to remain in post and the Council is perceived as being powerless to do anything about it.

Carefully selecting candidates for public office will also become increasingly important if 'back end' problems are to be avoided. It may be that, a good development for local democracy would be if high ethical standards are an integral, open and transparent part of the candidate selection process, with candidates being required to sign Codes of Conduct well before s/he is elected as a Councillor.

Imposing criminal sanctions against Councillors for failing to declare or register interests - whilst headline grabbing and potentially quite attractive to journalists and, perhaps, the public - will need to be sensitively handled by the Government as such a process will only serve to criminalise Councillors - a position that does not currently exist in relation to a breach of the Code of Conduct for Councillors.

Appearances before the local Magistrates Court will, of course, be costly, time consuming and frustrating for Councillors and witnesses, alike. Such 'high profile' incidents may, therefore, detract from the importance of the self regulation culture and serve little, as an evolutionary mechanism, for further improving the high ethical standards that already exist in the vast majority of local authorities.

Under localism, mistakes are bound to be made – whether inadvertently or not - and a new level of tolerance will be required by the public and politicians, alike. To make such ‘mistakes’, automatically, criminal seems wrong, in principle, without there being in place an appropriate pre-criminalisation mechanism of, say, ‘two strikes and out’ for failing to register/declare interests. Question then is who ‘records’ such behaviours and strikes.

Local government leaders, at all levels, are urged, therefore, to not only maintain but to promote high ethical standards and to develop new ethical governance arrangements that are not only fit for purpose - within easily understood Codes of Conduct and a cost effective local enforcement regime – but the arrangements must also have the respect of those who are the subject of them, of the independent assessor(s) and, of course, the public who, ultimately, hold Councillors to account.

Long live local governance.

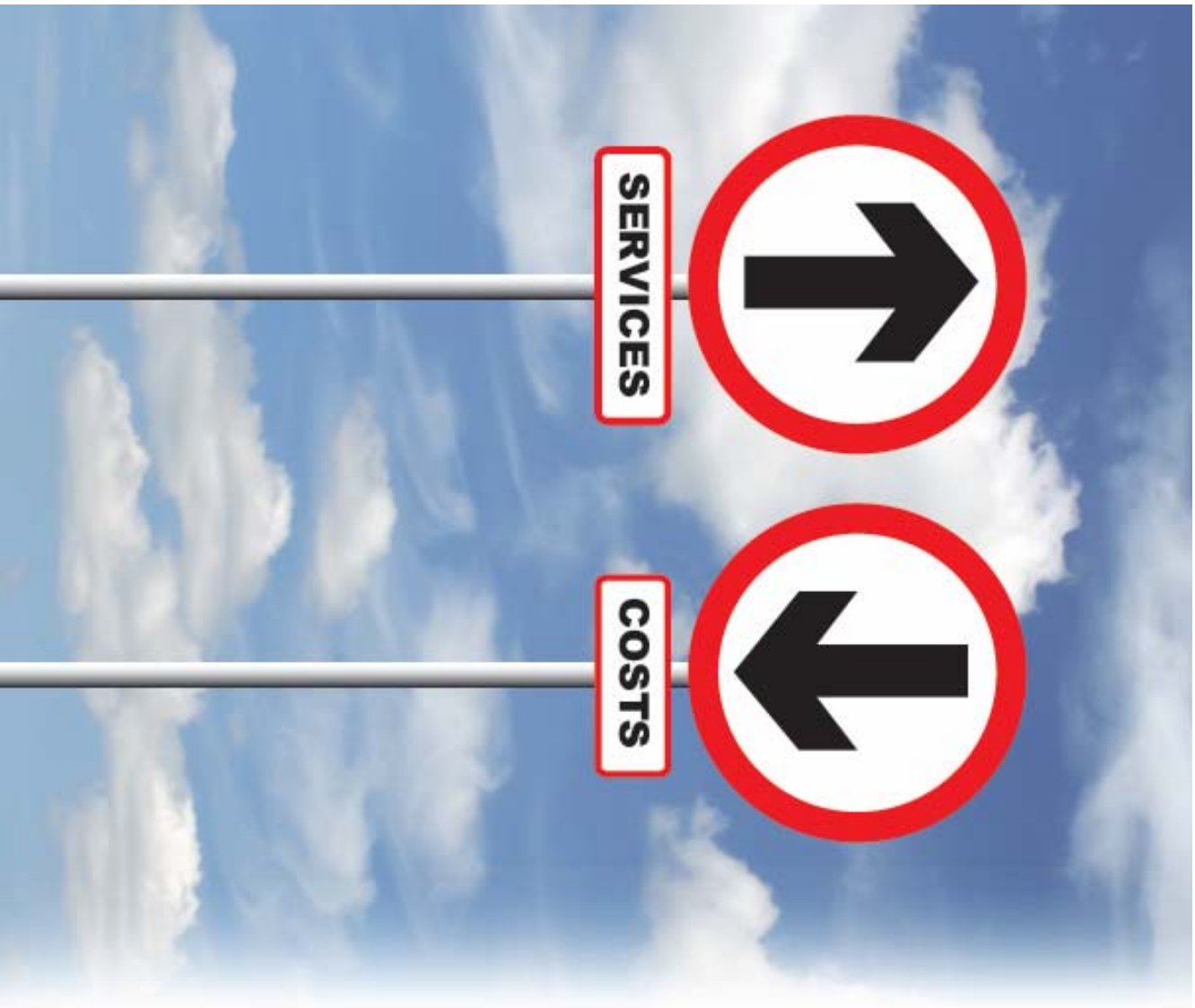


Branches

The 10 Branches Network is at the heart of the Association and normally meet quarterly or as required. They provide an invaluable opportunity to meet colleagues, to discuss practical problems and to share information and ideas (ranging from implementation and interpretation of legislation, sharing experience of governance and other issues, sharing reports to Local authorities on new legislation, to receiving training from one of the Members or from an outside speaker).

The first point of contact is the Honorary Secretary of each Branch who will be pleased to extend a welcome and to provide details of meetings.

For further information, contact the President or visit us at www.acses.org.uk



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The Leadership Crucible

Warren Bennis the elder statesman of leadership thinking wrote “research has led us to conclude that one of the most reliable indicators and predictors of true leadership is an individual’s ability to find meaning in negative events and to learn from even the most trying circumstances”(1).

He describes these situations as “crucibles” – circumstances that require leaders to “examine their values, question their assumptions, and hone their judgement.” Ron Heifitz describes the crucial importance of “adaptive behaviours” – where leaders adjust the way they communicate, inspire, and get buy in and commitment, make decision in changed circumstances. In a time when great expectations are being put on leaders across the public sector it seems that the ability to adjust and adapt to circumstances will be crucial.

We have seen a wide ranging response in local government - from those that have prepared for the crisis with foresight over a long period of time to those who are in denial and paralysed with fear and uncertainty. I spoke to a head of scrutiny recently who bemoaned the slow rate of decision making in his council – others complain about the bewildering pace of change.

Increasingly we are finding that senior leaders see executive coaching as a very cost effective investment. This is not the traditional form of coaching but a robust review of the key challenges and shaping a way forward – going beyond the action plan into the ways the leader must adjust their style if they are to implement wide ranging change successfully.

There are some key “base lining” issues to address –e.g. “how clear and focused are you able to be at this time?” “How well is your organisation able to think broadly and identify the long term consequences of today’s decisions?” “How well is the organisation getting the balance between pace and robust thinking?” “To what extent has your organisation got the capacity to deliver substantial change?” High level those these questions are each of them lead to substantial leadership issues – and identifies ways to change and improve the leader’s impact on the organisation.

As leaders adjust their approach one of the key tests in the coming months will be your capacity to engage key people. Recent research at the “best companies” organisation demonstrates that people’s relationship with their manager is key to their success. My experience in the motor industry in the eighties suggests that in times of widespread change relationships get frayed – managers can be reluctant to expose themselves to the emotional trauma relationships bring in difficult times.

The default leadership style can become disengaged – “just get on and do it” becomes the order of the day. In the long run however this is a damaging approach and undermines the organisations ability to manage complexity, handle stakeholders

effectively, encourage innovative thinking – and most of all fails to get commitment. Best companies suggest there are two key drivers of engagement - clear organisation goals and managing people day by day. We believe that the best way to enable innovative and far reaching transformation is to engage people. In times of uncertainty the need for clarity and day to day management becomes even more important than in “normal” times.

Best Companies go on to suggest four key things leaders should do (2) to strengthen engagement they are:-

Considers: asks people to do what is reasonable and achievable. It is inevitable that in these challenging times senior people will be asked to do more – but there needs to be a realistic conversation on what is achievable – and what is sustainable. High casualty rates at a senior level will cause significant damage.

Caring: interested in colleague as “human beings” – with a life outside of work and added stress levels during these challenging times. Helping colleagues to cope with the physical and emotional burden of change – relieving some of the pressure by being supportive.

Motivating: selling the vision and direction and giving focus. Good leaders also recognise that some people are not interested in vision and direction at the moment – they need to help people past the pain barrier – to tap into the values and drive that brought colleagues into the public sector.

Converse: two way listening and talking openly – tapping into how people are feeling – and what their concerns are, as well as checking on progress with actions and decisions – and getting fresh insights and ideas.

CIPD research (3) reinforces the best company findings – leaders need to engage their key people at this time more than ever before. They need to create organisational flexibility and greater alignment.

Bennis says the most critical skills in difficult times are the ability to adapt – he says this is driven by an ability to fully grasp the context and a determination and toughness to get through. This is why robust coaching has such a key role to play in enabling leaders to develop the changes they need in their own approach if they in turn are to deliver organisational change well. Bennis says the ability to adapt “enables leaders to grow from the crucibles, instead of being destroyed by them, to find opportunity where other might find only despair. This is the stuff of true leadership.”

1. Warren Bennis – HBR September 2002
2. Best Companies –Management Engagement 2010
3. CIPD – Shaping the future report 2010

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New approaches to accountability in a time of choice

Moving away from centrally defined performance targets, regimes and national programmes, we can expect to see a variety of approaches to service delivery developing at local level. These will require a variety of forms of accountability, each one proportionate and appropriate to how the services are delivered, who the customers are and who the commissioners and funders are. Under legislation anticipated in the Localism Bill, this will extend to local choice over political management structures in councils.

The Centre for Public Scrutiny (CfPS) believes that there are some principles around accountability which remain constant, because they are based on values and behaviours, whatever structure for service delivery is chosen by councils and other local partners. We believe that from these principles, different approaches to accountability can be developed to suit local priorities, and local people can refer to the principles when assessing whether local public governance is truly open, transparent and accountable in practice.

We have distilled the key principles into what we are calling an Accountability Charter, which sets out a series of processual and behavioural commitments to which organisations (not just councils) might sign up in order to check and demonstrate how accountable they are. This can be a key tool for self-improvement, to complement centrally-mandated drives towards greater transparency and enable strong and meaningful accountability, whatever approach to service delivery is chosen locally.

Principles

While it is always tempting when thinking radically to take a Year Zero approach, over the past 10-20 years there have been significant developments in thinking about what constitutes good governance and accountability. For example:

- Nolan Principles of Public Life
- Cadbury etc Combined Code on Corporate Governance
- Higgs Report on the role of Non-Executive Directors
- Langlands Commission's Good Governance Standard for Public Services
- CIPFA-SOLACE Governance Framework
- CfPS 4 principles of good scrutiny

From this thinking we can distil some key principles for good governance and accountability:

- | | | |
|---------------|--------------|----------|
| • Open | • Inclusive | • Fair |
| • Transparent | • Ethical | • Robust |
| • Accountable | • Responsive | |

Four Governance Typologies

Depending on the different service delivery choices made at local level, four possible typologies or models of governance might develop. In reality many local areas will probably end up operating something that might be a combination of two or more of these models. They are not intended to be mutually exclusive, nor prescriptive, nor as “best practice” models to be adopted wholesale at local level. More typologies may emerge as practice diverges.

Instead, they might be viewed as different conceptual approaches to service provision at local level. We are not defining one approach as “more accountable” or “better” than the others – we can see strengths and weaknesses in all four approaches. Local areas will want to consider which – if any – best helps them meet the principles of good governance in their own local circumstances.

The Place Leadership Council – a Public Service Board model

In this model, the council – with partners, but the council is firmly in the lead as the body with the local democratic mandate – is taking forward the lessons of Total Place, with pooled budgets for its place, provided to the partnership to spend as they see fit to tackle the priorities and problems they have identified.

There may be some accountability to Parliament for agreed outcomes but accountability is mostly focused outward around local priorities. Governance is through a Public Service Board, fairly tightly drawn around senior leaders with decision-making power particularly over committing resources. There is a question over whether non-executives are members of the PSB as in a company board model, or whether there is a separate ‘scrutiny’ body with power to challenge, review and question.

Two weaknesses need to be overcome in this model. Firstly, ‘tightly drawn’ runs the risk of being exclusive and in particular of not hearing the voices of service-users or the community. This could be overcome through the role of the scrutiny body or through a wider stakeholder forum to engage the community. Secondly, clear rules around interests, ethical behaviour, openness of decision-making and reporting and how decisions can be influenced would be required to overcome the well-documented deficiencies in traditional Local Strategic Partnership decision-making structures.

Looking ahead, in a highly integrated and well-developed PSB model, where most if not all services are jointly planned according to shared goals, all partners might slim down their internal governance and concentrate their accountability and governance systems jointly around the PSB. This would offer efficiencies both in speed, clarity and effectiveness of decision-making and in financial and resourcing terms. However, this model is the most dependent on change at the centre, requiring Whitehall spending departments to amalgamate funding streams and reduce their lines of central control and accountability through performance targets.

The Virtual Council – a commissioning model

In this typology, the council sees itself as an enabling and coordinating body, rather than as a direct provider of services or as a strong strategic leader of other partners. Elected members have a limited strategic executive role to agree the services they wish to see commissioned, with most scrutiny happening at a very local, neighbourhood level. There is a conscious aim to encourage a wide range of providers, including voluntaristic and mutual enterprises, and a focus on ensuring choice for service users, through markets, personalisation and direct payments.

Governance is lean and regulation light, with an antipathy to anything that smacks of bureaucracy. This requires a high tolerance of risk, as well as an acceptance of differential levels of service provision and an expectation of greater self-reliance on individuals and communities. Reporting and scrutiny would be light-touch and with limited powers to intervene or compel.

Governance in this model would require a high degree of self-discipline and self-regulation, for example around ethical behaviour, declaration of interests and financial probity and soundness. Questions remain over how failures will be dealt with if market mechanisms are not able to do so effectively – for example a failing school might eventually lose the confidence of parents and rolls would fall leading to closure, but this could take several years, blighting the education of the children who remain there in the meantime.

There might in practice need to be differential levels of regulation, with tighter control over “life and limb” services (eg for vulnerable children and adults), and an “exception” system whereby local scrutiny could trigger action if there were concerns.

The Public Stewardship Council – a municipal model

Here the council sees itself as the guardian of the public interest, based around its democratic mandate to safeguard public assets and the interests of all the community, including the community that has not yet been born. It could be seen as ‘traditional’ but also highly pragmatic, flexible and efficient, willing to work in partnership with others where a clear case can be made for it being in the best interests of the community but less interested in new structures or approaches for their own sake. Its proponents might conceptualise the council itself as a social enterprise but with a stronger, more democratic and ‘legitimate’ form of governance.

For councillors in the public stewardship council, having control over services is important to deliver desired outcomes, hence there may be more interest in direct provision than in marketisation. There may be a strong focus on fairness and access, and councillors would also have a strong champion and mediator role, standing up for people who may be less able to exercise choice over services for themselves, and using their democratic mandate to scrutinise and influence other service providers.

Services in this model would need to be highly responsive to customers and to local need and consistently able to justify why approaches that might involve others more directly in delivery were not better. It would be important to supplement the primacy of the council’s representative democracy form of governance with a wide range of ways for people to engage with the council in whatever more participative ways suited them. Partnership governance would develop patchily under this model, according to the needs of particular service areas for some forms of joint decision-making.

The Collaborative Council – a joint committees model

Here individual bodies may choose to collaborate and share services between them, as sovereign organisations pooling decision-making for particular, limited purposes. This might be to make management efficiencies (eg district councils sharing management structures and agreeing to deliver services together) or to collaborate to achieve shared goals (eg at regional or sub-regional level and on strategic issues as in the Association of Greater Manchester Authorities). It is likely to be more common within sectors than between them, although not exclusively (eg joint management arrangements between the council and PCT in Herefordshire).

As these arrangements are likely to be partial and to develop gradually over time, there is a danger that governance arrangements may not keep up. Authorities may be left with a mixture of governance systems and the risk of duplication and inefficiency eg needing to refer decisions and scrutiny back to individual sovereign bodies rather than being able to act in a wholly joined up way across the piece. Non-executives in particular could find it hard to act in a joined-up way if there were gaps between governance systems. However, this model also offers organisations the opportunity to develop at their own pace, going with the grain of what is felt to be acceptable and necessary locally at the time.

It can be seen that all these approaches have strengths and weaknesses, and taking a localist approach it will be for local areas to debate and discuss which kind of approach is most appropriate for them. Our Accountability Charter will provide a valuable tool for local authorities and their partners to assess whether their current or proposed approach to governance can stand up to public scrutiny and meet the eight principles set out above, in particular those of openness, accountability and inclusiveness.

Contact jessica.crowe@cfps.org.uk if you would like to take part in piloting the Charter to help develop your approach or to comment on the principles and typologies – this is developing thinking and we welcome comments and contributions.

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What does the Big Society mean for Public Service Delivery?

The Coalition Government wants to see more public services delivered by charities, not-for-profits, mutuals and social enterprises (collectively ‘civil society’ or the third sector). The previous administration invested large sums in training public sector commissioners on how to do this and created a range of investment funds to kick-start market capacity, like Futurebuilders and Communitybuilders.

Civil society organisations are perceived as having certain advantages. Allowing community-based groups to deliver more services embodies a new spirit of localism and builds civic engagement. It is also said that civil society organisations are better at working with difficult-to reach user groups, such as refugee communities or offenders, who may be suspicious of and less inclined to use services provided by state agencies. Operating outside the constraints of state bureaucracy, they should also be able to innovate and implement change quickly.

The volume of services contracted out to civil society has been steadily growing. The market for outsourced public services in the UK was estimated to be worth £79bn in total in 2008. Of this, some £7.8bn was provided by charities and not-for-profit organisations in 2008/9.

For local authorities, commissioning services from the third sector presents some important challenges. These can be grouped under three main headings: market capacity, procurement issues and contract risks.

How can authorities build civil society?

Local authorities are expected to actively build third sector capacity in their area. The Local Government Performance Framework includes National Indicator 7, which measures the contribution local government makes to improve the environment for independent third sector organisations to operate successfully.

Guidance states that encouraging a vibrant, diverse and independent third sector is ‘a vital part of a fair and enterprising society. It can help communities to be more cohesive and inclusive, and help individuals to have more say over issues that affect them’. One way to achieve this is for authorities to award more contracts for service delivery to third sector organisations.

However, third sector organisations face some very practical challenges in winning these contracts. Our own research highlighted some of the issues that providers face when dealing with local authorities (see further: tinyurl.com/yg4azgy). These include:

- Lack of early and effective consultation in the development of authority policy, programmes and strategies, leading to poorly-packaged or unattractive procurements;
- Failure to properly assess third sector organisations’ capabilities and to consider them as serious contenders. Insufficient recognition has been given by authorities to their strengths and skills. Procurement teams can be too risk averse and have a perception that the third sector lack the resources, organisation, and business skills to deliver;

- Difficulty in finding out about contract opportunities and who to approach about becoming a supplier. The third sector may often lack knowledge and experience of local government procedures and have difficulty in breaking into the market;
- A trend towards use of large scale contracts, and rationalisation of the supplier base through large frameworks, may rule out many third sector organisations. Difficulty in forging alliances with prime contractors may prevent them from playing a support role in the supply chain;
- Complex and costly prequalification and tendering procedures with unrealistic timescales, prescriptive specifications and excessively burdensome contract terms. These can mean invitations to tender are consigned to the 'too difficult' pile; and
- Lack of a level playing field in procurement, particularly relating to the unwillingness of some procurers to allow full cost recovery in tender prices, including a proportion of the organisation's overheads and management charges.

Procurement issues

In our recent survey of third sector organisations, 71% of respondents felt that the bidding process for service contracts is not getting any easier. Back in 2004, the government published guidance for local authorities entitled *Think Smart, Think Voluntary Sector*, which offered some very practical tips for authorities on how to stimulate the market for third sector service delivery. These remain just as relevant now.

The critical success factors highlighted were:

- Understand the market through ongoing dialogue. Get to know the third sector organisations locally, their capabilities, and their problems in dealing with you;
- Consult early on viability of policies, programmes and procurement strategies;
- Open contract opportunities to the third sector by providing information about how to become a supplier, wide publication of contracts in accessible media, training and support;
- Focus procurement on outputs/outcomes rather than processes, to incentivise third sector players and capture their expertise and innovation; and
- Keep contract drafting simple and proportionate – reducing complexity and bureaucracy helps to reduce the costs of procurement.

Contract risks

Authorities contracting with third sector organisations will need to consider a range of issues. First, who are you contracting with? Appropriate due diligence checks on the constitutional and governance arrangements of the provider will be essential, as well as the usual financial and background checks.

Procurers will need to be familiar with the new legal formats for third sector organisations, such as the community interest company, and the charitable incorporated organisation (likely to come into force later this year). There is also a renaissance of more traditional forms like the industrial and provident society.

Practical issues can arise – for example, it was widely thought that because the community interest company enjoyed a statutory 'asset lock', this prevented the sale of key assets. Not so, as the recent disposal by Ealing Community Transport CIC of its kerbside recycling business to May Gurney plc demonstrates.

Does the organisation have the necessary powers to undertake the activity? We were recently asked to advise a housing association on its power to operate a local authority day centre, only to find that it did not have the powers to do so, requiring an emergency general meeting to amend the constitution.

Other key commercial issues include the following:

- *Performance and payment regime:* local authorities are increasingly looking to tie payments to delivering successful outcomes.
Third sector organisations will want to satisfy themselves that the performance measures are reasonable and attainable. A contract where income may not even cover costs is a recipe for insolvency. The timings of payment will also be crucial to the provider's cashflow.
- *Employment and pensions issues:* where a service is being outsourced for the first time or being re-procured, it is very likely that the Transfer of Undertakings (TUPE) regulations will apply. This is often the sleeping giant of contract risks. The practical effect of TUPE will be to transfer the existing workforce to the successful bidder (and the resulting cost base), together with any existing claims from employees that may be pending. Often local authorities may struggle to provide bidders with quality information about employees in advance of the transfer date. This can be a source of uncertainty which causes providers to price in additional risk. Transferring employee pensions requires particular care, especially where public sector benefits have to be replicated.
- *Risk, indemnities and insurance:* the parties need to be clear about the allocation of contract risks. Authorities will wish to satisfy themselves that providers have in place the necessary public liability, employers' liability, malpractice and property/ business interruption insurances.
- *Confidentiality and data protection:* providing services in some sensitive sectors may involve passing on confidential data about service users. Appropriate clauses and procedures will be required.
- *Termination and exit from the contract:* in certain circumstances, both parties will be looking for an exit route. It is in both parties' interests that this is a last resort. It may be necessary to include some intermediate steps to allow disputes to be resolved informally or formally, perhaps using ADR techniques, before proceeding to a termination. The parties will need to consider what would happen in this 'armageddon' scenario though – particularly where vulnerable service users are involved. In practice, the authority may have a statutory duty to step in and provide the service. It will need the cooperation of the outgoing service provider, access to key documents and personnel, intellectual property rights and employee lists.

To address the issue of fairness of dealings between third sector and public agencies, representatives of key stakeholders developed The Compact. First published in 1998 and recently updated, this document is a charter of fundamental principles that should apply to contracts in this sector. For example, under paragraph 4.8 of the Compact Code for Procurement and Funding, the government undertakes 'to discuss risks upfront and place responsibility with the public sector body or voluntary and community organisation best able to manage them'. We have found that awareness of this charter among procurement officers is limited (see more at www.tinyurl.com/lmacah). We are likely to hear more of this charter in coming months. Initiatives like area-based budgeting and community asset transfers are likely to encourage third sector providers to seek out more contract opportunities, as authorities move from being providers to enablers and facilitators, in a much more diverse market of service providers. In an era of fiscal austerity, grant funding and charitable giving is likely to decline; contracted income will therefore become an attractive proposition for these organisations.

Local authorities and their legal teams will need to ensure they have the processes, skills and techniques for responding to and managing this expanding market.

Mark Johnson is managing director of specialist public services law firm **TPP Law**. (mark@tpplaw.co.uk 020 7620 0888). He will be presenting a workshop on this topic at the ACSeS annual conference. Further information can be downloaded at <http://tinyurl.com/tpplaw>.

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Effective and efficient review and challenge in councils

Effective review and challenge is an important component of good decision making and accountability. It needs to be strongly led within the organisation. It will only work if there are good working relationships, adequate resources and if elected members and officers have the right skills, knowledge and experience.

The government is requiring public bodies to throw their books open, publishing all spending over £500, in the belief that this will enable the public to hold politicians and public bodies to account and will deliver better value for public money. Significant cost savings are also needed as part of the national deficit reduction strategy, and councils face increased self-regulation. As monitoring officers and managers of corporate governance you have an important role to play in reviewing and challenging new and existing arrangements.

The Audit Commission is reviewing how internal council committees such as overview and scrutiny committees, standards committees, audit committees and other council processes work to review and challenge councils’ major activities, priorities and risks. We want to know how this can be done efficiently and effectively.

We have identified the principles that best underpin effective review and challenge in councils. Effective review is:

- able to tackle the big issues and outward as well as inward-looking;
- focused on the Council’s key issues and risks;
- independent of the executive;
- non-partisan in the way that it runs;
- strongly led;
- transparent and accountable;
- inclusive; and
- evidence-based.

These principles will provide the basis for questions we will ask councils this autumn. Findings will be used to develop a series of questions to help those responsible for council governance assess their review and challenge arrangements. Questions include:

- What are the major activities, priorities and risks in your Council?
- How is the Council’s management of these kept under review and challenged?
- What does effective and efficient practice in review and challenge look like?
- What are the enablers of, and barriers to, effective and efficient practice in review and challenge?
- What impact has your Council’s review and challenge work had?

- How do you formally engage the public in the review and challenge of the Council's management of major activities, priorities and risks?

Early findings from the already completed evidence review¹ suggest that:

- overview and scrutiny is not always effective in holding the executive to account;
- review and challenge is variable in quality;
- greater clarity is required about the purpose and role of the various council committees and groups involved in review and challenge;
- risk management is a weakness for some audit committees when they interpret their remit in narrow financial terms;
- some standards committees are narrowly interpreting their statutory role;
- there is some confusion about who might best perform review and challenge within councils outside the executive. For example, the audit committee role may be fulfilled by either the overview and scrutiny committee, or the standards committee; and
- oversight and challenge of partnership working is often under-developed, potentially leading to confused lines of local accountability and gaps.

Case study work with councils this autumn will explore the principles behind effective and efficient review and challenge. We will expressly seek to find out how councils can achieve effective and efficient review and challenge. We will publish a report containing the core principles and case study examples in Spring 2011.

You can get more information from The Audit Commission, 1st Floor, Millbank Tower, London, SW1P 4HQ

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¹ The evidence review 'effectiveness of the review and challenge framework process in local government', completed by OPM for the Audit Commission, is available on the Commission website at <http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/reviewandchallengewithincouncils.aspx>.



Lambeth's Co-operative Model – A new approach to local service delivery

There are two ways one can view the current age of austerity that the public sector is facing in relation to the severe financial cuts being imposed by the new coalition government in response to the significant public sector deficit. There may well be colleagues with a view of 'doom and gloom' and acute pessimism or there is an alternative approach of tempered optimism. The former approach is likely to lead to failure in terms of continuing to provide key local authority services whereas the latter approach is far more likely to succeed in seeking through innovation and collaboration the necessary opportunities to ensure that local government continues to thrive in delivering improved public services.

I firmly believe that lawyers have a crucial role to play in both the strategic thinking that will be required as part of the tempered optimism approach as well as the innovation in applying specialist skills around the options of delivery vehicles that will be vital in implementing some of the more innovative partnership models particularly around federated services.

The relatively new sound bites from the coalition government around developing the 'Big Society' and 'Localism, localism and localism' were already part of Lambeth's strategic thinking prior to May 2010 and the co-operative Council model of local service delivery in 'co-operation' with partners and citizens offers the Council the opportunity to develop public services in a way not previously envisaged.

The strategy is based very much on the fostering of the relationship between the citizen and the wider public services family at a local level. There is a recognition, rather like the 'Big Society' ideology that local government cannot do it all and that citizens need to be part of the solution to the challenges around sustaining local services within a greatly reduced financial envelope. The co-operative Council model seeks to forge a new relationship locally between public services and the citizens echoing the sentiments of Big Society.

The strategy also recognises the squeeze on public finances as a result of the severe recession. In other words we will be expected to do more with less but we are hoping to avoid the knee-jerk salami slicing approach to budgeting and service reductions and take an holistic view of the social impact of cuts with a clear commitment to safeguarding as far as possible frontline services.

The strategy is based on **seven key principles**:-

Principle 1: the Council as a strong community leader.

Principle 2: providing services at the appropriate level personalised and community based.

Principle 3: citizens and communities empowered to design and deliver services and play an active role in their community.

Principle 4: public services enabling residents to engage in civil society through employment opportunities.

Principle 5: a settlement between public services, our communities and the citizen (this is what we provide, this is what you do for yourself) underpinned by a desire for justice, fairness and responsibility.

Principle 6: taking responsibility for services – regardless of where they are accessed or which agency provides them.

Principle 7: simple, joined-up and easy access to services – location and transaction, “one place to do it all”, “one form, one time to do it all” – providing visible value for money.

But there are a number of key issues that emerge from the strategy that will require Legal Services to provide a pivotal role.

It is clear that in order to deliver the model there will be a need to develop new local democratic structures to ensure transparency and accountability in the services that are provided through the co-operative model. We need to ensure that mechanisms are in place that reconciles the competing tensions of supporting the new delivery vehicles whilst contemporaneously holding the organisations to account.

Clarity around resolving tensions or disputes between different partners and stakeholders within the delivery vehicle need to be clear and transparent. Historically, Lambeth, like a number of other Councils have had varied success in relation to some of the tenant management organisations that have been established in relation to the management of social housing within the borough. A number had become increasingly dysfunctional through infighting and disruptive factions emerging, and the lack of transparency in the governance arrangements around dispute resolution and exit arrangements made it more difficult than it necessarily needed to be to resolve matters.

The need to ensure appropriate probity and accountability is crucial and should be seen as a critical success factor. Clarity around the respective responsibilities and roles needs to be carefully articulated so the Council retains ultimate responsibility whilst at the same time giving the new co-operative vehicle operational control on the service delivery. The Council also needs to ensure that legal mechanisms within the model mitigate against the risk that individuals or groups do not adversely influence the service provision leading to other groups or individuals being disadvantaged or excluded.

Having clarity around the service specification will be crucial to resolve any tensions that could develop in relation to the mutual expectations both from the Council and from the co-operative delivery vehicle which sets out clearly the responsibilities of the parties and the standards of services expected.

We also need to recognise that some of the co-operatives will fail and therefore the need to ensure that appropriate exit arrangements are agreed and understood from the outset.

There are a number of management, governance and structural issues that will require the input of legal advice and we need to ensure that as lawyers we are pro-active in exploring these options without them being overly complex and convoluted.

Lambeth is currently in a transitional stage in relation to the strategy and is seeking to move the strategy from principles into reality. A series of commissions have been undertaken involving key community stakeholders to discuss in detail issues around developing a model or models as it is likely to be the case that different service providers will require bespoke delivery vehicle options developed.

Eight commission workshops will have been run between July and October 2010 involving academics, representatives from public sector think-tanks, partners from local government, representatives from key employers within the borough, key community groups, neighbouring chief executives, private sector representatives, unions, the Police and civil servants from national government. Over 500 organisations and individuals have been invited to submit evidence; and 100 have agreed to provide information, participate in discussion or have sought further information positively to take part.

In addition to the commissions a programme of citizen engagement has commenced. Deliberative focus groups targeting the key groups within the community have started and road shows have taken place allowing the Council to engage with ordinary members of the public and seeking views and opinions on the high level questions of cooperation.

The social media engagement continues with a live face book page, an interactive wiki and reference on twitter which has enabled us to connect better into a different range of networks and these are being used to maximise the impact of this work.

We will then move to “pilot” areas of work where the delivery vehicles of cooperation can be prototyped, applied and tested to support the development of the models of delivery in the short term and to support any broader programme of change which may result from the commission’s report and associated recommendations. Areas of potential service delivery include:

- Housing – TMOs
- Mental health
- Parks
- Libraries
- Third sector infrastructure bank (allied to asset transfer)
- Parking
- Planning
- Federated schools
- Food co-operatives
- Council Newspaper

Considerable interest has been generated in the work nationally and we believe that an ambitious vision and target operating model is likely to take three to four years to implement. I remain confident that the lawyers at Lambeth will play a crucial role in determining its success.



Emerging local government leadership issues

The next few years will create many challenging times for local authorities when strength of character and application of principle will be put to the test. Perhaps these are the essence of leadership. Politicians do not naturally stand for public office to make unpleasant decisions for the communities they serve. There is an increasingly disparate metamorphosis from election candidate to public office holder.

The former is free from constraint and responsibility, the latter is bound by them. The voting public do not always grasp the difference. 'I have voted for you and I expect you to do for me what you promised to do'. Western democracy has never been far away from personal interest but the constraints of public office frequently involve setting them apart. Devolution and localism, coupled with rolling back the state, pose both threats and opportunities for local government.

The demolition of the ethical framework for local government provides a challenge for leadership within the local government community. The framework established by the Local Government Act 2000 may well have been disproportionate, having regard to the resources required to maintain it, and over legalistic in its operation. Much of this may originally have been to do with the concern to have robust safeguards, such as a judicial appeal process, to protect undeserved damage to political reputation. Such reputation now sounds a little hollow following events in another place.

But ethical governance is part of good governance, and good governance is what conscientious democratically elected bodies strive to achieve. In repealing the ethical framework, there is considerable risk in throwing out the baby with the bathwater. The history of the western form of democracy is one as much to do with failure as success. Many democratic regimes around the world have thrived on corruption and eventually fallen at massive national cost. Ethical failure is at the root of them all. Power and ethical standards are not comfortable bedfellows.

Identifying ethical standards and applying the means to maintain them is the oilcan of democratically elected bodies. The local government family needs to demonstrate its strength of leadership in ensuring that its prevailing high ethical standards can be maintained, particularly at a time when greater tension is likely in a period of contraction and change.

The Nolan Principles remain untouched by the abolition process and provide a starting point for rebuilding. But the principles require clarification in the context of local democratic practice. The previous national code of local government conduct and the more recent statutory code sought to provide this. It must be expected that both the LGA and NALC will recognise their leadership responsibilities in the absence of a statutory framework, and formulate model codes for recommendation to their respective local

authority members, making use of what was valuable and effective from the regime to be repealed.

A voluntary code, that is a code without statutory force and without statutory sanction, will itself be a challenge. Those who wholeheartedly welcome the abolition of the 'standards regime' will not take kindly to its substitution. An alternative to statutory obligation is contractual. After the repeal of the statutory code, councillors may be more circumspect as to what they will sign up to. It is said that the sanction will lie in the ballot box, but it may be a rare party supporter who is minded to vote for the candidate of another party instead of their previously elected errant councillor.

Political parties will have an added responsibility within their constituencies to more carefully select candidates for public office who are prepared to comply with the ethical standards of the democratic body. Perhaps it is a good development for democracy that ethical standards are introduced at the candidate selection stage.

The mechanics of applying ethical standards rests with leading local politicians and their advising officers. Arrangements will continue to be necessary to manage ethical standards within local government. Statutory freedom will enable flexibility and proportionality. One useful opportunity would be to bring ethical standards closer to governance, by having a single governance committee with a leadership responsibility to manage all the processes of governance corporately.

At officer level, governance responsibility rests firmly on the shoulders of the Chief Executive, the Chief Finance Officer and the Chief Legal Officer. Perhaps this is the clearest opportunity for these three officers to demonstrate more coherently their leadership responsibility for good governance within their local authorities. Standing together on the high moral ground of both ethical and governance standards is strength indeed.

The Government is intending to revert to statutory requirements on registration and declaration of interests, with criminal sanction. Councillors may want to consider the implications of appearing before the Magistrates Court for 'inadvertent' failure of what some have described as the technical parts of the former code. The Government evidently recognises that these elements provide the main means of preventing bias and self interest in local government, the most obvious of ethical standards, which are replicated elsewhere in both company and charity law.

Of practical interest to officers will be who is to shoulder the duty to report alleged crimes to the police. All the more reason for the Chief Legal Officer (as the monitoring officer and acknowledged whistleblower) to work more closely with the Chief Executive and Chief Finance Officer in the future on these areas of ethical sensitivity.

It may be recalled that the Committee on Standards in Public Life in 1997 recommended the creation of a new offence about misuse of public office, partly to replace the common law offence of misconduct in a public office. This may provide an attractive option to the Government, in order to reinforce the less judicial ballot box with more criminal law. But with several government departments involved, enactment may be distant. Criminal sanctions are of course costly, time consuming and frequently frustrating, and rather detract from self regulation as an evolutionary mechanism for improving standards.

Devolution will bring with it other challenges. Some argue that local government has never been so more centrally controlled. Government controls the law, embodied in reams of detailed regulations and guidance. Government controls the finance, and, more

recently, government now controls the strategy. The scope for blue sky thinking in discharging functions is far away. With detailed control has developed a local government dependency on central government instruction. Local government 'sat nav dependency'.

At all levels officers have become reliant on and compliant with the rules and instructions of what to do, how to do it and when to do it. So much so, that when gaps are identified in the detail, the reaction is to turn to central government for more instructions. Central government has focussed essentially on expected performance in response to its requirements. It has also over reacted to the inevitable failings.

In the foreseeable future, cohorts of civil servants will disappear along with a host of other government bodies, from whom we have become used to receiving advice and guidance and instruction. All that will need to be replaced by the local bodies to which it is devolved, and by local government officers at every level exercising far more individual judgement.

Such a structural and culture change will require training and a constructive climate. Councillors and local government staff are not used to self reliance in vast areas of over governed and over regulated activity. In devolved administrations mistakes will be made, and a new tolerance will be required, by the public and politicians. Such tolerance is not always within a political vocabulary. The clutch plates that bind the councillor and officer working relationship could become well worn.

'To do more with less' is a platitude of hope over reality. Less money means limitations to existing services, but the public expectation will be one of continuing with what they are used to. Marketing bad news will require honesty rather than rhetoric. Devolution in the current cuts climate is about turning the tap off, not on. But devolution is about transfer of responsibility, as well as transfer of decision making. It could not be happening at a worse time. Managing the democratic process will test the endurance of Chief Executives, Chief Finance Officers and Chief Legal Officers, when local politicians know there is no one else to blame for their local decisions that conflict with public expectation.

Amongst the myriad of issues now facing local government, local government leaders at all levels are urged to spare a thought for maintaining ethical standards, developing local judgement and confronting public expectation.



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The Power of Change

The General Power of Competence has been much discussed over the last two years within local government. However, such has been the pace of change in the political and policy world since May that little attention has been given to one of the most significant legislative reforms of recent years. Whereas once this reform would have sat as the major plank of a piece of localist legislation, the Power is set to be one of some forty-five major reforms and revisions being made through the Localism Bill.

Situating the new General Power within the context of wider decentralisation and localism opens up additional challenges and opportunities. These will remain crucial to its success or failure.

In the first place, there is a challenge for civil servants and national government. With all these reforms coming forward, working to tight timescales and adapting quickly to a new Government with different policy slants and ways of working, parliamentary drafters will have their work cut out. However, NLGN's recent paper on the new power suggested that drafters should focus less on defining meticulously and laboriously a new series of specific freedoms for local authorities and more on simply removing the principle of *ultra vires*.

The very act of circumscribing the limits of activity undermines the role of local authorities, which are democratically-elected bodies with their own intrinsic legitimacy. The next wave of innovation and ideas will always be beyond the scope of the drafters' pen. Who could have predicted councils re-developing their role in mortgage support or banking prior to the credit crunch?

Of course, we have an idea of the next wave of innovations emerging on the horizon. Softer, more subtle, relationships and vehicles for community participation and ownership are needed. New methods of integrated working across public bodies to deliver innovative shared services and area based budgets may require new freedoms not only for local authorities but also for other public bodies. The next generation of joint ventures is likely to explore opportunities around income generation and a new suite of services. Councils need freedoms to carry out these activities. But they also require the freedom to think about a future series of policies and interventions to manage the reduction in public finances and re-energise local economies and democracy.

Experience in this country and abroad suggests that the Government should be wary of defining specific criteria for the new freedoms. This was tried and failed under the previous 'Well-being' legislation. As the then Secretary of State for local government argued during the introduction of the Well-being Powers into parliament in 2000, 'It is not local government's responsibility to engage in foreign policy or in issues that lie outside the scope of its public's concern about what can be effectively achieved locally. Local people do not want local government to take over the powers of central government; they want it to respond effectively to their wishes.'

There has been an interesting change of tone under the current Coalition Government. For, whilst Eric Pickles MP has similarly drawn the line at an invasion of France, there has been no other attempt to define what people may want from their local democracies. David Cameron was clear that councils should be able to do 'anything that is legal', by which he meant any activity that is not specifically prescribed.

The Well-being Powers in England undoubtedly were a force for good. A number of innovative councils adopted new techniques to respond to local problems, to resolve issues quickly and to develop new partnership arrangements. However, the judicial decisions on the LAML case in 2008 and 2009 undermined the worthiness of the Well-being Powers and set out clearly both the murkiness around how they could be used and their inherent limitations. Although the Labour Government moved to reform the legislation in the specific example of insurance mutuals, this could not conceal the underlying problems with the law.

And, lessons from abroad testify to a similar and simple truth – that when power is handed down it has to be done clearly, openly and as fully as possible. New Zealand – perhaps uniquely positioned to challenge England's centralised model of democracy and public services – has experienced the fall-out from an over-cautious and overly-specified legislative framework. In taking forward change under New Zealand's version of the general power, councils have to prepare a 10 year Council community plan projecting the activities in which the council will be engaged, the rationale for those activities, and the funding sources. This plan has then to be adopted through consultation. In addition, Councils are also required to go through consultation before forming or taking an interest in a company. The pace of change has therefore been slow.

Positioning the General Power within a wider devolutionary context also presents major opportunities and challenges to national politicians and local councils. For national politicians, the question remains how far the Government will stay true to its intentions to refrain from interference. In an international context, the reform is hardly revolutionary – it is required under the European Charter and has been introduced in many developed countries. But does the Government know what is in store?

Centralising policies under the Thatcher Government in the 1980s (for instance against the Lambeth and Liverpool radical Left) and under the New Labour Government (for instance when schools budgets were taken out of the control of local authorities) may have appeared reasonable to some at the time. Will the Government be able to resist stepping in when a council acts in a way that national politicians consider unreasonable but which is nevertheless legal?

What if local authorities took on additional commercial responsibilities beyond their existing remit which potentially put them in competition with private sector providers? For instance, would the government be happy to see (the partially nationalised) banking industry challenged by municipal banks offering credit services not only to small local businesses but residents as well? The Coalition's agenda of making government the provider of last resort may resonate in many service areas where private, third sector or civil society can offer new solutions. However, some local areas may feel that they wish to capitalise on their expertise or capabilities to supplement and compete in commercial sectors such as estate agency.

Optimists would conclude that positioning the new Power within a wider context of localist reform should give confidence that the Government intends to step back and allow local democratic solutions to thrive.

Finally, at the local level, the wider context of decentralising reform introduces major new dynamics. Councils are already being given new freedoms through de-ring-fencing,

planning reform and incentives for local business growth. As the historic centralisation is eroded, so power for change shifts to the local level.

Ultimately, success will rest in significant degree on the innovation within councils themselves. The changes present a major opportunity to link in more coherently the legal expertise within local authorities with the strategy and policy-making divisions. If legal services are consulted simply for approval of projected schemes then it is unlikely that councils will be maximising the new range of opportunities available. This puts a new emphasis and requirement on sharing of knowledge, best practice and innovation among legal officers in the local government sector.

What is more, if this reform is to unlock a new range of solutions, then the nature of risk itself will also be transformed. Rather than anxiety about the legal status of a policy change, local authorities are likely to become more concerned with the commercial, financial and economic risks attached to some of these propositions.

Maximising the potential of the new Power therefore rests on three foundations: on defining a wide remit for local councils; on ensuring that national politicians refrain from unnecessary intervention; and on a new understanding of local innovation and risk.

The speed and scale of change and localism may appear daunting to some, but it could also provide the catalyst we need.

Going nuclear? The general power of competence and what it means for local communities by Nigel Keohane was published by NLGN in August 2010.



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- 5 Opportunity to promote and participate in BLD's Legal Gateway Scheme targeting underprivileged youths and aspirational and budding lawyers
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- 7 Dynamic database of ethnic minority lawyers
- 8 Aid the public sector organisations in meeting legal obligations under the Race Relations Acts
- 9 BLD is the fastest growing online network of ethnic minority lawyers in the UK and Europe
- 10 We believe diversity is about 'All of us'

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supporting
solicitors



Inspiring The Passion For Leadership Excellence

Solicitors are at the heart of some of the biggest decisions of our lives. They are there when we buy a house or when we are going through difficult times. They help protect some of the things that we hold the dearest. And they are trusted with the most intimate details of their clients' lives.

For solicitors, our customers are not over a phone line in another continent or hidden by a computer screen, they are sitting opposite us, often in a great deal of distress.

In my own experience as a clinical negligence specialist my clients would have come to seek my help after being told the most distressing news, the longed for child would need a lifetime of 24 hour care with very little support available from the state, or a mother with young children facing a life without her beloved husband and also financial ruin.

My clients had put their trust in one profession and had received poor care and now they were being asked to put their trust in another professional, who again had knowledge and skills they did not possess. My legal skills were taken for granted but equally important was my ability to relate to them and to ensure that complex issues were explained clearly to enable them to make informed decisions. My clients relied on my professional skills to show them how to navigate our legal system sensitively and with compassion.

It is no surprise then that absolute excellence is expected – and demanded - from solicitors, from clients but also from the profession itself.

As President of the Law Society I am proud that solicitors take this commitment to professional and personal excellence very seriously. Part of my role and that of the Law Society is to rebut public misconceptions about the profession and ensure that there is no confusion between those who provide similar or the same services as solicitors but do not adhere to our standards.

Solicitors are highly skilled, trained and ethical professionals whose work places us at the economic and civic heart of our societies. Solicitors show leadership as guardians of the rule of the law and the protectors of people's access to justice

In jurisdictions where the rule of law is established it is a solicitor's job to protect it. In jurisdictions where rule of law is absent or lacking solicitors must lead from the front and redouble efforts to bring it about and strengthen it.

It has been said that the rule of law is all pervasive – the glue which holds our society together and the silver thread that runs through that are lawyers. It is important that policy makers and the public realise that.

All solicitors have common duties and share a sense of purpose. The duties are to act with integrity and independence; to maintain proper standards of work; to act in the best interests of clients; to comply with their duty to the court; and to keep the affairs of clients confidential. When you became a solicitor you made the decision to spend your professional career promoting those principles.

We will always put the interests of clients and our duty to the court above our own interests. That is what it means to be a solicitor. Our guiding precept is, and always will be, in seeing that the rule of law is upheld and seeking to ensure that everybody has equal access to justice. That commitment is our internal ethical motor but it is also formalised by exceptionally high professional standards.

Our shared sense of purpose helps to underpin a decent, democratic and lawful society. This, combined with intellectual excellence and professional rigour, gives us a unique platform from which we can make our voices heard and a role in society that few other professions can match.

Over the coming years solicitors will continue to demonstrate professional leadership through their commitment to practising high ethical standards, upholding the rule of law and delivering access to justice.

Good leadership from the top is especially important now that governance across the board is under scrutiny because of the need to make cuts to public services.

I want my members to have confidence that I can lead them through the difficult times that will lie ahead. By having a clear vision for the profession's future I can help them do that.

When I think about inspiring passion for leadership excellence it is the commitment to excellence from the profession that I belong to that inspires me. It makes me even more determined that, as President of the Law Society, my job is to make clear to a wider audience that solicitors are the guardians of the rule of law and the protectors of people's access to justice. It is that vision, and confidence in the profession's excellence that inspires my leadership.



The Bar is Open for Business

The Bar is a profession steeped in history, having been providing expert advice and advocacy since the 10th century. The Bar is nonetheless modernising and adapting to the needs of local authorities and other large purchasers of legal services. In the 21st century the Bar is no longer a remote or exclusive profession.

We are now firmly in the grip of the Age of Austerity and consumers large and small are seeking to reduce their expenditure and obtain better value for money. We understand that local authorities want to rationalise their legal services spend so that they can predict relatively accurately how much they are likely to pay for certain types of work. And we know that local authorities are interested in working out how they can use the Bar more extensively.

I have had a number of discussions with local authorities and other large purchasers of legal services who are putting in place strategies to reduce their legal spend, including by running competitive tender exercises which offer a volume of work in exchange for discounted rates. The Bar is learning how to become more attractive to local authorities and we are getting the message out to local authorities that the Bar is a relatively **low cost, high quality, and accessible** provider of legal services.

A single contractor

We know that local authorities want the security and ease of having a single body to contract with, whilst retaining the flexibility and choice of being able to instruct a number of different barristers. Chambers up and down the country are developing companies to make themselves more attractive to purchasers, by providing a one-stop-shop for contracting and billing. The Chambers can then enter into a contract with the local authority and supply a single entity that is entitled to sign the dotted line on behalf of many barristers. This can provide local authorities with access to many barristers, whilst retaining the security and stability of contracting with a single entity. We are increasingly learning of local authorities that are including this as a requirement in their tendering and contracting process.

Low insurance risk

We know that many local authorities will have in place policies for minimum insurance requirements for contractors. Please do not be alarmed if the Bar's professional indemnity insurance arrangements are different from those that you may be used to. The Bar has a longstanding professional indemnity insurer in place (the Bar Mutual Indemnity Fund or BMIF) which has extensive experience of calculating risk for the Bar and then in turn setting individual requirements for minimum cover. The Bar's insurance risk is impressively low and it is a mandatory requirement under the Bar's professional conduct rules to have in place required levels of professional indemnity insurance as determined

by the Bar's insurers. Local authorities can therefore take comfort in the Bar's mandatory professional indemnity insurance requirements, which are also strictly enforced by its regulator. Local authorities therefore only need to impose a broad tendering criterion that individual barristers comply with the insurance requirements imposed by their regulator.

Strict and comprehensive regulation

The Bar Standards Board was formed as the independent regulator of the Bar in 2006. We have gone from feeling a sense of trepidation about our new regulator, to wholly embracing strict, comprehensive, and independent regulation. The high degree of regulation of our profession represents a kite mark of excellence and is a strong selling point – local authorities can have confidence in the requirements and standards imposed on the Bar by our regulator, which acts with statutory authority under the Legal Services Act 2007 in the interest of the public and of consumers.

The Bar can do more than ever

Barristers are much more than the traditional image of a court room advocate wearing wigs and gowns. We also provide written and oral advice at a competitive price, which if sought at an early stage can reduce the cost of what otherwise might have become lengthy and costly litigation. We are increasingly taking on work that has traditionally been seen as "solicitors' work" – we can prepare witness statements, collect evidence, and conduct correspondence. The Bar can take instructions directly from clients, without the need for a solicitor, which can help to **reduce costs significantly**. Where a solicitor is required, the Bar is able to refer work to a solicitor to ensure that the local authority receives a full-range of services, at a competitive price and from a one-stop-shop.

The future

The Bar is becoming increasingly experienced at participating in tendering exercises for a bulk of legal work. Many Chambers employ sophisticated and business savvy Chief Executives, Practice Managers, and Business Managers. The Bar is rapidly modernising and looking to expand its market share, in particular by developing and maintaining good relationships with local authorities for advocacy, litigation and advisory work.

The Bar Council is always **willing to assist local authorities** in any way considered appropriate. This could include anything from providing advice on tendering criteria, where to advertise tenders, and any sticking points that might arise in direct contracting with the Bar. We are also continuing to educate the Bar on the evolving needs of local authorities and other purchasers, and we always welcome feedback.

Feel free to contact the Chairman's Office directly, by telephoning or emailing Ariel Ricci, ARicci@barcouncil.org.uk.



7 Models for Local Government Legal Services – A Discussion Paper -

At a Round Table meeting called by me on Wednesday 22nd September 2010 the following persons contributed to the development of this discussion paper, under Chatham House Rules:-

- ✓ Geoff Wild, Director of Law & Governance at Kent County Council;
- ✓ Philip Thomson, Essex County Council;
- ✓ Mark Hynes, Lambeth London Borough Council;
- ✓ Deborah Collins, Southwark London Borough Council;
- ✓ Beth Evans, Bevan Brittan Solicitors;
- ✓ Mark Greenburgh, Wragges Solicitors; and
- ✓ Tony Kilner, Policy and Development Officer for ACSeS.

Colleagues found the deliberations most beneficial in moving the “Shared Services Conversation” forward and broadly concurred with the President’s 7 Models for Local Government Legal / Support Services, which were presented as a continuum but recognising that each Local Authority would want to consider the relevant Model applicable to its local circumstances and that the Models could be applicable to the whole of the Legal / Support Services Department or to a part of the Department (for example: Employment, Civil / Criminal Litigation, HR, Finance, Payroll teams).

The continuum is shown on the attached diagram – with a Traditional Model at one end and an Externalisation Model at the other end. It was agreed that this conversation be presented as an article within a relevant publication for wider debate and discussion amongst local government and the public sector.

In terms of each Model, there are choices with regard to the “legal entity” to be created and there were various options for the same. For example, the Model could be an Industrial & Provident Society, a Management Buy-out, a Company Limited by Guarantee, a Community Interest Company, a Limited Liability Partnership, a Charity, a Trust, an Unincorporated Body or a Partnership under the Partnership Acts.

Clearly, there are major issues to be considered with regard to the employment (or the employability) of staff, including the potential for secondment and TUPE transfers. Moving in between or from different Models will also, undoubtedly, entail a review of staffing structures, competence, systems and processes. The predominant objective must, however, be one of improving the quality of service provision to local government and the public sector, as a whole, with appropriate leadership / managerial cultural change and improvements in productivity, efficiency and effectiveness of outcomes.

Leadership, management and career opportunities for staff must also be considered as such Models cannot operate in isolation of such important factors. Each Model will entail different skills and abilities for the various individuals and this can only be achieved through effective and efficient training and development of leaders, managers and the development of the right level and extent of skills for lawyers/support staff. The issues will also entail consideration of insurance and pension provisions.

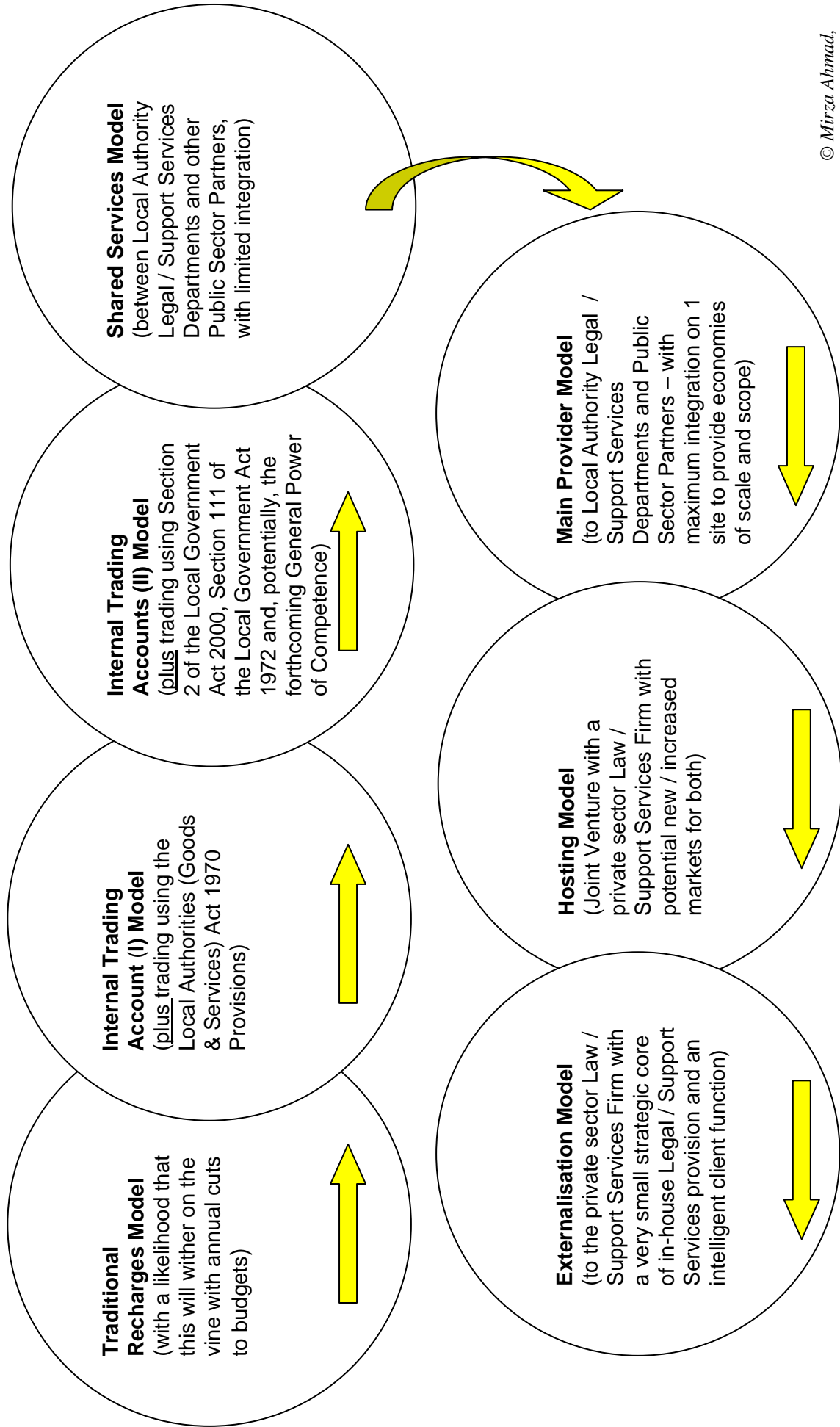
Carried to its natural extension and conclusion, the President of ACSeS outlined his vision, over the next decade, of a potential UK wide Local Government Legal Services Model which was hypothecated on a regional structure based on six Centres of Legal Excellence around, e.g. Birmingham (for the Midlands region), Kent (for the Southern Eastern region), Essex (for the Eastern region), Bristol (for the South West region), Cardiff (for Wales region) and Leeds (for the North West / North East regions). Such a UK Model could also incorporate the Scottish and Northern Ireland dimensions and, in time, come to lead the world in terms of provision of Local Government Legal & Support Services.

In terms of developing this conversation further, ACSeS is inviting key stakeholders within local government and the public sector to enter into this public debate. ACSeS will also be producing additional information, for ACSeS members and others, so as to show leadership in this area and to make it possible for relevant leaders to explore the various Models for best effect within their localities.

Clearly, ACSeS recognises that, in today's age of austerity, any change from one Model to another must generate tangible efficiencies and effectiveness improvements, including substantial cost reductions. ACSeS stands ready, therefore, to enter into a dialogue with all the professional associations - such as SOLACE, CIPFA and other key stakeholders, such as, DCLG, Deloitte, KPMG, Ernest Young, the Government Legal Service - who may have an interest in securing greater value for money for (or from) local government and the wider public sector.

Anyone wishing to enter into this conversation should contact, in the first instance, the President of ACSeS, Dr Mirza Ahmad, Corporate Director of Governance at Birmingham City Council (Mirza_Ahamd@birmingham.gov.uk), especially if they are willing to participate in a Round Table discussion for all Support Services, not just Legal Services.

7 Models for Local Government Legal & Support Services





Doing More With Less (Or How Big does a Council Need to be Anyway?)

If you had to identify, in one word, the reason why the human race has not achieved, and never will achieve, its full potential, that word would be "meetings." ~Dave Barry, "Things That It Took Me 50 Years to Learn". With plans to equalise Parliamentary Constituency sizes and reduce the number of MPs at Westminster, it seems that it is legitimate to discuss whether size matters in the Council chambers of the land.

The Commons is not the first governmental chamber to re-visit its size. The House of Lords Act 1999 reduced the size of the "Upper House" from 1330 to 669 by the exclusion of all but 92 hereditary peers in 2000. (It has since grown to 772 despite the subsequent departure of the "Lords of Appeal in Ordinary" to the new Supreme Court). There does not seem to have been an outcry that the quality of national governance has diminished or subsequently been replenished by reason of this dramatic change in the number of sets of brain cells available to make laws and hold the executive to account. Do numbers matter at all?

There does not seem to be a consensus on how many elected councillors you need. The Local Government Boundary Commission for England has noted: "The current number of councillors in each authority is mainly a result of historical trends which, in most areas, have evolved very little since local government reorganisation in 1974. Additionally, there is wide variation in council size across England, not only between the different types of local authority – metropolitan and shire district councils, county councils and London boroughs – but also between authorities of the same type." The Commission has decided to "respect this diversity" rather than challenge the status quo despite the impact of the introduction of executive arrangements under the Local Government Act 2000. [LGBCE Technical Guidance for Electoral Reviews, April 2010.]

I have every respect for the Commission but it surely cannot be right that at West Somerset it appears that the district level functions there can be effectively run by just 28 members with an electorate of just over 1000 voters each while at neighbouring Sedgemoor, 48 councillors are needed to run the same district council functions with each being accountable to an electorate of around 1900 voters. Time for a fundamental review of how many councillors you need to run a Council!

If Ken or Boris can be the sole executive authority for an authority with 7.5 million residents, why do other Councils need executives of between 3 and 10 members? How many members does it take to scrutinise an executive? Planning Inspectors and District Judges are making decisions on the most difficult planning and licensing matters alone: why does it take a committee to make the easier ones? (And why do 25 out of the 48 Councillors at Test Valley need to sit on one committee to deal with planning matters in the south of the borough? Because 26 of them sit on the committee that deals with the north! And there is another committee of 17 that deals with the planning decisions that cannot be made at those committees!)

How about a statutory maximum of 13 members on a Council? PS: San Francisco has 11 members on its City Council.



Leadership in times of change and austerity

I was originally going to write about leadership in times of change only. This was prompted by the very ambitious Coalition proposals and regular letters from the CLG during the government's early weeks about forthcoming changes. However it soon became apparent that the austere time in which we find ourselves is of equal relevance.

Local government is used to changes when there is a new government of a different political persuasion. However I do not think any of us can remember a government that had indicated so many changes in such a short space of time as the present one. The Coalition document in itself is ambitious but one look at the structural reform plans of the CLG and other departments is evidence, if any was needed, of the desire for major change to be carried out relatively quickly. Add to this the regular letters from the CLG about issues as wide ranging as the planning regime, liquor licensing review and streamlining temporary road closures for street parties and we can be left in no doubt that we are in for an interesting time.

There is also the abolition of bodies such as the Audit Commission and Standards for England along with, in the latter case, the present standards regime.

Coupled with all these proposals for change is what is being increasingly referred to as a period of austerity. We only have to look at our own budgetary circumstances. There cannot be any of us who has not had to look in detail at the functions we perform and what would happen if we ceased to do so or did so at a lower standard or reduced level.

Authorities will all find themselves in different positions. Some will be having to make swingeing cuts and will be considering large staff reductions and reaching agreement with neighbouring authorities for carrying out some of their functions; this includes the legal service in some cases. Some will be at the other end of the spectrum where savings can be made without large scale staff reductions but with reductions in services nevertheless. There will be a range of variations in between.

As well as making cuts or savings, authorities will be looking at how they can increase their income. This will go beyond the usual raising of fees and charges. Officers and members will be coming up with various ideas, some more wacky and outlandish than others.

Where does the lawyer fit into all of this? What can we do to enhance our role?

There has been a trend in recent times for the lawyers to be the last to know when things are happening. How often have we found ourselves in the position where towards the end of the project someone has thought "Oh well, I suppose we ought to get legal to check this through" only to find there is no power and what is being proposed cannot be done as planned. No one wants to be told that had they consulted us first we could have advised them on how they could have achieved the same outcome within the same timescale but in a different way. As Councils look to implement changes and cut costs or raise new income we are going to have to be on top of what is happening, and our game,

to ensure that the Council acts properly. This is the ideal time to show some leadership and enhance our reputations.

Looking ahead the only certainty is that local government is going to change, and change radically, in the next few years. We are going to see more shared service arrangements and more working with other public service organisations, not only to make more efficient use of scarce resources but also to give more resilience. This is probably much more the case at district council level where we will often have only one lawyer in certain areas of work

The one thing these have in common is the need to ensure that sharing services, raising income and all other initiatives are undertaken with the right structures in place and, most importantly, with the right legal powers. The Section 2 [of the Local Government Act 2000] well being powers may not be used as extensively as they could be but they are not the panacea many officers believe them to be. For one thing they cannot be used as the primary power to raise money. Whether the general power of competence that seems likely to be coming our way will enable this is not yet known but, somehow, I doubt it.

ACSeS members need to be fully aware and understand the implications of what is in the Localism Bill when it is published. We need to be in a position to brief our management teams on the provisions and what they will mean to our individual authorities and start the thought process going as to what our authorities need to be doing to get themselves into position to take advantage of new powers we may be given and, e.g. winding up our standards committees.

Not only this, but we need to be thinking about shared services and what our authorities may be needing to do. Do we want to outsource and therefore go through a tendering process or “go into partnership” with one or more authorities with the attendant issues of TUPE etc. Whatever route is chosen it is not quick and groundwork is needed to enable whatever process is chosen to proceed smoothly.

There are other dimensions to these issues. I see these as the political environment in which we work, those who use council services and, last but not least, our staff.

We all work in a political environment and, in whatever direction we find ourselves and the council moving, we cannot lose sight of this. Councillors will be concerned at the difficulties facing them over balancing budgets over the next few years and the effect this will have on service users. There may also be concerns about what could be seen as ‘loss of sovereignty’ if the shared services agenda pushes on apace.

We are already seeing councils saying that they will have to cut services in order to make ends meet. Some of these are services delivered to the most vulnerable in our society. Are there other ways that the savings can be made or the services provided?

Senior lawyers all manage staff and we will be concerned about their futures in whatever brave new world we find ourselves. All have embraced the public service ethos and many have worked for years in this area and built up considerable expertise in their fields. We have to ensure that this ethos and experience is not lost.

This article is, inevitably, an overview of what lies ahead. But, whatever comes along in the next few years, ACSeS members have to be fully appraised of the changes that are coming and their implications. These are undoubtedly challenging times. This is our chance to show that we are not the stick in the mud local government lawyer of popular imagination who is out to stop innovation happening, but the person who can ensure that the changes happen smoothly and lawfully and, where appropriate, take the lead.



Leadership During Hard Times

Is a leader natural born or nurtured?

This is a moot point that you may have tried to answer and often the safe answer given is both apply. Whilst leaders are born to lead, their upbringing and environment within which they grow up also plays a role in the leadership skills that they acquire.

So who are the leaders who have influenced many people? This question is often answered by mentioning names such as Mahatma Gandhi, Winston Churchill, Nelson Mandela, Bill Clinton and now Barack Obama.

It is often said that many first born children go on to become leaders. That is not to say that second or even third born children never become leaders. It is the large number of first born children who have become leaders that has been notable.

So what do leaders have in common?

- Charisma
- Confidence
- Excellent communicators
- Takes calculated risks
- Has strong following
- Good influencer
- Innovative
- Not shy about being in the limelight
- Good at delegating tasks
- Good at motivating others

But why do people follow leaders? Well I had an interesting experience in the United States where I attended a conference. I learnt about 'the dance of leadership'. And yes, we actually danced to demonstrate the 'dance of leadership'. As the leader danced others followed. The point of the exercise was that a good leader can even get their followers to do something like dancing with them at a conference.

The lesson is that people will follow a leader because they believe in them and have confidence in what they are doing.

In the complex world that we live in we often have to juggle many demands as leaders and these include:

- performance management
- people management
- excellent service delivery

- risk management
- financial management
- information/data management
- change management
- meeting public expectation whether in the private, public or third sector.

So how does a successful leader manage to achieve all of these challenges and still retain their sanity and sleep soundly at night?

Values

I start by looking at my values. When I am leading my team what matters to me most? My commitment to public service is a good starting point for me. This is followed by my desire to provide an excellent service to the community. To deliver an excellent service I need a motivated and talented workforce.

Together with my team I want us to innovate, experiment, have a no-blame culture and be risk aware not risk averse. We work in a political environment and we must be politically astute and sensitive in supporting the Councillors.

Vision

Words are important but so is the big picture. We need to feel, see and sense what we do and what we want to achieve. As a leader your followers need to understand the journey and your intended destination. They need to understand why you are taking a particular course and what contribution they can make to achieve success.

It is important therefore to communicate our vision. I like the 'red coloured high performance' car to illustrate my vision. There are plenty of other examples that can be used but ultimately the message is "be the best at what you do". Give the community the best that is available. The 'best' can be defined in many ways and does not always mean the most expensive.

The Challenge

The Challenge is the actual service we provide. For this we need an effective strategy/business plan. A good leader will develop this with their team. After all they are at the front line of delivering the service and they have first hand experience of what the public ask for and their views on the quality of service provided. It also makes the staff feel valued, involved and more committed.

Staff should be empowered and given responsibility. Trust and confidence are essential and there is no room for a blame culture. Innovation should be encouraged in a safe 'risk aware' environment. There should be a mature approach to working in partnership with talented staff.

The beneficiaries

I call our clients, customers, service users 'the beneficiaries' simply because they will benefit from the service that we deliver. We must actively engage with them and not just give them the service that 'we' believe they want. There is nothing better than asking them. In the private sector they frequently conduct market research. In the third sector they work with communities and are quick to pick up emerging issues. In the public sector, especially in local government, our Councillors become aware of issues through their active engagement with residents in their wards, at surgeries and we also conduct our own surveys.

To be a successful leader who delivers excellent services, we need to be out there in the community listening to people's concerns. Regular surveys and focus groups plays a key role. Partnership with other local organisations is equally important. Without this, we cannot be effective leaders.

Change and more change

We live in a changing world and we all need to adapt to this. This is very much suited to a 'transformational leadership style' where a leader is comfortable with managing change and willing to embrace and effectively communicate the reasons for change.

The transformational leader is quick to see changes occurring in the environment and will take timely and appropriate action to move with the changing times.

The skill required is to be able to take the staff along by getting them to share your vision and see the same picture. We know change can be frightening to many people so we need to manage this skilfully. Communication is key to success. Tell staff all they need to know – no surprises or what I call 'corridor conversations' between small groups of staff. 'Tell one, tell all' is my motto. Explain why change is needed, what staff can do to assist, what is in it for them and the outcome you are hoping for.

I particularly enjoy introducing and managing change because my previous work in Law Centres where we worked as a collective has prepared me well for this. I manage change in a 'collective' way. Dealing with fears, uncertainty or lack of commitment is part of the course.

In any change there are opportunities and this should be given prominence to encourage staff and give them confidence. In any change there is also an opportunity to learn new skills and this is often overlooked. Job opportunities are greater if we acquire more skills.

The rewards

Yes there are rewards for leaders and their staff. What can be better than job satisfaction through high client/customer satisfaction. We are here to please and when the 'beneficiaries' are happy and satisfied we know we have done a grand Job. It is true that sometimes the job can feel like a 'thankless' task but more often than not, our beneficiaries appreciate a service when we meet their needs. We must take time out to celebrate our successes. We owe it to staff when they work so hard to meet and exceed the 'beneficiaries' expectations.

That is the way to motivate and thank them for their hard work. Many organisations run bonus payment or staff awards schemes precisely for this reason.

Conclusion

With limited resources to deliver essential services, our leadership skills will be tested to almost breaking point. In the years ahead with anything in the region of 20% to 40% less financial resources, our effective leadership skills would be stretched to their limits. We would need to remain focused, motivated, committed and retain equally talented and committed workforce.

We will be expected to deliver excellent services with less and the most successful leaders would be those who are still standing upright with a solid team around them at the end of the course. Let's get going colleagues. It will be a bumpy and uncertain road but we have risen to the challenge many times before in local government and will continue to do so.

LEADING BY EXAMPLE

As one of the UK's leading law firms, Dickinson Dees has the expertise to offer the best possible advice and support to our colleagues in the Public Sector. We build relationships based on mutual understanding, and have a proven track record of meeting our clients' needs.

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Reading the Runes

If you've been around the workplace for the best part of a life sentence, you'll have noticed how much has changed over the years. Where for instance have typewriters, carbon paper and memoranda gone? Whither, for that matter, slide rules, adding machines and the clattering of the municipal tea trolley? Withered away and evolved out, that's where.

For the older you get the more you might have to stop yourself intoning that, 'It wasn't like this in my day'. It certainly wasn't! Nevertheless, if you're still roaming the workplace, the odds are you've kept sufficiently up to speed with practical Darwinian theory. For as the celebrated evolutionary biologist never said: 'it is not the most intelligent nor the strongest species that survives but the one that most readily adapts to change'. So those who wish to go the way of the pterodactyls, as you were!

For local government, being politically driven at both central and local levels, is eternally restless and can often feel like the famous cynics' definition of history – just 'one damn thing after another'. From CCT, to best value, to CPA, to CAA to Big Society to. . . On, on and relentlessly on. But of course there's no use asking the world if it wouldn't mind stopping for a minute while you get off for a cup of tea, because clearly it won't. So in a burst of oxymoronic splendour, you and yours will need to go with the flow whilst at the same time swimming creatively against the current!

Here are a few pointers:

1. Read the policy runes at both national and local levels. Seasoned and reputable political and sector journalists will often have their fingers on the national political pulse (as they're paid to get close to the players involved) and it's important to have a feel for the likely weather on the road ahead when planning the journey;
2. At local level get into the corporate space and make things positively happen there. Ensure (like Thomas the Tank) you and yours are seen as 'really useful engines';
3. Clearly the day job has to be done and you're likely to be good at it otherwise you wouldn't be where you are. But what exactly is it? What are we all doing and why? Do we actually need to do all of it the way it's currently done? Does anybody? If yes, could it be done differently? Could we for instance do it more efficiently with other authorities or organisations? Could they do it better and more cheaply without us? If so how can the skills and experience currently absorbed in it be valuably redeployed?
4. Ask yourself regularly what you're for – at least at work! What value are you adding? Would the organisation suffer if you weren't there? If not what can you do about it. These are tough but salutary questions that can be asked at all levels.
5. Avoid defensive territorialism. Local authority status structures traditionally depended on size of department and the number of people reporting to you. This clearly won't play in the present globalised and hi-tech world. Status is now much

more likely to come from achievements rather than position. Motivate yourself and your team accordingly.

6. How can the authority take a lead on what used to be called 'Total Place' but which is now apparently emerging as 'place-based' or 'community budgeting'. There is a compelling logic to area financial and service synergy for public services.
7. How well do you know your people? Do you know what hidden talents they may have other than those you see them using in putting their nose to the daily grindstone? If not you should find out. Think of the value you could release for your authority if you gave them something to do which unleashes the hidden 'genius within'.
8. Make sure you and yours do what needs to be done rather than what you feel like doing. **How** it's done though might be more flexible to enable release of individual seams of creativity.
9. Expect the unexpected. Not for nothing are timeless myths populated with surprise attacks from monsters. For these are metaphors for our daily experience of reality. World War 2 fighter pilots were warned to: 'Beware the Hun in the Sun'. It's often what you're least expecting that will find your Achilles heel. So while driving energetically forward, do keep a weather eye on your rear and side mirrors and keep tuned into the corporate and political wavelengths.
10. But to manage effectively in a rapidly changing environment, you'll need to inspire and fire-up the troops. So if you're feeling battle-weary - and frankly at times anxious - start with firing up yourself. Or at least make sure you don't generate viral cynicism! At the risk of giving the famous 15th century war hero over exposure, you could do worse than follow Shakespeare's Henry V. For before the Battle of Agincourt where the English were hopelessly outnumbered, Henry takes time out to visit and encourage his 'ruin'd band' of troops. And despite his own anxieties:

'Upon his royal face there is no note
How dread an army hath enrounded him. . .
But freshly looks and over-bears attaint
With cheerful semblance and sweet majesty;
That every wretch, pining and pale before,
Beholding him, plucks comfort from his looks'.

That's the way to do it!

But to live up to the constant reinvention and re-creation that leadership now demands you'll need plenty of resilience and underlying self-belief. And a support network is vital. Which is where ACSes can play such a valuable role. For you're bound to find an ACSes colleague facing similar challenges with whom you have creative rapport. And the professional network at Branch level can be of immense benefit to your authority e.g. in shared services or in setting up suitable corporate governance structures for place-based budgeting.

You won't be good at anything – no-one ever is. But just like all those in your team, there will be some things you're hot on - aside of course from the usual sub-atomic legal particles. It's clearly taken for granted you all can tell your Wednesburys from your Thursdays! The trick is to make sure that so far as possible you and yours are all managing to get a crack at what you're good at and what drives you. For as the old saying goes, find a job you love and you'll never have to work again.

It's not so long ago that the only computer in the building filled a whole room to yield probably no more processing power than does the average mobile phone today. Now a powerful personal computer is central to us all in the workplace. The world is turning ever faster. Hold tight!



Relying On Goodwill

The number of hours to be worked by a local government lawyer as set out in their Statement of Particulars has long since ceased to be an accurate reflection of their weekly time commitment. Even the standard Job Description qualification to this provision that from time to time you will be expected to work over and above the 40 hours (or thereabouts) has become the epitome of understatement.

As most employees choose public service, at least in part, to give something back to their community, it has not historically been a problem that legal managers have relied on a generous slice of goodwill to keep clients happy and to maintain or enhance service standards. In a year's time, however, it is likely that the child protection solicitor who is wearily taking out the files from her briefcase at 9pm after making tea and putting the children to bed because she is covering for a sick colleague at court the day after is also subject to one or more of a pay freeze or cut, no increment the previous April and car park charges. In a time of unprecedented austerity, how can leaders generate the goodwill amongst staff that is vital to deliver services and maintain the reputation of the legal function within the authority when they have less incentive than ever to offer it?

It is not possible to provide a detailed answer to this question in this article but I share some headline thoughts based on the experience of managing staff who have recently undergone unitary transition and many of whom have a new place of work, a new job and a new line manager to get used to along with the stringent savings measures that apply to all of us.

- **Performance Management** – This may seem a strange “incentive” but we have a great opportunity to emphasise that performance review and reporting is not a stick to beat out incompetence but is a demonstrator of excellence and value.

As part of a new focus on performance management at Cornwall, we are engaged in a comprehensive process of Business Process Re-engineering. Streamlining the way we do things is not just about driving out inefficiencies but enables staff to eliminate the frustration of waste and to create a way of doing things that saves time, makes their lives easier and enables their work to be more rewarding.

We can easily make the false assumption that lawyers like to do things their own individualistic way and would resist attempts to standardise. The reality is that by taking duplication and delay out of the process, the client is happier and the lawyer has the benefit of a procedure that is shared and understood by the team but does not stifle personal flair or creativity.

- **Training** – Pressure will be rightly applied to review and possibly reduce this budget but the preparation of a comprehensive Service Training and Development Plan is both a catalyst to do this and gives new momentum to approach training in a more innovative way. Lawyers should research and provide more training for their colleagues and clients and be encouraged to write legal articles. Both attract CPD and develop new skills and instead of sending individuals to London, we are

looking to bring trainers to the Council to deliver more bespoke events to a greater number of staff. This means that there can be a consistency of approach across the Council so that a recent Procurement Law Update by a Barristers Chambers (expenses only!) was well-supported and received by the Procurement Team and senior client managers as well as a wide spectrum of legal staff.

It is also worth looking at imaginative management development – such as The Colour Works or Olivier Mythodrama - rather than the traditional legal discipline training courses we rely on for CPD points. We are also looking to train our managers ... before they even become managers ... thereby succession planning, investing in our junior lawyers who have potential to advance and who we cannot reward in direct financial terms and reducing their chance of failure if and when they are promoted.

- **Flexible Working** – By this I do not mean a “flexi time scheme” which over the last fourteen years I have seen imprison rather than liberate staff. We are trying to set overall work objectives rather than expectations of presence in the office for a certain amount of time at certain times of the day. Investment should be made in the technology of home working and good quality open plan offices and managers should be helped to fulfil their responsibilities based on intelligent performance review rather than thinking that unless a direct report is chained to the adjacent office desk, they cannot be sure they are actually working.
- **A Clear and Confident Vision** – Local government legal services can try to survive these difficult times either by heading for the bunker or by seizing the opportunity a crisis presents us. In parallel with doing what we do better, we are going out to offer our services to Big Cornwall! We are good at what we do and we are going to persuade other public services in the county (and beyond!) to use us or work with us. It is a demonstration of quality to our corporate masters and a resounding note of confidence in our sacrificial staff.

Taking positive measures to generate goodwill should not be a cynical ploy and reliance on staff working above and beyond the legal minimum should not be an excuse for poor or exploitative management. We cannot deny, however, that if we are to thrive in troubled times, we need our staff to be exceptionally motivated and productive and as leaders, we need to create the ethos and conditions that inspire that approach.

Ultimately, my child care solicitor should be able to watch “House” or indulge in Facebook when the kids are in bed but should she have to prepare cross-examination, the knowledge that the Service knows where it is going, is improving its processes, allows her to work from home when convenient and has identified her as a future manager and is backing that with effective training should help to generate the essential goodwill to go that extra mile!



Bridging the Gap

The “bridge” as metaphor has become a familiar part of the communicator’s lexicon. We are for ever “building bridges” between interest groups and factions and when we note that this is often more difficult than hoped for it will almost certainly be a “bridge too far”. The literal simplicity of the concept and its metaphorical appropriateness are genuinely comfortable side by side and the reader doesn’t have to work very hard to see what the author wants to say.

Just sometimes however this familiarity means we slide over it all too easily, barely pausing to contemplate what is actually being described. I am probably guilty of this as well; I can certainly hear myself saying to groups of lawyers, by way of example, that it is down to them now to build bridges across the profession to ensure that clients see real value while also protecting the fine ethical and conduct traditions of a great profession. Nice words perhaps, but I also know that there is a world of difference between writing a well turned sentence for a speech or an article and practically managing a team or business through a period of scrutiny and major change.

So, I would like to work a little harder in this article to describe what I mean and not just rely on a metaphor to camouflage the fact that I have failed to give specific examples of what I mean. What then is the “bridge” I believe has to be built and what do I really want lawyers to do?

First let me describe the issue as I see it from a UK perspective.

In the boom years of the eighties and nineties lawyers did very well. Work was plentiful, clients were successful and there was a general acceptance that good lawyering would be expensive. Although law firms talked up the fact the market was becoming very competitive, in reality clients did not exploit this and they were not very efficient in the way they selected or managed law firms; in addition most law firms invoiced their clients by one mechanism or another on a time charged basis – a basis that actually rewards inefficiency.

Now, however, the position has changed dramatically. Work is not as plentiful, clients are not as successful and clients also know that every supplier, every advisor and every consultant must be able to describe value for money or risk not being selected. Clients are becoming more efficient and furthermore there is also real (and new) competition in the market from new types of legal services provider and from a number of global players who can commoditise the product and offer price certainty.

In many senses this is mostly good and certainly about time; but not everything about what is new is good; in the same way that not everything about what is old is bad. The challenge for law firms and for lawyers in in-house teams is now probably the most fundamental challenge the profession has faced for decades – how to shape legal

services in this century that delivers something appropriate and affordable for clients, but that does not diminish core professional values.

So, having set out the issue, this is where I would like to introduce, I hope legitimately, a “bridge” metaphor; a bridge with many columns relying on a mutually supporting contribution from both sides of the legal profession, in-house and law firm.

It would be very easy to look at the role of the in-house lawyer and say that primarily they should be forcing down the price of external legal services to their employers while providing through their own resources an expert service of value to their employers as well. In my view however this is misguided. Driving down costs is a legitimate pursuit, but not as an end in itself; at some point we must value quality as well. Neither is it appropriate to imagine that an in-house team can deliver a comprehensive service just through its own resources.

The challenge therefore is huge – law firms and in-house teams working together to deliver a comprehensive service that is appropriately expert, efficiently designed and thoughtfully communicated to ensure value is seen and quality appreciated. This cannot be achieved, however, simply by driving down the price or by insourcing more. Nor, I suggest, can it be achieved by chasing some sort of fashionable elixir for new service providers; they will have much to offer, but not as a comprehensive solution.

No, what is needed is a detailed and open re-examination of what it means to be a lawyer and, in doing so, what legal services should look like going forward. It will be about building a new bridge – a bridge with columns characterised by:

- Mutually supportive relationships that are based on transparency and trust. Both sides must work at this, probably communicating better than they have ever communicated before.
- Work practices that are designed to drive efficiency for the benefit of clients. Can costs reduce, but profitability preserved? Can risk be shared? Can innovation be rewarded?
- A total lack of arrogance or complacency. The profession faces genuine threat and the old ways will not return.
- A willingness to challenge all assumptions on all sides and to act on constructive criticism. In-house teams have much to learn and must be open to change as well; law firms have a role to place as mentor as well as service provider to help everyone succeed.
- A genuine desire to collaborate and to play the different strengths.

These columns must be as relevant to the in-house team as they are to the law firm. For many this will be a cultural shift that will be too much; for most however it is accelerating the already established direction of travel. The bridge is a powerful metaphor to describe the transition our profession must make, but do not let the familiarity of the message disguise the enormity of the tasks ahead. The threats are huge and success is far from assured.



Budget restrictions and financial pressures

Budget restrictions and financial pressures will see increasing demands being placed by many councils on their legal teams to deliver efficiencies, while maintaining high professional standards. Most struggle to do this in the traditional way, by reducing overheads, removing staff or cutting service levels. But is there an alternative?

Could local authority lawyers become players in the wider market and generate external income by charging or trading with, for example, council employees and members of the public, as well as private and public sector organisations?

Over recent years, Kent County Council Legal Services has built up a thriving external practice based on providing high-quality, low-cost legal services to local authorities and public sector bodies across the country, which now accounts for more than 25% of its overall income and generates £1.5m per annum.

By recruiting and developing a flexible and highly-motivated team of 96 lawyers (many from private practice with a strong commercial 'nous'), a legal practice with a turnover of more than £6m and at least 250 clients has been created. Kent's legal team is now well placed to match, and often exceed, whatever the private sector can offer.

To achieve this, it has primarily used the powers contained in Section 1 of the Local Authorities (Goods and Services) Act 1970 to make agreements and trade with other public bodies for the supply of legal services.

But until relatively recently, the professional conduct rules governing local government solicitors and barristers were inequitable and out-dated with regard to their ability to work for clients other than their employers and other public bodies. And while the statutory powers for local government lawyers to charge and trade with the private sector were already established under Sections 93 and 95 of the Local Government Act 2003, in reality, they were restricted from so doing by their own professional body's rules.

Rule 4 of the Solicitors' Practice Rules, introduced by the Law Society in 1990, provided that a solicitor who was employed by a non-solicitor could not work for anyone other than their employer, except as permitted by the Employed Solicitors' Code. The Code permitted local government solicitors to work for other public sector bodies, but little else. In light of the code's restrictions, the ability to generate additional external income for the council, its taxpayers and the wider community was extremely limited.

Now, however, following revisions to the Code made in 2007, solicitors employed in local government can act for any other organisation or person to whom the council is statutorily empowered to provide services. No longer are local government lawyers restricted to providing services only to their employers or to public bodies under the 1970 Act.

The potential impact of revising the current code in this way is immense. It has opened up the prospect of local government solicitors providing – and charging for – legal services to anyone permitted under Section 93 of the 2003 Act which, using the wellbeing powers, includes virtually anyone in the authority's area, including the private and voluntary sectors and individuals. The ability to generate significant income from such external sources can go a long way to not only paying for the legal function, but also subsidising the delivery of frontline council services.

With the introduction of Section 93 and a relaxation of the Code, combined with the Audit Commission's 'costs-plus' approach to calculating charges, local government lawyers should now realise that there are few situations that they cannot target in order to expand their client base.

It also opens up the potential for greater collaboration between local authority legal departments, raising standards and generating greater efficiency savings through economies of scale and providing a healthy income generation stream – all of which will be of benefit to the councils, their taxpayers and the wider community.

The ultimate goal could be to enable local government lawyers to provide legal services direct to the private sector in the same way as they do to the public sector. However, this would either require the establishment of a company in order to deliver legal services, or the creation of teams of non-solicitor lawyers to handle private client work, neither of which is currently possible or even desirable.

There must be few lawyers working in local government who are under any illusions about what the future holds. Just "doing more with less" won't be enough, with demand for legal services rising at a time when local authorities face prospective cuts of anywhere between 20% and 40% to their budgets. With the pressure to protect frontline services intense, "back office" services are under threat and more radical solutions are needed.

This environment will become even more challenging for legal departments in October 2011, when the introduction of alternative business structures will allow the major outsourcing providers – amongst others – to own legal businesses for the first time. This is a 'Darwinian' prospect – and local authority lawyers need to adapt if they are to survive.

The response that the legal team at Kent County Council has devised together with law firm Geldards, known as Law:Public, is a brand under which the two organisations aim to provide a cost-effective service and a viable alternative to the panel system. This resulted in the launch of their own unique combined offering, which is set to herald a period of rapid change in the provision of legal services to local authorities and the public sector.

Both Kent and Geldards were pursuing parallel tracks without realising it. Having seen various private sector panels set up and also complex arrangements such as the 'hosting' model (where local authority lawyers from one authority transfer to another, which then provides legal services back to the first authority), they felt that there was scope for another model of provision. There had to be a simpler and more pragmatic solution – a third way.

Many heads of legal and chief executives in local government know that the large panels are all very well, but they often fail to provide the one thing that everybody wants, which is trusted, professional relationship with personalised contacts; commercial expertise combined with public sector ethos and value.

Law:Public provides the best of both worlds in terms of what the public and private sectors have to offer, with more than a combined roster of more than 100 lawyers and exceptional value for money.

There are a lot of extremely valuable assets that the private sector can bring to the table in delivering public sector work. The problem is the prohibitive price tag that goes with this – something that local government simply will not be able to afford as belts are tightened.

By combining under the one brand, Geldards and Kent can offer a much more complete package than they would as individual organisations but – crucially - at an affordable price. The target is a maximum hourly rate of £150, taken as an average of the two organisations' rates.

Clients who might have thought twice about going to Geldards before because they may have lacked some of the areas they wanted in a law firm, will now go to them because they know that it has the backing of a large local authority legal department. And people who might have thought twice about going to Kent, because they may have had some reservations about its capacity and geographical reach, will now go to them because they have the backing of a top 100 commercial law firm, with offices in Derby, Nottingham and Cardiff.

The two organisations did not enter into this blind. A pilot with an unnamed local authority before the launch was sufficiently successful for them to press ahead.

In terms of structuring, the arrangements have necessarily been kept fairly informal. This is because there needs to be flex in the process for each partner and also to allow it to grow organically. It also allows Kent and Geldards to remain within the Solicitors Regulation Authority's regulations on joint marketing, fee sharing and charging for their services.

The prospect of Law:Public becoming an alternative business structure is a possibility, but Kent and Geldards are holding off exploring this and are waiting to see how the service develops ahead of October 2011 before committing to any such move.

At that time the likes of Capita could soon be significant players in legal services provision to local authorities. After all, management consultants have been itching to add legal services to the bundle of services such as IT, finance and payroll that have already been outsourced. The introduction of ABSs will sweep away the legal obstacles to this happening.

It is time for local authority legal teams to throw off their blinkers. The opportunities are there to be taken but few have so far done so. But there is going to be blood on the floor in the next few years, and there will be victims of the financial crisis as local authority budgets are slashed. It is time now to look at the means of survival.



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Service Excellence - The Ingredients Of Confidence

If you can forgive the sight of the live lobster accompanying him, the demeanour of the Italian waiter in a beachside restaurant on the Amalfi Coast epitomised the best in customer service: pride; self-assurance; confidence. What is more, the waiter belied the potential subservience of the role (take food and drink orders, bring to table, clear, and do the bill) by turning it into a performance accompanied by witticisms and charm.

Not everyone dealing with clients or customers in the public or private sector can deliver this relaxed but effective service. There are cultural traits here, and the context of a Mediterranean restaurant does not travel perfectly to an environment of dealing day-to-day with professional services clients. But the interesting word is “confidence”, and what an organisation needs in order to deliver its service confidently.

What impact does confident service delivery have upon a client? The following is suggested:

- The client relaxes; behaves better; interferes less
- The client trusts the lawyer
- In the public sector, where the service is being delivered to an internal client, the client is more likely to be an advocate for the service to other stakeholders in the organisation
- In the private sector, the client is more likely to recommend the lawyer or the firm to other potential clients.

That only takes us so far. The question is what the lawyer needs in order to deliver the service so as to imbue client confidence. Out of potentially a long list of items, one might put forward:

Personal attributes

- Technical competence
- Ability to recognise client needs and act on them
- Good judgement on both business and ethical issues.

Practical organisational support

- Effective supervision (insofar as needed for the role)
- Competent administration and IT back-up
- Training and development opportunities.

A supportive organisational culture

- Recognition that front-line deliverers of service are the face of the organisation....and senior management acting on that and supporting the front-line

- A remuneration and career progression system that (subject to budget constraints and impact of uncontrollable external forces) rewards service excellence
- An environment where legitimate internal grumbles on ability to do the job are addressed (not dismissed), but where equally unwarranted negativity (potentially corrosive to the organisation) is not allowed to develop.

The cultural elements, sometimes defined as “The way we do things around here”, are critical. A positive culture does not just mean members of the organisation being happy in a touchy feely sort of way; it means greater efficiency due to lesser need to rely on bureaucratic control in order to drive service provision.

But of course life does not always run smoothly, and there will be client complaints and dissatisfaction from time to time. Anyone who has ever had a client shouting down the other end of a phone, or is staring at a blood pressure raising email, will find unconvincing the mantra that receiving a complaint is actually a positive opportunity for the organisation; furthermore, one might defy the practising lawyer to feel that sense of opportunity when the complaint suggests a professional mistake having been made personally by them.

Nevertheless, there are many situations where the complaint does give the chance to improve the external client’s perception of the organisation (or equally the internal client’s perception of the service provider). Some simple transporting of thinking to our personal lives as consumers helps provide an answer. Most times when we get upset about poor service it is not because we enjoy the emotional experience; in fact all we want is to have something done for us (something that probably we will be paying for), and the failure to get it done is causing us at minimum inconvenience and possibly also personal embarrassment or even financial loss.

Thus in our state of annoyance and frustration we can be doubly grateful when someone takes ownership and sorts the problem out for us. Even better for the beleaguered service provider, if there is some obstruction to getting the job done (for example, a delayed permission from an external agency) we may accept and even sympathise with the provider’s difficulty, as long as we feel that they are doing their reasonable best to remove the obstruction – if the provider looks for a way round the problem then that is a bonus.

Now doing the client or customer empathy thing gets us perilously close to the adage that “The customer is always right”. People newer to the world of work can question what that really means. Is it, for example, a licence for a junior lawyer to be treated oppressively or manifestly unreasonably by a client (internal or external)? The answer is obviously “no”. Standards of client expectation have to be treated in context – a City lawyer on high £00,000s a year and with a £000s per hour charge-out rate might find it difficult to refuse to work late into an evening because of a pre-arranged tennis match. On the other hand, bullying and harassment is not acceptable, whatever the price being paid directly or indirectly for the service.

In a context of, say, a ticket counter, a reminder notice of unacceptable behaviour not being tolerated may operate as a sanguine message. Sometimes other action may be needed. In practice days, the fee-earner team of two of my partners was getting unwarranted grief from a client. The partners collated the instances, and then phoned up the client to say that the firm really valued the work but if the client wanted to continue to behave like that then the firm would not take future instructions from the client. The bad behaviour came to an end as a result. Evidence there of a supportive culture, and also incidentally leadership.

Training and development opportunities have been highlighted above. In the current public sector financial climate it would be crass to ignore the pressure on training budgets. However, apart from the need to “keep up to date on the law” and to get those CPD points, in order to deliver a competent service a lawyer has to find time for training, albeit that organisations will rightly seek the most economic solutions to meet their needs. The phrase “the reflective practitioner” is one that has stuck, and there is no doubt that lawyers need to take time out to reflect on how they are delivering their service and what training and development they need in order to maintain and enhance the service.

And finally what about the buzz of delivering that service excellence? For some years in practice I had the privilege of working for local authorities on town centre redevelopment schemes. The attraction was that the individuals were not hardened property investors or developers, for whom this was just another deal – usually no one on the client’s side had seen one of these projects through from beginning to end. Thus to deliver a good service you just had to get their trust, and this could only be earned the hard way by delivering the service they needed. When on one scheme we worked through the night immediately before New Year in order to get documentation signed before a committee authority ran out, there was a tremendous sense of satisfaction for both the authority’s senior officers and the law firm team.

Occasions such as that are both rare and priceless, and depend upon the ingredients for service excellence all being present, but the feelgood factor when an excellent service is delivered in any context, both for the individual and the institution, and whether delivered by the practice lawyer or the restaurant waiter, is one for which it is worth striving.

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Questionnaire for Joint Working Arrangements between Local Authorities

This questionnaire originated within our firm of Veale Wasbrough Vizards. We regularly offer it to our colleagues in local government to help in the critical early stages of planning and preparing the structure for joint procurements or joint working arrangements. We have been told that it has been helpful. It is a pleasure therefore to be invited to share it with the members of ACSeS. Through a series of questions, the questionnaire is intended to offer a structured approach to the consideration and design of arrangements needed to underlie a joint working initiative.

Joint Working Arrangements between Local Authorities

In order to establish any effective joint working arrangements it is necessary to agree and document the joint arrangements under which the respective Councils will operate. In relation to any joint procurement, consideration will need to be given as to how the joint working arrangements will operate both during the procurement phase and the implementation of the contract phase.

We recommend that the participants in any joint working arrangements should consider, resolve and approve the following issues in order to be able to formulate the nature of the joint arrangements which are to be adopted.

General Approach to Procurement

This element should include consideration not only of the procurement task itself but also looking at the type of contractual relationship it is intended to arrive at. This is because this will ultimately impact on the form of the procurement itself.

1. Is it intended to have a structure/agreement in place setting out the governance arrangements between the Councils which will apply during the procurement phase?
 - a) Who will respond to questions raised by bidders?
 - b) Who will receive the bids?
 - c) How will bids be evaluated and by whom?
 - d) Who will appraise the final contract(s)?

Usually it is necessary to set out how the Councils intend operating the procurement and the criteria and process for awarding jointly in the ITT/ITN/ITPD in order that bidders have confidence both in the robustness of the process and that they understand what will ultimately be required of them. Whilst there is no necessity for a formal structure during this phase if all decisions are to be referred back to the respective Councils for approval such a system inherently creates risks of delays in the procurement.

2. What approval structures/requirements are in place and to what extent are they harmonised to avoid delays etc?

3. What is the expected form of relationship between each of the Councils and the provider/contractor?
 - a) Will each Council have a contract with the provider?
 - b) Will all Councils sign up to one contract?
 - c) Will one Council sign a contract as the agent of the others?

4. How is it expected that the relationship between each of the Councils and the provider will be managed. For example:
 - a) how will decisions be made?
 - b) who will enforce obligations?
 - c) who will be invoiced for payment?
 - d) how is it decided how much each Council should pay?
 - e) who will set the performance targets/acceptance criteria?
 - f) who will approve satisfactory completion of tests?
 - g) who will decide on termination? and
 - h) who will agree/make any changes to the contract(s)?

5. Under each contract there is a need for clarity of decision making. How will this be achieved?

Bidders will require certainty so as to avoid delays due to decision making by a number of individual bodies, the risk of lack of clarity of decisions or immobilisation resulting from the inability of the Councils to agree on particular issues. This may require establishment of a joint committee to whom decisions are delegated by the Councils and who then make any strategic decisions. A contract representative appointed by all Councils may take decisions on day to day basis under the contract.

6. How will conflicts between the Councils themselves in respect of the procurement be dealt with?

Consider development of policy/protocol for resolving conflicts.

7. Risk and liabilities retained by the Councils – how will they be apportioned between the Councils?

Governance Arrangements (procurement and/or contracts implementation phases)

The following issues should be addressed for any governance arrangements between the Councils. It will be important to keep in mind throughout the development of the governance arrangements the points raised above relating to the general approach to the form of contract and management of the relationship with the provider/contractor. For the purpose of the following part of this note the Councils acting together are referred to as the "Client Group" and its members as CG members.

1. What are the aims, and objectives of each CG member and the principles according to which each CG member will operate?
2. How will the procurement/services fit with Corporate Strategies and Plans of each CG member and what will be the relationship with any other bodies such as Local Strategic Partnerships?
3. What are the individual expectations of each Authority for the delivery of the service?
4. How, where and when will the Client Group meet?
5. Are there any provisions for "quorum" and for any minimum representation (at each meeting) from each of the Councils and any third parties?

6. What are the arrangements for rescheduling meetings which are not quorate and will there be power for decisions to be taken outside meetings?
7. Will any issues be delegated to the Client Group specifically and on what basis (e.g. unanimous consent of group or of identified person for each of the Councils or Nominee)? What reporting mechanisms/approval of budget processes will be put in place?
8. Who will monitor performance under the services contract/ issue any default notices or termination notice?
9. What areas/issues will be reserved by each Council specifically? Any referrals back required?
10. What will happen if there is no agreement? How will disputes be resolved?
11. How will CG members be appointed and removed? Will there be any restrictions as to numbers, approved of replacements etc.?
12. How many CG members will there be (representatives from each Council and any limits on minimum or maximum numbers or percentage representation)?
13. Will a casting vote be required / how will "deadlock" be resolved?
14. What happens if one defaults (separately considering the procurement and contract implementation phases)?
15. What exit arrangements should there be – before contract close?
after contract close?
16. What will be the consequences of exit? Will there be termination events for individual CV members and/or for the whole venture? How will this impact on the contract which is procured and what comfort will the provider have that it will not be prejudiced for something which is not its fault?
17. Will relevant inputs required/expected from each CG member be identified? Will they be developed whilst the procurement is progressing? If so on what basis and on what timescales will they be developed?
18. Will the structure of the Client Group develop with the project? (e.g. change into a Joint Committee when things are clearer)?
19. How will investment/ risk/ reward be shared? Particularly what happens if further funds are required/ how will any savings in costs be shared (e.g. payment deductions for defaults/ bid prices and pooling of budgets) and who will own any assets produced as a result of the implementation of the contract?
20. Has the District Auditor been satisfied as to the measurement and accountability of each Authority?
21. How will the issue of variations be dealt with? Will these result in additional costs/changes to services for the Council requesting them? How will costs of change which are not requested (e.g. change in law) be apportioned?
22. Who would operate specific rights under contract e.g. step in/ instructions /additional work?
23. How will any roles in respect of the management of the client side of the contract be funded and resourced?



Transparency, Freedom of Information & the Challenges Ahead

Tony Blair recently admitted that in his view, the Freedom of Information Act is “*not a sensible thing*”. However, the current Government appear to disagree, as transparency is one of the key policies of the Coalition Government, which was launched by the Prime Minister in May in the form of the Transparency Programme. Its aim is to demonstrate to the public that taxpayer money is being spent appropriately and to make politicians and public bodies accountable for what they spend in a period where huge savings need to be made.

However, meeting the requirements of the Transparency Programme is not going to be easy, and taken with some recent developments in Freedom of Information, may in the short term create some challenges for local authorities and information rights practitioners.

Transparency Programme

The Transparency Programme applies to all Government Departments, Non-Departmental Government Bodies, Local Government and NHS Bodies and its requirements were initially set out in a Letter from the Prime Minister to Government Ministers in May. Although the Programme largely applied to Government Departments, it also set requirements that applied to local authorities. In June, Eric Pickles wrote to local authorities to set out in more detail what this meant and called for the publication of a range of information including information on salaries, job titles, allowances and expenses, council minutes and papers, job vacancies and front line service data.

One of the key requirements of the Transparency Programme is the publication of items of spending above £500, including the publication of contracts and tender documents, which applies from January 2011. At the time of writing we are still awaiting Guidance from the Department of Communities and Local Government about how this requirement is to be met by local authorities. However, the Treasury has recently published Guidance to help Government Departments to meet similar requirements from November to publish items of spending above £25,000, which will assist. As will recently published Guidance from OGC on publishing government tenders for contracts over £10,000 and Guidance on publishing government ICT contracts. Both these requirements are now in force.

It is clear from this Guidance that there may be much work involved in meeting these commitments. Although some local authorities have already started to publish their spending data online, for many this will create a considerable challenge, both from a practical and a resource perspective. Publication of tenders and contracts will also need careful thought: time will need to be built into the procurement process to allow for quality checks on tenders and contracts before they are published and advice will need to be taken on the application of exemptions under the Freedom of Information Act or the Environmental Information Regulations (EIR) to permit redactions.

Freedom of Information Requests

The concern voiced by many, is that publication of spending data, tenders and contracts will lead to an increase in FOI requests, which studies have shown are already on the rise. In particular last year, following their annual FOI survey in Local Government, the Constitution Unit of the University College of London (UCL) reported that the number of requests in 2008 had almost doubled from 2005 levels. However an increase in FOI requests, also leads to an increase in costs.

Although the UCL's survey suggested that the average time spent dealing with requests had reduced from 16.4 hours in 2005 to 11.6 hours in 2008, the increase in volumes still suggests that the overall costs of dealing with requests have increased. Using a £25 an hour staff rate, this would mean the cost of dealing with requests across Local Government in 2008 was in the region of £34 million, an increase of nearly £10 million over four years. Birmingham City Council recently reported they alone may have spent over £790,000 in 2009 dealing with FOI requests.

At the same time as the increase in requests and costs, the Information Commissioner is taking a tougher approach to the enforcement of FOI and EIR. In July a new FOI Regulatory Action Policy was published which sets out the measures which the Information Commissioner will take to ensure that public authorities comply with the requirements of the Act and the Regulations. In particular he intends to make more use of Enforcement Notices. Areas of particular concern to him are public authorities who routinely fail to respond to requests within the time limit, who fail to specify exemptions when they refuse to disclose information, who inappropriately extend the timescales for dealing with requests and who fail to carry out internal reviews in a timely manner.

This new Policy followed the publication of an FOI Enforcement Notice which was served on the Independent Police Complaints Commission (IPCC) in June. The Notice required the IPCC to take action within three months to clear considerable backlogs of requests which had exceeded the twenty working day time limit. Previously, this type of procedural failure has been dealt with by Practice Recommendations. However an Enforcement Notice has more force, as failure to comply with it can result in the Information Commissioner referring the matter to the High Court where it may be dealt with as a contempt of court.

Other enforcement tools which the Information Commissioner has indicated he may use include monitoring public authorities where he has concerns about compliance. For example, monitoring could be triggered where a public authority fails to meet the timescales for responding to a request in more than six cases over a six month period, or where there are delays of more than fifteen days over the time limit.

Monitoring would involve the public authority providing the Information Commissioner with monthly statistics about request handling for three months. This may then lead to other enforcement activity if there is no improvement, for example, the carrying out of an audit to assess good practice with the consent of the public authority concerned. Scrutiny by the Information Commissioner and other enforcement action is therefore a real risk for those local authorities who do not have effective procedures in place for handling FOI requests, which could lead to a further strain on resource and budgets.

Property Search Fees

Reduced income from property search fees is also an issue causing some consternation within Local Government. In 2009 following a number of decisions, the Information Commissioner published Guidance advising that it was not permissible to charge under the Environmental Information Regulations to inspect public registers, including the Local Land Charges Register. As the Regulations are derived from an EU Directive, they take

precedence over national law and therefore existing statutory provisions which permitted charging.

Following confirmation of this position by the Information Tribunal decision in the East Riding of Yorkshire case this year, the Department for Environment, Food and Rural Affairs wrote to all Local Authority Chief Executives in July, announcing the abolition of the £22 statutory fee for personal searches of the Local Land Charges Register. The Local Land Charges Rules were therefore amended by statutory instrument in July, removing the £22 fee with effect from 17 August. The Explanatory Note accompanying the amendment made it clear that the reason for the amendment was that the fee was incompatible with the EIR.

This has resulted in a rush of reports to Cabinets up and down the country to change charging structures and try and deal with the consequences of the resulting loss of income. There is also the issue of whether any refunds can be claimed for those who have paid the fee since 2005 and if so, who is responsible for this given that the charge was levied pursuant to national legislation.

Amendments to the Freedom of Information Act

In September, the Government announced that it was planning to extend the scope of the Freedom of Information Act to increase transparency in line with the commitments it made in the Coalition Agreement. In particular, the Ministry of Justice is looking at extending the Act to additional public authorities, although it confirmed that *“any extension of the FOI Act will need to take account of the burdens that this would place on bodies to be covered”*. However at the same time as the Government announced this intention, Tom Brake, a Liberal Democrat MP, introduced a Freedom of Information (Amendment) Bill to the House of Commons under the Ten Minute Rule. The Bill seeks to:-

- abolish the ministerial veto under section 53(2) of the Act
- introduce a maximum limit on extensions to the time limit under FOI where a public authority is considering the public interest test so that all requests are responded to within a maximum of 40 working days
- extend the time limit under which proceedings can be brought for the section 77 offence of deliberately altering, defacing, blocking, erasing, destroying or concealing records with the intention of preventing disclosure. The current time limit of six months between the offence and prosecution would be extended to six months from the date of sufficient evidence of the offence coming to the prosecutor’s knowledge
- to extend the definition of public authorities to cover any company where at least 51% of the shares were owned by one or more public authorities and to not for dividend companies, such as Network Rail
- to extend the Act to certain private contractors working for public authority organisations which had contracts of a value exceeding £1 million and covering a period of more than 12 months

The extension of the Act to some local authority jointly owned companies, joint venture companies with the private sector and to private contractors would undoubtedly have quite an impact on local authorities. However the details of these proposals are not yet clear, although the Bill will be published before the second reading on 12 November.

The Challenges Ahead

One of the objectives of the Freedom of Information Act was to change the “need to know” culture to “a right to know” and the first five years of Freedom of Information have moved the public sector a long way towards achieving this. However the step change

required by the Transparency Programme, together with recent developments in Freedom of Information law have created new challenges for information rights practitioners: local authorities will need to improve information management across their organisations, proactively publish more information, increase levels of compliance and handle FOI requests more efficiently.

This is something recognised by the Information Commissioner who recently said "*In the current circumstances of reduced budgets and increased concern for transparency and accountability, information rights are a front line service, not a mere back office function. We all have to do more for less, but much is expected of all of us working in the information rights field*". In the long term greater transparency will benefit us all. However in the short-term it seems information rights practitioners will need to rise to the challenges ahead.

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Gateway Defences to Possession Proceedings

Just as the term ‘tolerated trespasser’ is finally consigned to the housing law history books, the latest legal jargon, ‘Gateway A’ and its equally inspiring partner ‘Gateway B’, is spreading further through the housing law blogosphere and consuming paragraph after paragraph of a quite overwhelming number of appellate court judgments, remarkable for their length and at times irreconcilable breadth of judicial elucidation.

The subject is possession proceedings where occupiers have no security of tenure under statutory schemes relating to social housing, such as non-secure tenancies or licences provided in pursuance of homelessness provisions of Part VII of the Housing Act 1996, and introductory and demoted tenancies governed by the regimes at Chapter 1 and Chapter 1A of Part V of the 1996 Act respectively. The issues are (i) the scope of a tenant’s ability to defend possession proceedings where the public authority landlord has an unqualified right to possession and (ii) the appropriate venue for running the defences that are available.

Kay

The gateways represent the response of the House of Lords to several Strasbourg decisions which held that, in certain circumstances, the lack of procedural safeguards in a claim for possession against trespassers or tenants without security of tenure was incompatible with Article 8. The gateways represent the only two routes through which an otherwise unqualified legislative entitlement to possession can be challenged. They were, in name at least, incarnated at paragraph 110 of the judgment in Kay v Lambeth LBC [2006] UKHL 10 in which Lord Hope held that where the requirements of the law have been established and the right to recover possession is unqualified, the only situations in which it would be open to the court to refrain from proceeding to summary judgment and making the possession order were:

Gateway A

If a seriously arguable point is raised that the law which enables the court to make the possession order is incompatible with Article 8, the county court in the exercise of its jurisdiction under the Human Rights Act 1998 should deal with the argument in one or other of two ways:

- (i) by giving effect to the law, so far as it is possible for it do so under section 3, in a way that is compatible with Article 8, or
- (ii) by adjourning the proceedings to enable the compatibility issue to be dealt with in the High Court.

Gateway B

If the defendant wishes to challenge the decision of a public authority to recover possession as an improper exercise of its powers at common law on the ground that it was a decision that no reasonable person would consider justifiable, he or she should be permitted to do this provided again that the point is seriously arguable.

In neither case, Lord Hope said, could the challenge be based on the occupier's personal circumstances, which it was to be assumed the legislature had sufficiently safeguarded by the fulfilment of the requirements for recovery of possession.

Qazi and Doherty

In Kay, the majority stated that they were affirming the earlier House of Lords judgment in Harrow LBC v Qazi [2004] 1 AC 983 in which it was held that the county courts, when faced with a defence based on Article 8 should proceed on the assumption that the domestic law is compatible with the occupier's Convention rights, although there may be exceptional cases where a summary procedure which precluded any kind of judicial scrutiny of the factual basis for possession might be incompatible with Article 8.

Mr Qazi's joint secure tenancy had been determined by the service of a notice to quit by his ex-partner, his subsequent application for a sole tenancy failed on the basis was not entitled to family-sized occupation, and the local authority issued possession proceedings whilst he lived in the property with his new wife and family. Mr Qazi's case did not prove to be exceptional and his appeal ultimately failed.

By contrast Doherty v Birmingham City Council [2008] UKHL 57, was an exceptional case; the local authority landlord sought possession against a family of gypsies upon whom had been served a notice to quit thereby determining their licence to occupy a pitch. The House of Lords found the lack of procedural safeguards in the legislative scheme, in that case the Mobile Homes Act 1983, to be incompatible with Article 8.

An Exceptional Case which is Seriously Arguable

Since Qazi, Kay and Doherty there has been a stream of judgments in the High Court and the Court of Appeal, testing the parameters of the gateway defences and highlighting the tensions emerging from some of the less cogent dicta of the House of Lords authorities. The list of case-law relied upon by legal advisers in county court possession proceedings has grown longer, and the 'seriously arguable / exceptional case' permission threshold identified in Qazi and Kay has proved increasingly difficult to resolve by the summary determination procedure originally envisaged by the House of Lords, not least because of the absence of consensus on the scope of the gateway defences themselves.

Of the two gateways, it is unsurprisingly the substance of a gateway B challenge which has proven the most difficult. Until the Supreme Court revisits Qazi, Kay and Doherty, many questions remain unanswered. To what degree can proportionality be raised under this gateway, if at all? When is a personal circumstance relevant to a gateway B defence? Or, to put it another way, and despite Lord Hope's suggestion in Doherty to the contrary: is the time a tenant has spent living in a property relevant, or his or her attachments to an area, or the reason the ASB escalated during a particular period? If those aren't examples of relevant considerations a housing officer is to take into account when considering whether to issue possession proceedings, what is the Defendant to raise and the county court to consider under a reasonableness (and if the Supreme Court so decides, a proportionality) review?

Court of Appeal in Mushin

The latest judgment of the Court of Appeal in the conjoined appeals of Manchester City Council v Mushin & Ors [2010] EWCA Civ 336 is more concise. It was expedited in order to give guidance as quickly as possible to courts dealing with these cases and to enable if possible the appeals to be linked with Pinnock v Manchester City Corporation [2009] EWCA Civ 852, the first Supreme Court hearing to consider the gateway arguments. A summary of the relevant principles established by Mushin are as follows:

- (1) Following Wandsworth v Winder [1985] AC 461, a gateway B defence may in principle be pursued in the county court, even where the occupier has no private right, but that is subject to any express legislative exclusion precluding such a defence.
- (2) Following Pinnock (and by parity of reasoning with the demoted tenancy regime), the appropriate venue for an introductory or demoted tenant to pursue a gateway B defence is the High Court.
- (3) Following Barber v LB Croydon [2010] EWCA Civ 51 and McGlynn v Welwyn Hatfield DC [2009] EWCA Civ 285 tenants of non-secure tenancies and licences provided under the homelessness provisions can raise gateway B defences in the county court.
- (4) Following the majority in Doherty and Kay, whilst conventional judicial review grounds are increasingly informed by principles of fundamental rights, a gateway B challenge does not permit a full proportionality review under Article 8(2) of the Convention.
- (5) Following Smith v Evans [2007] EWCA Civ 1318 and Kay and Doherty, it will only be in a truly exceptional case that it will even be seriously arguable that such a gateway B defence will succeed.
- (6) Following Barber and Central Bedfordshire Council v Taylor [2009] EWCA Civ 613, Gateway B challenges can apply to any decision of the local authority landlord relevant to possession which could have been the subject of an application for judicial review.
- (7) Following R (McLellan) v Bracknell Forest BC [2001] EWCA Civ 1510 and Manchester CC v Cochrane [1999] 1 WLR 809, the introductory tenancy regime is compatible with Article 8 and Article 6.
- (8) Following McLellan and Sheffield CC v Smart [2002] EWCA Civ 4, the homelessness regime is compatible with Articles 8 and 6.

Pinnock

Despite Mushin, uncertainty is still stalling proceedings in county courts, which is why it is hoped that the nine-strong panel of the Supreme Court which heard the appeal in Pinnock on 7th July, dealing with demoted tenants but hearing broader argument on other tenancies without security, will revisit Kay and Doherty comprehensively in their judgments. It had been thought that Mushin would be heard with Pinnock, but it has been deferred until November, before only seven Justices, so it remains to be seen what will be dealt with now and what is left for later given the limited constitution of the November court.

And Finally...

The European Court of Human Rights has just issued its judgment in Kay, finding that, because at the time of the possession proceedings in the county court, Messrs Kay & Ors could not challenge the proportionality of the decision to seek possession, the law as *it then stood* was not compliant with Article 8. The development of the gateway B defence is endorsed, but it is not clear if the Court considers the availability of traditional judicial review grounds alone as Article 8 compliant (full proportionality not included following Mushin), or if the Court has misunderstood the scope of domestic judicial review.

The Government has just issued its response to the 2009/2010 report of the Joint Committee on Human Rights and says the following about its own legislative agenda:

The question of the appropriate level of scrutiny to be applied in summary possession cases is by no means straightforward. The House of Lords has found it necessary to consider this issue on three separate occasions and a fourth case, Pinnock v Manchester City Council, was heard by a panel of nine judges in the Supreme Court at the beginning of July. The position in this area will therefore be reviewed when the decisions of both the Supreme Court in Pinnock and the European Court of Human Rights in Kay v United Kingdom are received.

So, the Government will wait and see, as will public authority landlords, tenants and their lawyers, what the Supreme Court has to say, in particular with reference to the European Court's recent decision in Kay. The not insignificant implications in both principle and practice of conducting what is in effect judicial review in the county court explains to some extent the time it is taking to grapple with these arguments properly, but it is getting harder and harder to justify the extended legal limbo of some four years, and counting.



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The chill winds blow ...

Anyone enjoy gardening? Let's take a look at two very contrasting approaches as the cold, autumnal winds once more begin to fetch down the leaves from the trees.

Slash and Burn ... or snip, snip?

First, there's the slash and burn technique. Chop everything back and hope that come springtime it all grows back healthy and strong.

Or there's the more delicate-fingered approach. A little snip here, a little snip there, but nothing much to show for it but a small pile of dried twigs.

Both methods have their devoted adherents, but in truth neither is likely to promote a successful long-term outcome.

The Challenge of Leadership

Now what exactly does this all have to do with the challenges of leadership in the biggest economic crisis of a generation? Quite a lot, actually.

The chill winds blow in the form of the Public Spending Review. There's some major pruning to be undertaken before winter takes hold, and external events put things beyond our control.

Of course, coming to terms with the harsh financial climate means dealing with real people, real jobs and very real consequences. However, the garden analogy still has much to offer us as leaders. There is a great deal of very useful academic research that considers organisational structures as living organisms in their own right. So let us return for one moment to our two conscientious gardeners.

With the first, cuts are delivered uniformly, and everything's pared back into exactly the same neat shape. Except real life, in common with gardening, is not like that at all. Some things need to be cut right back, or even, perish the thought, removed altogether. Others need to be left well alone, and others still may benefit from feeding and nurturing in preparation for the season ahead. There is no one size fits all.

And what of our second gardener – a little snip here and there, but in reality no more than tinkering about the edges? Without healthy pruning, the garden will surely die. Disease, infection and decay all take their inevitable toll in the absence of proper, regular care.

So with this in mind, let's examine whether there's a better approach to gardening that we can adapt to our own leadership style.

What does ‘healthy’ look like?

Before we start to make detailed plans, we need to have a very clear picture of what ‘healthy’ looks like in the context of our own organisation. There are two very good reasons for this.

First, if we are to prune effectively we need to know what the finished item looks like. If we fail to keep an accurate picture in mind at all times we may end up cutting off a fruit-bearing bough, whilst leaving a less healthy limb in place.

Secondly, the emphasis on the creation of a ‘healthy’ organism is quite deliberate. It places the concept of financial prudence in a positive light. For a healthy organisation, pruning is not just a matter of necessity; if done correctly it can deliver highly desirable results.

Stop for just a second right now. Are there things around you that need clearing away, tidying up or binning? Could things run smoother if some of the accumulated clutter was sorted out? An organisational structure is no different. As time passes, blockages build up, old activities become redundant and new challenges emerge. Unless we take time to prune we have little chance of our organisation continuing to work effectively. We end up doing the same things the same way, instead of adapting to the changed circumstances in order to grow healthily and sustainably.

In short, ‘healthy’ is good. We need to accept this means taking stock and deciding exactly what’s appropriate for our organisation right now.

Getting People Involved

It’s not only us who need to be thinking about these things. A large garden is tended by a team, and as good leaders we need to involve our people.

There is nothing worse than seeing a problem fast emerging over the horizon, yet being powerless to do anything about it. The impact on a disenfranchised workforce is all too easy to identify – just take a look at trends in sickness absence.

We might be tempted to think that in a recession, with jobs under threat, people will do whatever they can to get into work come sickness or health. However, research points to an entirely different conclusion. Stress levels rise, and in their wake comes an increased susceptibility to all manner of illness.

Again, there are two major benefits to be gained by involving our people in finding possible solutions. First, it may help reduce stress, and with it the attendant increase in sickness rates that can cripple an organisation at the very time its resources are stretched to the maximum. Secondly, the more people who look at a problem, the better the prospect of either finding a solution or mitigating its harshest impacts.

It makes total sense to garden as a team.

Communicate, communicate, communicate

As any good gardener will tell us, watering the garden regularly helps keep it healthy and flourishing. In the context of an organisational organism, the equivalent is good communication.

As leaders we need to think carefully about who we need to communicate with, what needs to be communicated and how. One of the biggest dangers here is creating an initial information overload, followed by a prolonged period of silence from the top.

The devastating effect this can have on an organisation should never be overlooked. Human beings are natural communicators. A state of silence never lasts long, and if the gap is not filled from above then it will, most surely, be filled from below. Rumour, stories and gossip usurp the silence, and can quickly wreak havoc with internal morale.

The more effective approach as a leader is to ensure clear, regular communication. This is the case regardless of whether we are the bearers of good news or bad. The latter is never easy to break, but far better tell the truth than seek to hide the reality, or worse still, say nothing at all.

People appreciate honesty, even if the news is not what they may have hoped for.

Looking after the People who go

Sadly, many of us are likely to find there is little alternative but to make redundancies if we are to balance our books. It is in just these circumstances that great leaders show their true metal.

Making someone redundant is, and never will be, an easy process. However, it also provides a very real challenge to live out the true values of the organisation under the most difficult of circumstances. Excellent organisations, and their leaders, treat their people with dignity, provide their people support to retrain or find a new post and allow their people the opportunity to mark their departure properly with staff and colleagues.

Severing the link is never easy, but making the very real effort to do it properly means the relationship can still remain intact. This makes great sense to a wise organisation. A good reputation takes considerable time to build. However, it can be destroyed almost instantly by a flood of disenfranchised, disappointed stakeholders.

As effective leaders we need to make sure our pruning is done properly, and not botched in an attempt to get things over with in undue haste.

Looking after the People who stay

Finally, perhaps the most overlooked area of all in the process. What are we doing for the people who stay?

The seismic shocks from a redundancy exercise are often felt within an organisation for some considerable time after the event. Again, we return to the analogy of watering the garden.

Should we fail to communicate clearly and regularly where the organisation is to journey now, we invite the silence to be filled once more with rumour, stories and gossip. As good leaders we need to communicate the vision, the values and the mission even more effectively than before.

So we know the chill winds are about to blow. It's a call to us to renew our passion in providing clear, effective leadership. Perhaps there is something to be learned after all from gardening in a season of challenge.



Are you Under-Privileged?

Court of Justice rejects again arguments that full rights of Legal Professional Privilege be extended to In-House Lawyers in competition investigations – but are local government lawyers making the most of the privileges that they do have?

The judgement on the 14 September in the Akzo Nobel¹ case has once again ignited debate about the extent of legal professional privilege and the independence of in-house lawyers.

The Judgement

The Court of Justice of the European Union (CJEU) has decided that rules of legal professional privilege (LPP) should, as a matter of EU Law, not apply to enrolled in-house lawyers in the same way as they apply to communications between external lawyers and their clients. Despite forceful arguments in favour of extending in-house lawyers' LLP rights in competition investigations, the CJEU decided that in-house lawyers are subject to potential conflicts of interest arising from their perceived lack of independence as employees of a business.

The Court of Justice did, however, tone down slightly the language used by its Advocate General when justifying its conclusions. Whereas the Advocate General had referred on several occasions in her Opinion to the possibility that an in-house lawyer could be party, knowingly or not, to abuses of LPP, the Court of Justice chose not to detail specific instances of particular conflicts, other than to generally suggest that there might be difficulties for in-house lawyers who also act as competition law coordinators. The omission of reference to "abuse" in the final judgment does not make the disappointment of losing the arguments any less real, but it may reduce a little of the resentment that in-house lawyers will have felt after reading the Advocate General's Opinion.

The ruling recognises that EU States, such as the UK, that make no distinction for UK competition law enforcement purposes between the LPP rules applying to in-house and external lawyers should be allowed to maintain those rules in place for any competition investigations initiated at national level by the UK Office of Fair Trading or a UK sector regulator. However, as a result of the ruling, clients will have to continue adopting artificial communication procedures with their external lawyers to limit the full impact of their inability to invoke LLP.

Akzo's unsuccessful attempt to overturn nearly 30 years of EU judgments has nevertheless produced one small but significant extension of legal professional privilege for organisations caught up in EU competition investigations. The General Court ruled in 2007, at an earlier stage in the proceedings, that LPP could apply to certain types of internal working documents or summaries that were created exclusively for the purpose of seeking legal advice from an external lawyer in the exercise of the rights of the defence

¹ Akzo Nobel Chemicals Limited and Akros Chemicals Limited v Commission of the European Communities (C-550/07)

even if those documents had not been seen by an external lawyer and had not necessarily been created by an in-house lawyer. That development of the law remains unaffected by the final ruling of the Court of Justice. As there are no further rights of appeal from the Court of Justice's ruling, the renewed statement of the law can be expected to remain for position for the foreseeable future.

Relevance to Local Government?

Let us be clear - the case itself does not create any new limitation on LPP since the judgement confirms the existing position with regard to in-house lawyers under European Law which began with a decision in 1982¹, namely that LPP only applies where the exchange is connected to the "client's rights of defence" and emanates from an "independent lawyer" ie one not bound by the a relationship of employment.

Neither is it really likely to have an immediate and substantial day to day significance for most local authorities – since it concerns the extent of legal privilege in EU competition cases. In all other cases the law in England and Wales still places in-house lawyers in essentially the same position as an external lawyer with regard to legal professional privilege.

It is reassuring that the Law Society remains supportive of equal treatment for regulated in-house and external lawyers. Certainly most local authority lawyers are very clear that whilst they are employed they are also required to conduct themselves with the required level of integrity and independence that their professional status demands. It is perhaps also a slightly naïve assumption that individuals in external law firms do not develop close ties with their clients along with economic dependence on major clients that do not create conflicts which are difficult to "deal with effectively".

The publicity around this decision does however raise the question of whether lawyers in local government are making the best use that they can of LPP, both as a tool of their profession and secondly as an additional selling point for a continuing role for lawyers within local authorities?

Whilst there is an increasing emphasis on openness and transparency in a local authorities business, there will be times when the need to be able to receive frank and informed legal advice and to protect the confidentiality of such communications is essential to the good administration of local government. The benefit of being able to rely on LPP will commonly arise on the routine business of local authorities (eg litigation and dispute matters) but also in relation to major strategic issues where legal advice is required. The remainder of this article considers some of the issues local authority lawyers should be tackling to make sure that they and their "internal clients" are optimising their privileged positions.

Maximising Privilege

Perhaps the first thing that local authority lawyers should be doing is making sure that they have a clear working knowledge of the rules that apply. Secondly that they make their internal clients aware of those rules and ensure that appropriate procedures and communication strategies are in place to ensure that privilege is not lost unintentionally.

Legal privilege falls into a number of categories which will need to be addressed:

- Legal professional privilege
 - Legal advice privilege

Legal advice privilege relates to confidential communications (and evidence of those communications) between a client and its lawyers, which were written for

¹ AM&S Europe v Commission of the European Communities [1982] ECR 1575

the purpose of giving or obtaining legal advice. This will cover presentational or strategic advice provided that it relates to a client's legal rights, liabilities, remedies or obligations or otherwise have a relevant legal context. It will not apply to advice, for example, of a purely strategic, operational, public relations or commercial nature. Documents such as internal memoranda prepared by employees may not be protected by legal advice privilege as there is a narrow legal definition of who the "client" is which should be studied carefully in each case¹.

- Litigation privilege

Litigation privilege attaches to confidential documents that were created for the dominant purpose of actual or pending litigation. It includes documents prepared by employees and third parties.

- Joint privilege
- Common Interest Privilege

Whilst this is a complex subject a checklist of considerations for addressing these issues might commonly include the following:

- Involve lawyers at the right time (an early stage) so as to ensure the issue of privilege is addressed from the outset.
- Consider who the "client" is and how best to deal with this issue at the outset.
- Limit the circulation of confidential advice. It is important to understand the distinction between confidential and privileged documents. Not all communications between a client and its lawyers are privileged notwithstanding that they may be of a confidential nature. However privilege will no longer apply if a document loses its confidentiality – this makes it important to maintain confidentiality in all privileged documents.
- Try to avoid creating unnecessary records that will not attract privilege. Implement minute/note taking protocols and document management procedures. Consider who is best to undertake preparatory work. Consider the style of note taking and reporting where privilege may not be applied eg keep matters factual and avoid expressing opinions that may not be helpful if disclosed.
- Do not disclose to third parties unless privilege will be maintained.
- Don't mix privileged with non-privileged information and advice.
- Make sure all privileged and confidential communications are marked as such. Ensure that legal advice between client and lawyer is clearly identified. Consider filing protocols to keep such advice clearly separate.
- Factor in FOIA and EIR requests and the rules relating to these, particularly with regard to the exemption for legal professional privilege.

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¹ Three Rivers District Council and Others v Governor & Company of the Bank of England [2003] EWCA Civ 474; Three Rivers District Council and Others v Governor & Company of the Bank of England[2003] UKHL 48



Achieving Leadership Excellence Through Positivity

“Times are hard.”

What do these three words mean to you?

It is the one consistent message I have heard every time I have tuned in to watch the news – regardless of time, channel or date.

How many times do we have to be told the same message?

Once is enough – trust me. The mind has registered it.

The problem is when you hear the same message repeatedly, day in and day out, you start to believe it; in a situation like this the negative connotation in the message spreads through your mind and body like a cancerous growth and slowly paralyses you, leaving you feeling helpless and ineffective.

It makes you feel like you have no control over the situation, and that renders you powerless.

What you need to do, is think about that opening sentence in a different way.

“SO WHAT, if times are hard...”

Read the above sentence now and see how it makes you feel.

Re-framing or thinking of things in a more empowering way works well to address a problem.

The other way is to stop continuously feeding your mind rubbish. You don't put diesel in a car that is powered by unleaded fuel – unless you want it to stand still!

If something is not working for you – then stop doing it and try something else.

Habits are behaviours we do again and again. They can dictate what we do and often we do them unconsciously. That is fine if it is a healthy habit and produces healthy results. However, you can have bad habits too. Habits can be changed, quickly or over time, by doing things differently.

If all news is bad news, (I should know, I worked in a newsroom for years) do you always need to watch it? How about catching a bulletin on the radio on your way into to work? Perhaps you can quickly scan the headlines online. The point is with access to most things 24 seven, it is rare that you will miss anything worthy of note. Surely it is better to spend that time doing something that you find uplifting or enjoyable.

One of the most important qualities a leader needs is to have a positive frame of mind and the ability to look at things from a different perspective.

As a leader, you may have to make some tough decisions. Understanding your own leadership style will assist you while clarity and confidence in your vision will allow you to focus and keep your eye on the ball, so you can pave the way forward.

It may be re-assuring if everyone is in the same boat as you but successful leaders aren't afraid to move quickly to turn their oil tankers into a fleet of speedy and responsive tug boats, if that is what is needed to survive.

Of course once you know where you are going, you have to share that vision with others. Successful leaders use clarity and sincerity to connect with people. People like to know what the way forward will mean for them. So tell them. It will make them feel involved and included in the plan. All you need to do is communicate the message to them with care.

I often say to presenters, if you were sitting in the audience during your presentation, what would you like to see? How would you like the message to be conveyed? What would make you sit up and listen?

Whether you need to impart good news or bad news, it needs to be done with clarity and sincerity.

Nobody likes to hear bad news, but often if you have taken the time to build strong relationships with your team, then they are likely to see a situation as 'our problem' and not as 'your problem.'

Despite this, numerous studies show that one of the biggest problems in companies today is poor communication. Poor employee performance, lost profits and wasted time are all symptoms of this malaise.

The following story makes the point well:

A man is coming down a narrow mountain road in his car. A woman is travelling in the opposite direction in her jeep. They come face to face and narrowly squeeze past each other with inches to spare.

The woman winds down her window and shouts "pig" to the man.

Annoyed the man mouths back "cow" to the woman.

The man looks back at the woman through his rear view mirror and turning a corner smashes straight into a hog standing in the middle of the road.

The man had thought the woman was criticising him, when she was actually warning him. However due to time constraints, she was limited to what she said. What might you have said in a similar situation?

When you don't take the time to communicate properly, misunderstandings can occur, often leading to disastrous results.

An effective communicator is clear on what they want to get across and makes sure the message has been understood correctly.

You must have heard the saying, 'money makes the world go round' – well it doesn't.

People make things happen and strong leaders know that people are their best asset.

A senior manager once asked me, what he needed to do to connect with people.

I told him to ditch the title and treat people like you want to be treated.

Job titles in companies may show the level of responsibility someone has or the results they need to achieve, but it doesn't always accurately define what a person actually does. Influence and inspiration come from a person and not a position. That is why sometimes the person at the top of a company may not be respected by other employees working in the business, while somebody lower down the ladder may have lots of influence among their peers.

Ultimately successful leaders have the ability to adapt their behaviour to respond to others whilst still being comfortable with who they are. Confident leaders are not afraid to share their power through knowledge. They make themselves known to their employees and are able to move around the business effortlessly.

What makes a powerful and charismatic leader? Here's a summary of the key elements...

A positive mind set is the ability to see situations in a different light, put things into context and take a positive approach to a situation. Through this you can achieve growth and development for yourself, your team and your organisation.

Clarity means thinking things through in a clear and structured way. You will clearly have a vision and be able to articulate how you hope to achieve that for yourself and to others.

Presentation is important in a society where we tend to make judgements on what we see quickly. The way you come across using both verbal and non-verbal communication (what you say and your body language) will mean that either people will feel comfortable in your presence and their reactions will be positive towards you or they will not.

Communication is all about sending out your message in a clear way and ensuring it has been received and understood in the way you want it to be.

Connection is the ability to share, understand, guide and work with others for a common purpose. If you treat others like you want to be treated then you will find people will be open and receptive to building a relationship with you.

About Fleet Street Consulting:

Fleet Street Consulting works with businesses and organisations to help build winning relationships, improve results and increase productivity. Harnessing the power of communications is at the heart of everything we do! We specialise in bespoke training and management development programmes.

Our core services include Presentation Skills, Media Courses, PR workshops and Personal Effectiveness programmes. We also offer Business Mentoring and Coaching and Communications Strategy. Our clients include: Aston Villa Football Club, Shop Direct Group, De Vere Hotels, Al Jazeera, DLA Piper, Grant Thornton, The Media Trust, Warwickshire County Cricket Club, The Midcounties Co-operative, Advantage West Midlands, Birmingham Hippodrome, Institute of Cancer Research, The Thompson Foundation

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Leadership

We are working in uncharted territory, choppy waters or any other metaphor you choose. Depending on who you listen to, we need a steady hand on the rudder to steer the right course or new thinking for new times. Whether we're referring to leadership in politics, retail or banking operations, public sector or any other organisation – what do you think leadership is?

It has never been so loosely defined and yet so sought after. Let's take a quick look – recession, economic downturn, public sector cuts on an unprecedented scale, shrinking private sector, expectations for the third sector to plug the gap– yet what do we see in increasing numbers? Command and Control Management, protecting bureaucracy or the status quo and not too many examples of those willing to put their head above the parapet and take on new challenges.

We need to accept that old solutions are probably not the best answer to today's challenges and problems. Doing the same thing and expecting different results is recognised as a form of madness yet if we keep doing what we've always done, there's only one outcome! It isn't necessarily positive!

We require more than our fair share of new thinking when less young people are in the workplace. We need to embrace opportunities from technology, other organisations and cultures and look to more flexible ways of working. Many private sector businesses have been pleasantly surprised that the recession has led to them achieve more profit or more output with less people whilst retaining people and skills by negotiating different terms. Somewhat paradoxical!

Whatever your school of thought I believe we get the leaders we deserve at work, politics or wider society. We can do much more to nurture leaders, support fledgling skills and opportunities to help a new style emerge for this era.

What do we mean by leadership? We have all heard of irresponsible leadership at the top of financial organisations or running public services under the spotlight for the wrong reasons such as Haringey or Mid Staffs. Less is publicised about inspirational leaders in previously unsung sectors.

Leadership can be demonstrated by all of us at different times and in different contexts. Leaders are not necessary those with the grand titles, largest offices or car, greatest turnover, budgets or headcount in their sector.

Leadership can be quiet and effective. It doesn't have to be harsh and abrasive. Consider the many unsung community leaders who despite lack of traditional resources gain respect and achieve results on what many others would require a team of management consultants, a mega IT system and a large budget to achieve.

I'm optimistic that reduced resources will lead to greater true collaboration and genuine partnership working to share resources and build relationships than lip service we've seen previously.

Having worked in economic development for many years before RDAs, we worked together with far fewer resources through genuine collaboration with private and public sector to achieve great inward investment and regeneration results.

The regional model we deployed spread to other parts of the country as it was practical, collaborative, non competitive and right for its time. Leveraging in benefits from one another and sharing resources from competitors was second nature in my previous career of 20 years in international trade. It's how many small businesses work and certainly how voluntary and charity sector organisations achieve so much. Barack Obama leveraged his network of community contacts to unprecedented effect during the last Presidential election at a fraction of other leadership campaign costs. More can be done for less when we genuinely need to and want to work together.

Leadership is about taking responsibility for our actions – at individual, corporate and societal levels. It's about showing initiative when actions are required not in people's regular job descriptions, when tasks need doing by those available not necessarily those we might have commissioned when money was plentiful but about evidencing fitness for purpose and value in everything we do.

My personal leadership skills started early and continue to be honed daily. I imagine most were – starting as a Sixer in Brownies, Patrol leader at Guides, school senior prefect and leading a team after only a year at work. I continue to learn from the most unlikely places.

Many of us employ people who show leadership skills outside their work environment yet we oppress them - pigeonholing them into processes, structures, job descriptions and performance manage them when they fail. Often they do not have requisite skills because we tried to 'look after them' during the last restructuring so have moved them up or sideways and created other problems. We did not look after the organisation as a whole. We lost sight of the purpose of our services and our end users. Why not empower staff, remove some shackles and see what happens?

Why not demonstrate authentic leadership by assessing exactly what an organisation needs to do, and work on what resources it needs and how best to procure them and tell people this? This doesn't necessarily involve having the largest empire of people, real estate or marketing campaigns. It does require egos to be set aside.

Going back to basics is a great leveller and leadership skills are often demonstrated and developed at such times.

I am a non executive director of a large organisation and often hear about the need to 'harness our best talent' – why? Harnesses are restraining mechanisms to stop animals usually from progressing or straying beyond where we want them to go. Is that what we really want to do to our brightest people and potential leaders?

Board members have much to consider. Do they understand their individual and collective roles? Do they exercise their respective fiduciary or governance duties? Are they recruited for the right reasons and skills? Is it easier to recruit 'yes men' in our own image despite the poor results that group think is evidenced to achieve? How do we

ensure future board diversity and robust governance? Is the lack of diversity part of the problem? Would having a diverse board improve independent challenge or be a headache for a chair to work with? In whose interest is the board working?

Leaders need to be more aware of people's behaviour and styles. Many CEOs progress through a financial director route – not renowned for people skills. How many boards give a voting place to their HR director or others with a greater understanding of people rather than technical specialisms? Boards often focus on finance, process, IT, strategy, and even marketing before considering the very real cost to any organisation of wasted people resources. Those in professions dealing with people know how complex yet rewarding it can be when employees or clients achieve much better outcomes than we'd expected. Are they are greatest asset or liability?

We often see people with heads down, plodding on, keeping out of the spotlight that might target them for redundancy but failing to shine their light on new opportunities through fear or just doing what they've always done.

The current climate calls for new thinking! We need authentic leadership – courageous and willing to consider alternatives and new options. Strong leadership, often referred to in times of crisis can result in the 'macho' style of the last century which stifles innovation, initiative, enthusiasm and most worryingly halts enterprise.

Wasted potential is a personal pet hate yet I've seen this in every sector. It is not only the financial but human and reputational costs that need consideration.

I recently worked with a third sector organisation led by a visionary executive officer who successfully empowered unemployed young people through apprentice placements to securing their first jobs. At their first attempt they achieved outstanding results by supporting people to achieve much greater results than they had ever believed possible. Their organisation has progressed despite lack of resources by developing existing staff to become assessors, increasing the range of services offered and realising their potential role in the 'Big society'. Doing more for less is clearly demonstrated by them.

Whilst working with these young people, I have been struck by how few could cite inspiring effective role models in leadership or life in general.

Have we let down a whole generation? Have examples of inappropriate leadership of recent bank failings, military decisions, political influence and work experience from their own or parents failed to produce examples of good leadership?

There are lessons we need to learn. We need to recognise opportunities to demonstrate leadership everywhere. What will you do for yourself, your colleagues, your employees and your community? Leadership needs you!

www.justrealsolutions.com

Helen Liddar
Solicitor (non-practising) and Coach



Learning to fly

I'd tucked the last edition of this publication into my waterproof map carrier on a trip to the Lake District and that's how I came to read it at 1,000 feet above sea level. We were on a mission to find minnows at Alcock Tarn. We were not disappointed and I sat in the eye of the storm whilst 3 small boys dashed around in a fishing frenzy. As I read the articles, I was taken back to the story of a 27 year old lawyer I once knew whose colleague said to her, "Just go on and fly!" He meant "get out there in your career and head for the top," however she did not have a clue how to go about it...

From my reading of the editorial and articles, the editor's motivation in these publications is clear and laudable; facilitate the development of new local government leaders with a legal background. So how does someone with a background like yours who is interested in influencing the work of the Council as a leader go about developing their leadership potential? How do you learn to fly? Here are seven top actions to get you on track so you can see your way to the role you choose?

The first is 'find what you love to do.' **What do you want to create in your working life?** How can you translate that into a job of work and get paid to do it? What do you not want to do? Once you have the job role in mind, ask yourself what you will give to this job and what will doing this job give to you. Do you still want it?

"We make a living by what we get, we make a life by what we give." Winston Churchill

The second tip is to **resource yourself with the things and people that you imagine will help you on your way.** Who is it that you admire who works in the area you would like to be in? Go and talk to someone who has been there, done it, and bought the wardrobe to match. Who have you read about in recent articles and would like to learn more about? Contact them directly and ask for an hour of their time to give you a snapshot of what it is like to be them and do what they do. You have more chance of achieving what you want if you talk about it to a lamp post than if you keep it to yourself and a trusted and experienced mentor will share their experience and may stay with you as you develop. They have the same number of hours available to them in the day as you do. How do they use their time? Make good contacts with a wide network of like minded people and start developing mutually supportive relationships with them.

What one other resource would you particularly like to develop?

Tip number three is **get yourself a clear vision of how this future role looks to you.** Go and find a crystal ball, or rather make one of your own in the shape of a 'timeline' and go and have a look at your future as a leader. Emily Dickinson wrote, "I live in possibility." That is where a timeline can place you, firmly within possibility of the kind that leads to probability. This exercise is one that a trained colleague can take you through. Use your timeline to see your life from the future perspective of the job you want to do. Once you

are standing at the point on your line which represents a future point in your career, looking back towards the present, you will see the things you did just before you reached that stage. This allows you to build a list of future actions you will take towards your future role.

To help get you into action, which is a great place to be, there are many different books that will provide a guide. One such guide is 'Your best year yet' from Jinny Ditzler (Harper Collins).

At number four lies encouragement to consider how you talk to yourself and to others about what you intend to achieve. How often do you use "I can" and "I will" as opposed to 'could', 'should' or 'I'll try'? How you view your abilities and future prospects and translate these into the language you use is very important to your success. Your subconscious will listen to your words and so help you to influence your own success. **Be strong, clear and positive in your choice of words** to describe what you want to do and how you are approaching this.

Often it's not just what we say out loud, but that little voice in our head or on our shoulder that has it's own dialogue. Where listening to that voice is not helpful, get curious about how to change it's tune. Perhaps it has a volume control or mute button that you can use? Recognise that you can simply say to it, "Thank you, but not now" and replace it with some other words or images that work better for you.

At number five is '**know yourself.**' You may already know your preferences and strengths both as an individual and as part of a team from Myers Briggs and Belbin assessments and others. What steps will help you further develop your internal GPS so that your decision making, delegation, risk assessment and relationship building skills are strong, reliable friends?

Mohamed Ali said "It isn't the mountains ahead to climb that wear you out - it's the pebble in your shoe." Get curious about yourself. Is there a pebble in your shoe? What do you habitually do in a certain situation or with a particular person that you'd rather do in a different way? It is probable that with a little time and attention, any pebble will disappear. Where will you look for help? Coaching is great for this, so again look for help amongst trained colleagues.

Tip number six is to create the ideal environment for yourself in which to learn to fly. How we behave is highly context sensitive. **What will you add to your environment to improve it?** What will you remove? What object or image do you or will you associate with the leadership success you want to achieve? Who is a cheerleader for the future you choose? What have they said lately?

The seventh and final tip is to **celebrate your successes.** How often do we scale a peak and get to the top only to find that there is another rise now in view and so we get right on with scaling that peak too. Linger in your success for a while, even if it is only a little while and use it as a review point and a place to refresh your energy; it is also a time to thank those who helped you get there and to tell them how you are doing.

So how's your flying going and how are you strengthening your wings? Here's to your continued success and to that of the others who will emerge as courageous and effective local authority leaders before 2020 and beyond.

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The Transition From Technical Expert To Leader - The Challenges And Opportunities -

From the moment it was clear that the global economy was entering choppy waters, a significant number of column inches have been dedicated to discussing the need for effective leadership in the Public Sector in challenging times. For the first time in decades, Public Sector managers are having tough conversations with their teams about downsizing and redundancy.

Furthermore, managers will face the challenge of re-inspiring and re-engaging those that remain, all against a backdrop of what is likely to be bewildering and unsettling for even the most change resilient individual. This challenge is further compounded by the “more for less” environment in which most public servants now find themselves – less resource, less time, less money - and yet an expectation of maintaining quality, if not improving it. And let’s not forget that these managers may not have a clear line of sight for their own future in the organisation.

One group of Public Sector managers who we have seen particularly exposed by the current climate are technical experts who have moved into leadership positions. In many cases, these individuals have been rewarded and promoted based on their technical ability with little support provided to develop their ability to lead others. In better times, the individual’s leadership credentials can be supported by their reputation as a technical expert. However, when tough times dictate that teams need transformational leadership, the importance of emotional rather than technical intelligence becomes vital.

In recent months, our Leadership and Management Development Practice has seen an increasing demand in requests to support technical specialists as they move into leadership roles. With a recruitment freeze across the Public Sector, more and more technical people are finding themselves, sometimes unwittingly, in leadership roles with limited leadership experience and an employee’s idea of the organisation’s overall goals and strategies rather than a leader’s understanding. This is a huge leadership challenge requiring a completely different mindset to managing in better times. Getting this transition right can speed up the development of effective leaders who feel confident and can quickly contribute in their new role.

But why are technical people sometimes challenged when making the transition to leadership roles? When speaking to our clients, it would appear that there are a number of characteristics typically shared by technical people which are strengths in their technical capacity but can become weaknesses in a leadership role.

Technical people tend to identify with their profession first and their job second. Ask a technical expert what they do for a living, and you're much more likely to hear, "I'm an accountant" or, "I'm a lawyer" than to find out which company he or she works for. Similarly, we have found that there is a tendency for technical leaders to identify firstly with their technical specialism whilst keeping their role as leader as secondary priority. In some cases, they freely acknowledge not valuing the team-building activities and reward mechanisms that are in place to motivate and bond employees. A key challenge when moving into a leadership role can be to fully champion the organisation and engage their teams.

Technical people value autonomy. By the very nature of their technical expertise, technical people may see less benefit in the management role. They may prefer to manage themselves and want control over the conditions, pace and content of their work rather than leading other people. This may have developed through working for technical leaders who do not value leadership skills, thereby perpetuating a low priority on leadership.

Technical people have high achievement needs. Technical professionals are driven by a need to do difficult jobs well and to accomplish projects of major significance. They can be frustrated when their skills are under-utilised and they are concerned about their technical skills becoming out of date. When they can't see the measurable impact of what they are doing, they may struggle to be motivated. Technical people need to have access to the latest technology and they need a chance to work on it to improve their skills. As a result, leadership responsibilities can be a serious distraction and technical leaders can find it a challenge to understand the value of non-technical team members.

Technical people are world-class networkers. Because they see themselves as members of a profession first and employees second, technical professionals keep in touch with their professional peers around town, around the country, and around the world. And they stay in touch on-line. The Internet provides them with the means to instantly broadcast information about what's going on at work. For employers, this grapevine is a double-edged sword. If the technical people think it's a bad place to work, they may share this with their peers. If one technical person leaves for greener pastures, there is a risk others will follow. Equally an inspiring technical leader can 'sell' an organisation within the technical community. As such, technical leaders may have significant challenges in building and maintaining team and individual loyalty to the organisation.

So what steps do technical people need to take to develop their leadership skills? In our view, there are six areas of focus:

- **Commit to the role of leader and establish a leadership brand**
It is vital that technical experts make the proactive choice and the significant psychological leap to move from technical specialist to professional leader. Too often, technical people accept leadership positions as the only way to advance their career. However, becoming a leader should be viewed as an entirely new professional career, which requires the same amount of consideration as any other type of career transition such as the choice to move to a new organisation.

- **Adopt and develop a unique leadership style**

Developing an authentic style and leadership brand is critical to being an effective leader. Once a technical specialist has made the proactive decision to become a leader, they are on a steep learning curve to develop the skills and experience required. In difficult times, leaders who have not committed to their role can reduce loyalty and motivation in their teams. A leader must understand their authentic style and where their authority comes from in order to have impact or create a positive environment.

- **Adding IQ to EQ**

According to Marcus Buckingham and Curt Coffman of Gallup in their 1999 article “How Managers Trump Companies”, people join organisations but leave managers. Whether you fully accept this contention or not, there are few people who haven’t experienced the de-motivating impact of poor leadership.

Daniel Goleman, the internationally renowned psychologist and author of “Emotional Intelligence” would put this down to, in many cases, a lack of EQ on behalf of the leader. One thing is for certain, technical specialists are not lacking in IQ but many need to develop their emotional intelligence to become effective leaders. The good news is that EQ can be measured and developed further with appropriate coaching and other group interventions.

- **Leading with Authority.**

Managers must understand what best practice leadership means in their organisation so that they can exercise their authority in accordance with their unique leadership brand. Critically, leaders need to understand how to lead through change and, in particular, how to deliver tough messages and have courageous conversations about changes that directly affect peoples’ working lives and livelihoods.

Particularly in tough times, it is important for managers to give clear direction and set standards for their teams. This is difficult to achieve without authoritative leadership. Think of this as the leadership equivalent of a firm handshake. Unfortunately, some technical leaders don’t understand where their authority comes from and end up leading with the equivalent of a limp handshake, lacking in confidence or conviction. Others may go for the over-zealous bone-crusher but this coercive style is rarely the answer.

- **Managing Performance**

Mediocre performance cannot be tolerated. This is even more critical in light of the challenges posed by the “more for less” agenda which will require new ways of working and increase the pressure on performance and productivity. In our experience, tackling performance issues is not the preferred task of most managers let alone those lacking confidence in their leadership skills. However, good performance coaching skills and a clear understanding of how to effectively manage both high and low performers will help to ensure the team delivers rather than disables strategy.

- **Building a new career as a leader**

In the same way that technical specialists must commit fully to a new leadership role, they must also understand that leadership is a new career which must be developed along with their technical knowledge. Leadership skills need to be developed and practiced and time and resources should be put aside to achieve this.

Organisations must not assume that outstanding technical specialists will inevitably make good leaders. In our experience, this is often not the case and the penalties for getting it wrong can be severe for the organisation and the mismanaged teams. Also, we mustn't forget that the impact of a poor transition for the technical specialist can be devastating. Years spent in building a reputation based on their technical prowess can evaporate in weeks, if not days. Organisations must invest in the development of this oft forgotten cadre of managers.

Penna is a leading HR service provider with expertise in talent attraction, development and transition. For more information on Penna's Leadership and Management Development ILM Accredited Programmes including "Technical Expert to Professional", contact George Griffin, Penna's Director of Leadership and Management Development at george.griffin@penna.com.



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Dealing with Stress

What is stress? In technical terms, it is when the pressures experienced by the individual are perceived as exceeding their capacity to deal with them, in a situation where coping is considered important. A complex way of saying something simple - stress happens when you know that you can't cope. Not all stress is bad. Without some stress, we wouldn't achieve much, but the problem occurs when the stress builds up to such levels that it turns into *distress*.

Some people are naturally more able to cope with stress than others. Some solicitors thrive on it, while others go to pieces. It is important to remember that it is the perception of the individual concerned which is important. You may not consider a solicitor's workload to be excessive or their working environment to be stressful, but they may nevertheless experience symptoms of stress. This does not mean that they are somehow weaker or less able than solicitors who would view the same circumstances as an easy challenge – on the contrary, they may work more conscientiously and methodically, ultimately with better results.

Stress can be a killer. Not only can it take a physical toll with illnesses such as heart disease, but it can also lead to mental illnesses such as depression, as well as alcohol and drug abuse. 80% of lawyers calling LawCare's helpline about their alcoholism cite stress as the reason they began to drink to excess. All in all, stress can cost a high price in terms of professional careers, personal relationships and shattered families.

So why does it happen to solicitors? Studies have concluded that lawyers are at high risk from compulsive behaviour (i.e. overuse of alcohol, drugs, food) because of the type of personality attracted into the legal profession. Lawyers are most often hard driven A- type personalities who are also perfectionist, over conscientious, driven, competitive, ambitious, unable to delegate, status aware, highly aspirational individuals who find it hard to admit, even to themselves, that there are occasions when they can no longer do everything. The lawyers' own thoughts and belief systems can aggravate this inability to ask for help. The beliefs that, for example,

- "I must always be competent"
- "I must always be in control of events and people"
- "I must always be admired"
- "Events must always turn out as I want them to"
- "No one else could do this as well as I could, so I have to do it"
- "Taking 'down time' or leaving the office earlier than others is a sign of weakness".

These beliefs need to be challenged by the solicitor him/herself, and by managers, supervisors and partners. Such beliefs are unachievable and incorrect and serve only to add further stress to the individual lawyer perpetuating them, to his or her colleagues, the firm, and the profession as a whole.

There is little data available about the extent of the stress epidemic in the UK, but it is probably fair to assume that it is similar to that within the legal system in the USA, where studies by the Washington State Bar have shown that

- 12% of lawyers facing complaints or disciplinary action are clinically depressed
- 18% are subject to admitted addiction
- 75% of disciplinary cases involve alcohol abuse

and studies by the Oregon Bar Association have shown that

- 60% of disciplinary cases and 40% of negligence claims involve stress, depression and/or alcohol abuse on the part of the lawyers involved.

In the UK as a whole, it is known that stress and related issues are the second most common reason given for sickness absence, with up to 60% of those taking sick leave giving stress as the reason they are unfit for work. Whilst no statistics exist, LawCare's experience seems to suggest that the legal profession has the opposite problem, with "presenteeism" an issue which needs to be addressed in many firms. Lawyers who have been working in an extremely stressful environment, and are showing the typical stress symptoms of irritability, inability to concentrate, extreme anxiety, digestive problems and muscle strain, are nevertheless continuing to come to work and to stay late into the evening trying fruitlessly to catch up.

A stressed lawyer is not a good lawyer. Stressed lawyers make mistakes which cost money, so it is in the interests of An employer to have an effective HR policy which takes account of the issue of stress, allowing for the different susceptibilities of staff.

The overall HR ethos should be focused on supporting individual members of staff with thorough induction for new staff, regular training and quality appraisals, opportunities for career development, clear and fair employment policies (including an effective, zero tolerance policy on workplace bullying), good grievance procedures and mentoring/support schemes. Most importantly, there should be no stigma attached to taking time off sick due to mental illness or stress, and "presenteeism" should be discouraged, with staff required to go home if they appear to be sick, or if they habitually work far beyond their required hours. Studies (including the Law Society Quality of Life Report) have shown that employees value things like flexible working time, good relationships with colleagues, and friendly and approachable management more than they do remuneration, so taking steps to ensure that your firm is a pleasant working environment can pay dividends in terms of staff loyalty and effectiveness. In addition, bear in mind that stress is a Health and Safety issue, and some employers have had to make large compensation payments to staff who suffered stress at work.

If stress is a problem, LawCare offers several resources which can help.

- Lawyers, their families and staff who are suffering from stress and/or clinical depression, or who have other related emotional issues can call the LawCare helpline for free and confidential support. The number to call is 0800 279 6888, and lines are open 9.00 a.m. – 7.30 p.m. on weekdays, 10.00 a.m. – 4.00 p.m. at weekends and Bank Holidays, 365 days a year. Posters, flyers and leaflets advertising the helpline service are available free from LawCare by phoning 01268 771333.

- LawCare’s Anti-Stress Desktop Workbook is a small booklet which includes advice on time management, delegating, prioritising and learning to say No, all tools which can be very helpful in combating workplace stress. This can be issued free to all your employees, and includes details of the helpline service.
- LawCare also issues several free publications about stress. “Back to the Beehive” advises both staff and employers in situations where a solicitor is away from work due to stress, and there is an 18 page information pack about stress and depression, the symptoms, consequences and treatment. These are available on our website (www.lawcare.org.uk), or can be posted or emailed by calling 01268 771333 or emailing admin@lawcare.org.uk.
- LawCare’s Wellbeing Portal is an online tool to help lawyers take control of the stresses in their professional and personal lives by helping them to identify, assess and manage their stress. This useful resource is completely confidential and is also available via the website.
- LawCare offers free (except for expenses) CPD accredited workshops, seminars and presentations on the subject such as “Stress Recognition and Management” and “Time Management” and “Vicarious Trauma”. For more details, phone 01273 461861.

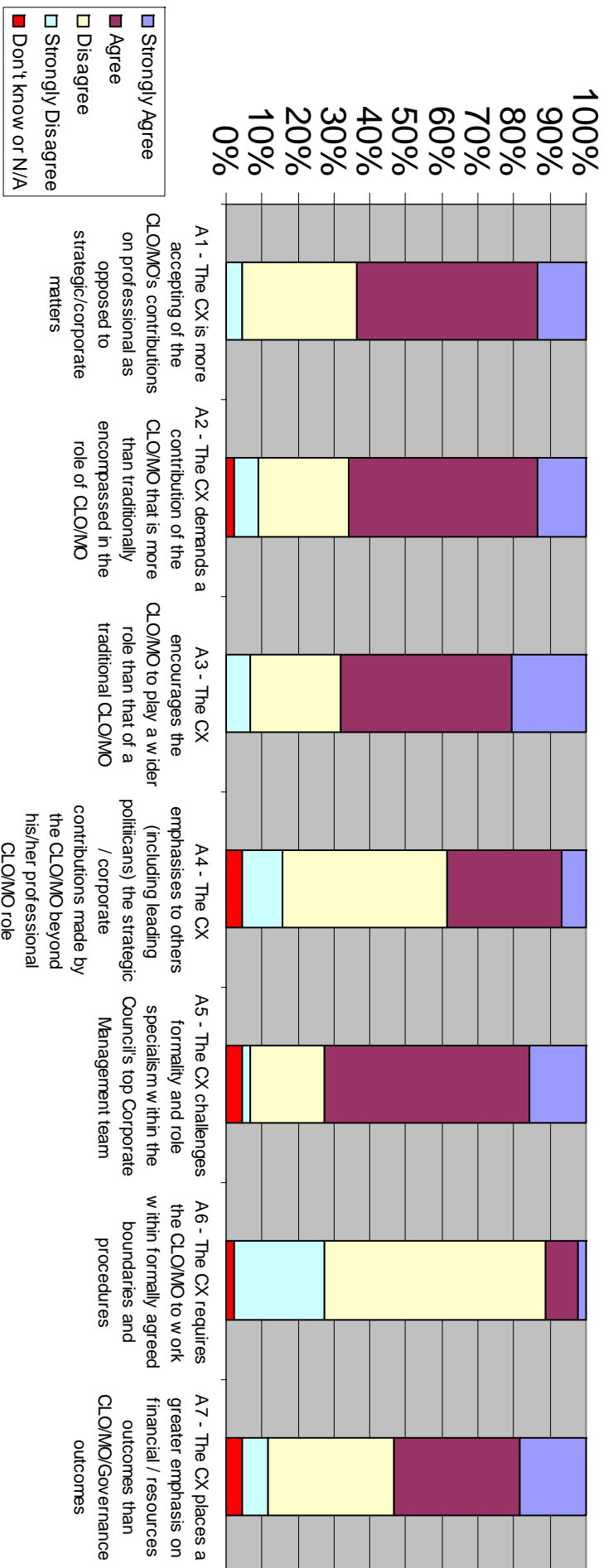
In the 21st century, it is unrealistic to expect to live or work without some element of stress, but what must be avoided is prolonged and high level stress. That ruins health, careers and relationships. If you, or someone you know, needs help, LawCare is there for you 365 days a year. Just pick up the phone and give us a call.

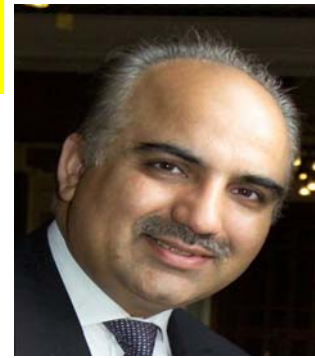
**LawCare can help you deal with these issues. There is a free and confidential helpline open 365 day a year from 9 a.m. to 7.30 p.m. on weekdays and 10 a.m. to 4 p.m. at weekends and public holidays
0800 279 6888.**

We also provide training, free of charge other than expenses, to highlight the need to recognise stress levels (including drinking to cope with the stress of work) and manage them. If your organisation is interested in a training session / presentation, please contact our administration line on 01268 771333. LawCare also offers two publications, *An Alcoholic in the Firm* and *Back to the Beehive* about helping an alcoholic or depressed colleague or staff member.

There is a wealth of information on LawCare’s website at www.lawcare.org.uk, including the LawCare Wellbeing Portal, an online screening tool to help lawyers, their staff and families, to recognise, understand and manage the stress in their lives. No one needs to suffer alone.

About the CX (44 responses)





Strategic Relationships Survey: 2010

The strategic relationship between the three Statutory Officers – Head of Paid Service, Monitoring Officer and Section 151 Officer – is essential for success of Local Government. At the end of the day, success or failure rests not just on these three individuals but the whole of the organisation, itself, in terms of valuable contributions from its members, managers, staff, customers and citizens.

Finances will, undoubtedly, play a major part in that success or failure decision, but it is important to recognise that it is only “leadership excellence” that will determine whether or not an organisation succeeds or fails. The strategic leadership provided by the politicians to these three Statutory Officers will, therefore, also become a critical test for any organisation.

With that in mind, ACSes launched its Strategic Relationships Survey: 2010 amongst its membership to assess the relationship between the three Statutory Officers from the perspective of the Chief Legal Officer / Monitoring Officer (“CLO/MO”). This article sets out the key highlights of that survey which will be considered in further detail at a future meeting of ACSes Council members.

Forty four ACSes Council members responded to the on-line survey during September and October 2010 and the “**top 7 highlights**” of the survey are as follows:-

1. CLO/MO has sufficient legal / technical staff that s/he can rely upon (74%);
2. CLO/MO is able to self-define his / her role in the organisation (64%);
3. The Chief Executive does not require the CLO/MO to work within formally agreed boundaries and procedures (61%);
4. The CLO/MO is not limited to offering accurate and timely CLO/MO/ governance advice “when called upon to do so” (60%);
5. The Chief Executive challenges formality and role specialism within the Council Corporate Management Team (57%);
6. The Chief Executive demands a contribution of the CLO/MO that is more than traditionally encompassed in the role of CLO/MO(52%); and
7. The CLO/MO is more confident and comfortable when s/he is supporting the Strategic / Corporate Agenda (51%); and

There are, of course, areas for improvement and the following top three are highlighted:-

1. The Chief Executive needs to encourage the CLO/MO to play a wider role than that of a traditional CLO/MO;
2. The Chief Executive needs to emphasise to others (including leading politicians) the strategic / corporate contributions made by the CLO/MO beyond his/her professional CLO/MO role; and
3. The Chief Executive should have more confidence in the CLO/MO to operate without prior clearance with the political leadership.

In terms of some of the qualitative comments from the survey the “**top 7 tips**” to elevate the standing of the CLO/MO are as follows:-

1. The CLO/MO should be a member of the Corporate Management Team and deputise for the Chief Executive;
2. The CLO/MO needs to stress the positive and proactive side of the role, including recognising the importance and power of the role they fulfil;
3. The CLO/MO needs to earn the respect of others and should not expect to be given such respect because of their title. Accordingly, they need to be a good colleague and a team member, who gives practical help and advice rather than just being seen as a legal professional;
4. The CLO/MO needs to be proactive in his/her use of the law to achieve corporate / strategic objectives and be interested in the political processes;
5. The CLO/MO needs to be attuned to the culture of the organisation and build strong and formal relationships that will support others that involve them;
6. The CLO/MO needs to understand the Corporate Agenda and demonstrate how they can contribute to it by being a problem solver rather than an obstructer; and
7. The CLO/MO must focus on adding value to the Council and less on the former role.

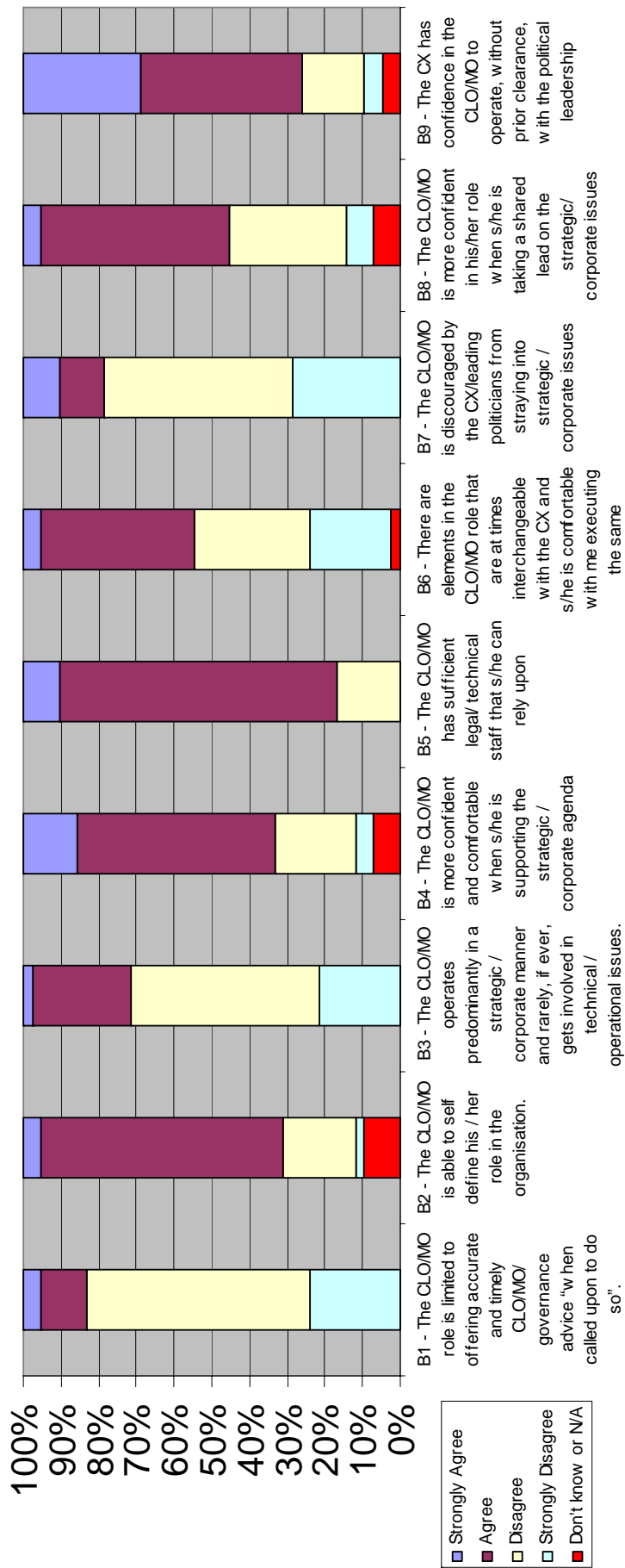
In terms of what the CLO/MO should avoid doing, the following “**top 3 tips**” are highlighted:-

1. Avoid saying “no”, without giving options and avoid being seen as a block or a barrier to innovation;
2. Avoid “legal speak” and avoid hiding in the office behind technical legal books or give technical advice which does not take into account the practicalities; and
3. Avoid losing the trust / confident of members and officers and avoid getting involved in the minutiae of internal processes.

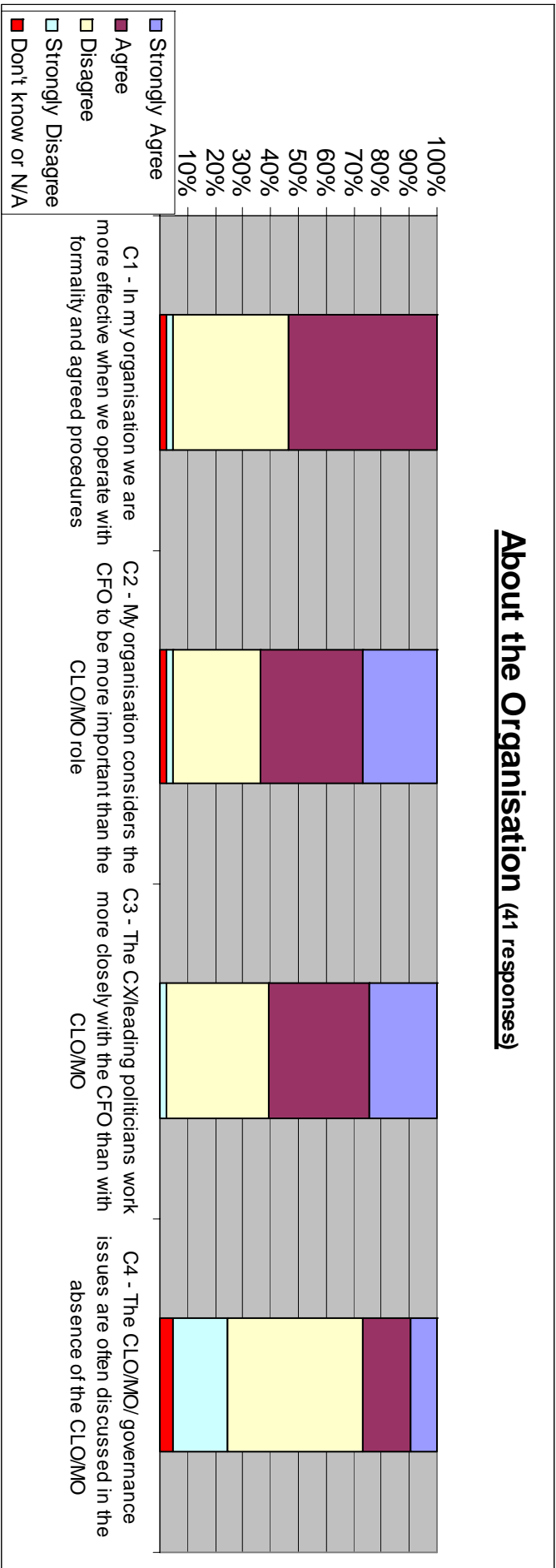
The three charts in relation to the questions asked appear with this article.

In conclusion, this Strategic Relationships Survey: 2010 presents a snapshot of the important views of Chief Legal Officers / Monitoring Officers serving within Local Government. It would be interesting to see if these views change in, say, two years time and, as such, this Strategic Relationships Survey 2010 provides a valuable benchmark for measuring strategic relationship outcomes for the future.

About the CLO/MO (42 responses)



About the Organisation (41 responses)



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