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GOVERNANCE AND ACCOUNTABILITY IN THE MODERN LOCAL AUTHORITY:

AN EXPLORATORY ANALYSIS OF VIEWS FROM INSIDE & OUT – WITH PARTICULAR REFERENCE TO OUTSOURCING AND PARTNERSHIP WORKING.

ALEX STRICKLAND FRSA

A thesis submitted to the University of Huddersfield
in partial fulfilment of the requirements for
the degree of Doctor of Public Administration

17th March 2015.

ANNEX 1-7

Volume II of VIII

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Annex 1 – Background to the Structure & Internal Workings of English Local Government.

1. An Overview of the English Local Government System

1.1. The Structure of Local Government.

There are a multiplicity of standard texts on the structure and operation of local government (Griffith & The Royal Institute of Public Administration, 1966, Wilson & Game, 2011). By way of context, it may be noted that England has some 353 local authorities¹ (in addition to a system of parish councils). In London this comprises 32 boroughs plus the City of London, as well as the Greater London Authority which along with the Mayor of London takes responsibility for strategic issues such as cross London transport. Outside of London, the system is complex. The most populated urban areas form six conurbations (Merseyside, Greater Manchester, West Midlands, West Yorkshire, South Yorkshire and Tyneside). Together these constitute 36 ‘metropolitan’ authorities which have responsibilities for all local functions including housing, town planning, economic development, public health, refuse collection, education and social services). Outside of the metropolitan areas ‘shire England’ used to operate a two tier system of local government (with the upper tier of County Councils responsible for strategic planning, highways, education and social services with District Councils responsible for other functions) until the mid 1990’s when there was more of a patchwork approach adopted following the recommendations of the Banham Commission in 1994. The net result was that there is now little logic to the organisation of local government in shire England. Some areas such as Shropshire have unitary status with one authority running all functions others like East Sussex CC have the traditional two tier arrangement with East

¹ These are known as principal councils under the Local Government Act 1972 and are in addition to a system of Parish Councils (in England) and Community Councils (in Wales). The 353 authorities comprise 27 county councils, 55 unitary authorities, 32 London Boroughs, 36 Metropolitan Boroughs and 201 District Councils together with the Isles of Scilly and the London City Corporation.

Sussex County Council running county functions and a series of district councils operating district functions. Other areas like Lancashire still have the two tier structure for most of the county but have both Blackpool and Blackburn with Darwen 'opting out' of county control, as unitary authorities operating all functions in their areas. The current trend has to been to favour the creation of further unitary authorities with the most recent ones being Cornwall, Cheshire East, Chester & Cheshire West Councils in 2008². The most recent trend is to focus powers and funding streams on 'City Regions'³ and to look at service delivery through partnership arrangements and pooled budgets (Willis & Jeffares, 2012). This again suggests that complexity is likely to increase rather than the reverse. And yet, over the last twenty years or so, there has been a greater push for the creation of unitary (single tier) authorities, heralding the abolition of upper tier councils, notably many County Councils in shire England, all County Councils in Wales and all Regional Councils in Scotland. This left Wales and Scotland with a unitary structure of local government.⁴ Northern Ireland has only ever had single tier authorities, with some 26 covering the province although they tended to be small in size, with all key housing and planning functions being delivered at an (unelected) regional level by the Planning Service and Housing Executive.⁵ The desire for the creation of larger unitary authorities is based mainly on the argument for service delivery in the quest of economies of scale. This has been the argument made by several local government commissions in England over the years⁶ and it has just reached Northern Ireland with the Review of Public Administration (Knox & Carmichael, 2006) due to take effect in 2015, reducing 26 authorities to just 11 'super councils', which are due to take on key planning functions for the first time in many decades.⁷

² These were elected in shadow form in April 2008 and formally established April 2009.

³ For further discussion of the local government system and city regions see Chapter 4.

⁴ Wales has 22 unitary local authorities whilst Scotland has 32.

⁵ See Chapter 10.

⁶ The Redcliffe Maud Commission (1966-69) (Redcliffe Maud, 1969) and The Banham Commission (1990-92) (Banham, 1992). The Widdicombe Commission also considered internal governance (Widdicombe, 1986).

⁷ This was of course due to the onset of 'the troubles' when Londonderry Corporation was the first to be stripped of housing allocation powers followed by other authorities in the province, amidst allegations of gerrymandering and sectarian issues over housing allocation. These powers were vested in the Housing Executive and have remained so to this day. Similarly planning powers were controlled by the Department of Environment at Stormont. Planning functions are due to be vested in the new 'super councils' in the spring of

1.2. Theories of Central/Local Relations.

In addition to considering the structure of local government, thought should also be given to the nature of the relationship between local government and the central power base at Whitehall. Three main theoretical frameworks⁸ have been advanced in this context. It is useful to outline them here as they are crucial to understanding the context. First is the Agency Thesis (Bogdanor, 1988) which gained currency in the 1980's and maintained that Whitehall had reduced local government to the status as an administrative agency to implement central government directives⁹. This perspective highlights the fact that the Whitehall power regime operates the most centralised state in Western Europe. Second is the Partnership Thesis which assumes equal but highly formalistic power relations between central and local levels but this has been criticised for ignoring power realities. This criticism led to the development of the Power/Dependence thesis (Rhodes, 1979)¹⁰ in which local/central levels are considered to have some power in particular situations, but the degree of power depends on the particular task and resources involved and the ability to conduct negotiations around that.¹¹ Thirdly, the Stewardship model (Chandler, 1988)¹² is a modification of the Agency thesis, but allows considerable discretion to local authority in the implementation of Whitehall policy directives, although there is an acknowledgement that the implementation operates within the broader constraints set by law and financial regimes. Having introduced the structure of local authorities and considered the nature of central/local relations, it is instructive at this stage to chronicle the internal governance arrangements that they operate by.

2015 although housing functions are to remain regionalised administered by the unelected agency - The Housing Executive.

⁸ An overview is provided in Greenwood, John, Pyper, Robert & Wilson, David (2002) 'New Public Administration in Britain' (3rd ed) (LONDON: Routledge).

⁹ During the 1980's local government was bypassed in a variety of ways with for instance Urban Development Corporations dealing with urban regeneration, with Housing Action Trusts dealing with social housing and programmes in education administration aimed at by-passing the local education authority through devolving management of budgets (through Local Management of Schools and Grant Maintained Schools) to school level thereby marginalising or excluding local authority involvement.

¹⁰ See Rhodes, R. (1979) 'Research into Central-Local Relationships in Britain: A Framework for Analysis', Department of Government University of Essex.

¹¹ The Power/Dependence Thesis rests upon Exchange Theory advanced by James Thompson (THOMPSON: 1967) and also assumes that each level of government will seek to act in its own enlightened self interest (to draw on Adam Smith).

¹² See Chandler, J. (1988) 'Public Policy Making for Local Government' (LONDON: Croom Helm).

2. The Internal Governance of English Local Authorities.

2.1. The Committee System

Historically, local government in the United Kingdom has functioned on the basis of the committee system (Wilson & Game, 2011, Bailey & Crawford, 2004). Under this system the 'full council' consisting of all elected members was seen as the supreme decision making body. Committees were traditionally structured around particular service areas such as education or housing (but later around broader joined up areas such as 'young people' or 'community services') and tended to exercise referred powers meaning that decisions had to be approved by the full council. Some committees exercised delegated powers that did not need full council approval and the most important committee tended to be the Policy & Resources Committee that decided on general policy and budget matters (Wilson & Game, 2011). There was a requirement that committees be politically balanced.¹³ This system however came to be seen by many as bureaucratic and cumbersome which led to widespread pressure for reform (Cairns, 1996).

2.2. Internal Decision Making Structures

The election of the Labour Government in 1997 saw publication of a White Paper in England & Wales¹⁴ (and the McKintosh Review in Scotland)¹⁵ proposing reform. These recommended new models of internal management and were legislated for in England & Wales in the Local Government Act 2000¹⁶. Essentially this replaced the committee system with a new 'executive' model of decision making (Fenwick & Elcock, 2004). There were a variety of forms of Executive (Cabinet/Leader, Council Manager and Elected Mayor). The Cabinet/Leader model (often known just as the 'Executive') was the most popular.¹⁷ The general scheme was that the full council

¹³ Sections 15-17 Local Government & Housing Act 1989.

¹⁴ See 'Modern Local Government: In Touch With the People', White Paper, Published by DETR (1998).

¹⁵ MIDWINTER, A. (2000) 'McIntosh on Governance and Accountability', Local Government Studies, Vol.26, No.2, pp.1-6.

¹⁶ See also Local Government in Scotland Act 2003

¹⁷ The Local Government Act 2000 allowed small authorities with populations under 85,000 to operate what was known as 'alternative arrangements' which was a version of the committee system.

would determine the policy framework/budgetary matters¹⁸ and within that framework the Executive (which was to constitute up to 10 members and could be single party) would have responsibility to deal with other matters with the exception of regulatory matters¹⁹. There was to be a system of 'overview and scrutiny' committees which would scrutinise the decisions taken by the Executive and the key point about this reform was that for the first time in local government history it created a split between executive and scrutiny functions (Fenwick & Elcock, 2004) Some members of the Council would take on executive responsibilities (as Portfolio holders) whilst others would take on responsibilities for scrutiny or else deal with regulatory functions such as planning and licensing. There was also to be a new ethics regime with an enhanced Code of Conduct and a system of local Standards Committees and a (since abolished) National Standards Board. This revamping of the system was in the name of democratic renewal and although arguably managerialist in nature and doctrine (modelled on the Westminster system of cabinet government and select committees) it led to inevitable debates about whether the role of the elected member had been strengthened or not. The general conclusion was that Executive members enjoyed enhanced status, profile and influence at the expense of 'backbench' members whose focus was on scrutiny or regulatory matters (Fenwick & Elcock, 2004, Midwinter, 2000).

2.3. The Role of Local Government Officers

Before leaving the issue of constitutional arrangements, mention should be made to the importance and role of local government officers. Increasingly these are professional staff (social workers, teachers, environmental health officers, highway engineers, surveyors, planning officers, accountants, lawyers etc.) who are employed locally on merit²⁰ by each authority. They are constrained by tight rules

¹⁸ The Local Government Act 2000 sets out a series of statutory plans which cover cross cutting areas e.g. Children & Young People, which set out policy for the authority known collectively as the Policy Framework. These are to be determined by the full council.

¹⁹ Planning and Licensing are the key functions here. Applications for planning permission and the grant of licenses (for instance for taxis, public entertainment or alcohol sales) are dealt with by committee on a quasi-judicial basis determining applications on their particular merits.

²⁰ Section 7 Local Government & Housing Act 1989.

governing political involvement²¹ in addition to any professional codes. Some officer roles are of particular importance and are required by statute - notably the Chief Executive (or 'Head of the Paid Service' as it is legally known)²², the Chief Finance Officer²³, the Chief Inspector of Weights & Measures,²⁴ the Chief Social Services Officer²⁵ and the Director of Children's Services,²⁶ The Chief Executive (who can come from any professional discipline)²⁷ has statutory responsibility for co-ordinating the affairs of the whole authority. The Chief Finance Officer (who must be a qualified accountant)²⁸ is responsible for the financial affairs of the authority. Both the Chief Executive and Chief Finance Officer positions are of central importance in running any local authority both at present have statutory protection against dismissal²⁹ and both have extensive statutory duties to report matters of concern to elected members. In addition each authority is required to appoint a 'Monitoring Officer'³⁰ (usually but not necessarily the most senior lawyer in the local authority)³¹ who bears personal statutory responsibility for ensuring that the authority operates within the law and upholds high standards of ethical governance. There has been analysis of the power that officers actually exercise in local government.³² At this stage, it is worth briefly considering how academics have considered that power is actually exercised within local authorities.

²¹ Section 19 Local Government & Housing Act 1989 introduced a regime of 'politically restricted posts' which restricted/banned political activity for posts that involved giving policy advice to an authority or for posts graded over a particular salary level.

²² The Head of the Paid Service is appointed to discharge statutory duties under section 4 Local Government & Housing Act 1989.

²³ The Chief Finance Officer has statutory responsibility for the budget of the local authority under section 151 Local Government Act 1972

²⁴ Section 72 Weights and Measures Act 1985

²⁵ Section 6 Local Authority Social Services Act 1970.

²⁶ Section 18 Childrens Act 2004.

²⁷ Traditionally this post has been occupied by lawyers but increasingly town planners/economic regeneration specialists and accountants are holding these posts. (See Chapters 9 and 10 of this thesis).

²⁸ The requirement to be a qualified accountant was introduced by section 113 Local Government Finance Act 1988.

²⁹ There has been much debate in the professional press particularly from the Society of Local Authority Chief Executives and the Chartered Institute of Public Finance and Accountancy about the importance of maintaining this protection (which is currently under review by the Department of Communities & Local Government) amid some high profile cases over recent years such as the dismissal of Mr Bowles at Lincolnshire County Council in mid 2000's.

³⁰ Section 5 Local Government & Housing Act 1989

³¹ The appointment of lawyers is custom and practice rather than a statutory requirement

³² See for instance J.Greenwood, R. Pyper & D.,Wilson (2002) 'New Public Administration in Britain' (3rd ed) (LONDON: Routledge).

2.4. Theories of Internal Working in Local Authorities

Three theoretical frameworks are proposed in considering the internal operation of local authorities (Greenwood, Pyper & Wilson, 2002). These generally consider the distribution and exercise of power between elected politicians and paid officials and can only ever be a starting point for analysis, alongside other considerations, such as party politics. Nevertheless, the first is the formal traditionalist legalistic model³³ which sees the classic split between elected members who make policy and officers who carry it out. Second, is the technocratic model which considers that officers exercise disproportionate influence because of their technical expertise (unlike in Whitehall, there are few generalists in local government – officers tend to be qualified in a professional discipline – engineers, public health officers, teachers, social workers, accountants etc.) and finally is the joint elite thesis which sees high level of elected members and officers deciding on matters jointly.³⁴ It is suggested that the latter is particularly important given the rise of networks and community governance and it is submitted that this is probably the nearest approximation to reality. This latter point assumes particular significance given the importance of Community Leadership (see section 2.5 below).

2.5. Community Leadership

Central to the reforms was the notion of Community Leadership.³⁵ This is rooted in the idea that local authorities were 'first amongst equals' enjoying democratic legitimacy in their local area and should act as a focus for local activity outside as well as within the local authority. Hence legal powers were increased³⁶ by the introduction of Section 2 'wellbeing powers' which was later boosted to a general

³³ This draws on the Institutional base of Public Administration/Political Science as practised by scholars such as William Mackenzie, William A Robson and Norman Chester, as well as later scholars like Neville Johnson and Fred Ridley. It is based on an analysis of formal decision making structures and using descriptive analysis based on that.

³⁴ This may be seen as being similar in nature to the Core Executive idea advanced by Rod Rhodes with respect to the exercise of power in Central Government in which key officials and ministers jointly exercise power in key areas of decision making.

³⁵ This was underpinned by two statutory provisions in the Local Government Act 2000. First was the wellbeing power in section 2 (to take any action calculated to improve the social, economic or environmental wellbeing of the area' (since eclipsed by the new power of general competence in Section 1 of the Localism Act 2011). Second was the duty to produce a Community Strategy under section 4 which required the involvement of bodies beyond the local authority.

³⁶ Notably this did not extend to legal powers to raise finance.

power of competence in Section 1 of the Localism Act 2011. The idea of Community Leadership was of central importance (Sullivan, Downe, Entwistle & Sweeting, 2006) particularly given the need to engage with partners to deliver complex and interlinked public policy objectives. The idea of local authorities being 'first among equals' in these networks may have a certain logic in terms of democratic legitimacy, but impact typically comes from the ability of the authority to negotiate and influence rather than mandate particular actions.³⁷ The importance of community leadership together with increased reliance on services being delivered through outsourcing (see Chapter 3) and partnership arrangements (see Chapter 4) serve to place issues of accountability/scrutiny centre stage.

³⁷ In this context it is instructive to consider the Power/Dependence Thesis that was advanced by Rod Rhodes in the sphere of Central/Local Relations. The Power/Dependence Thesis maintains the importance of negotiations and recognises that different parties/bodies may have different negotiating strengths depending on the particular circumstances.

Annex 2 - New Right Thought

Two Strands of New Right Thought

It is suggested that New Right thought is split into two strands – the libertarian strand which has a focus on free markets and an authoritarian strand which has a focus on authority, discipline and respect. It is important to be aware of these strands because together they created the philosophical context in which the state was ‘hollowed out’ – making it do less, but doing so in a way which restored legitimacy and respect.³⁸ In surveying the New Right, there is always the danger of giving sense of comprehensiveness/unity in retrospect that did not exist at the time. In general, the ideological economic and political paradigm represented by New Right thought, reflected the wider philosophical debate on role of the state in relation to the individual, whilst drawing to various degrees on doctrines ranging from Economic Liberalism and Monetarism to Methodological Individualism and Public Choice (Ashford, 1993, Barry, 1987, Welsh, 1993).

Although economists were often driving the debate, they considered the wider impact of economics on society and politics. Commentators have long noted the split between Libertarian (neo-liberal) and Authoritarian (neo-conservative) thinkers on the new right (Ashford, 1993, Barry, 1987, Welsh, 1993) and any analysis of New Right thought must pay significant attention to it.

³⁸ The restoration of legitimacy however did not mean it was free of problems at either central or local level. The chief management problem was that of network steering – how to steer the policy networks implicit in outsourcing and partnership arrangements so as to deliver effective policy outcomes. It has been suggested by Rod Rhodes for instance that policy implementation has become more complex as the state had ‘rubber levers’. This feeds into the complexity argument arising from the increased number of dependency relationships identified by La Porte as long ago as 1975 and referred to by Anthony King in his elaboration of the Overload Thesis.

New Right Thought: the Libertarian Strand

CLASSICAL LIBERAL

- ADAM SMITH
- DAVID RICARDO

NEO LIBERAL

- FREDRICH HAYEK
- MILTON FRIEDMAN
- SAMUEL BRITTAN
- PETER JAY

PUBLIC CHOICE

- WILLIAM NISKANEN
- GORDON TULLOCK
- JAMES BUCHANAN

Fig 1 Libertarian Thinkers

- IMPORTANCE OF MARKETS
- PRIVATE PROPERTY
- LIMITED/CONSTITUTIONAL GOVERNMENT
- RULE OF LAW
- LIMITED WELFARE STATE
- MONETARISM – REDUCTION IN MONEY SUPPLY TO CONTROL INFLATION

Fig 2 Libertarian Themes

The Libertarian strand of the New Right which played the key role in the British context, is dominated by Classical Liberal and Neo-Liberal economists together with Public Choice Theorists (see Figure 1 above) and is concerned with themes such as - individualism, a belief in (negative) freedom, limited government and the efficiency of free markets (see Figure 2 above).

Turner (Turner, 2011) identified four key libertarian (or neo-liberal) New Right themes - namely a belief in the sanctity of markets, an emphasis on the importance of private property, a concern to ensure limited/constitutional government and an opposition to/mere tolerance of any sort of welfare state. In addition to this the notion of controlling the money supply to keep down inflation, the rejection of Keynesian Demand Management and the contention that government intervention in the economy is folly making any situation economically worse may be added (Ashford, 1993).

There is a degree of doctrinal debate particularly around economics, say between Chicago/Austrian School around monetarism.³⁹ Notwithstanding such doctrinal debates agreement tended to form around key policy themes such as controlling inflation, privatisation and a preference for government non state intervention in the economy (see Section 2.8 below - 'Policy: The New Right Policy Programme').

The Impact of the Classical Liberal Economists (See Figures 1 & 2 above).

The Libertarian strand drew heavily on the contribution of what Marx referred to as the 'classical economists'. Mention must be made of the 'grandfather' of market economics - Adam Smith (1723-1790) who in his celebrated 'Wealth of Nations' (Smith, 1776) broadly advocated a laissez faire approach with limited government intervention, together with his emphasis on the importance of private property, stable exchange conditions and the ability to enforce contracts which led to the thesis that although producers and consumers act in their own self interest, the infamous 'invisible hand' in the form of the price mechanism brings together supply and demand in a competitive market at the point that maximises benefits to both producers and consumers. David Ricardo (1772-1823) also had an influence in particular with his advocacy of global free trade through his Theory of Comparative Advantage and his thoughts on the relationship between profits and wages and the production of value (Ricardo, 1817).

The Impact of Hayek & the Austrian School

FRIEDRICH HAYEK (1899-1992) was the most influential figure of the so called 'Austrian School' economists, started by Carl Menger (1840-1921) and Ludwig Von

³⁹ with the Chicago School believing that a gradual reduction in the money supply could adequately control inflation, whilst the Austrian School contends that inflation must be 'stopped dead' (HAYEK:1990, p.23, ASHFORD: 1993, p.30). Ashford noted that there was a difference between the Chicago and Austrian schools on the issue of trade unions, with the former tolerating them and the latter believing that they prevented an efficient labour market and should be stripped of legal immunities (ASHFORD:1993, p.30/31). The Austrian school also stress a belief in enterprise and entrepreneurship as do 'Supply Siders' but the latter advocate national government intervention to build infrastructure and develop strong industrial sectors, hence the concept of the 'Developmental State' (WOO-CUMINGS:1999, ONIS:1991, LEFTWICH:1995) in which state capitalism sponsors a strategy to develop and invest within key economic sectors, such as the Japanese model (CHALMERS: 1982).

Misses (1881-1973) at the University of Vienna. This school lays a premium on the efficiency of free market competition and is a strong opponent of any government intervention in the system - beyond ensuring national defence, exchange stability and a legal framework to enforce contracts. Ludwig Von Misses was an early critic of the growth of bureaucracy and laid the foundations for what was later to become the distinctive public choice critique of bureaucratic organisations.

The Austrian School was also influenced by the (former communist) and positivist philosopher Karl Popper (1902-1994) who articulated an opposition to collectivism in all its forms. Ashford noted that the Austrian School advocates a 'Methodological Individualism' in which the individual is the primary focus of study and a 'Subjective Theory of Value' in which the individual is the sole legitimate judge of what is acceptable and not in the market place (Ashford, 1993).

Hayek like Smith was a proponent of the perfect market which was seen as the ideal to aim for, in which the price mechanism was determined by buyers and sellers, there were no barriers to entry and there was easy access to full and accurate information upon which to base decisions⁴⁰.

Hayek was a trenchant critic of economic planning, whether it was by means of a command (soviet type) economy or a regulated social market one. His 'Road To Serfdom' (Hayek, 1944) made the case against economic planning by arguing that first of all no person or organisation was competent/capable of doing it right and to the extent that central planning was possible, it would be a heavy burden on liberty - hence his conclusion that (socialist) government intervention led to the 'road to serfdom'. This was supported by the argument that even if it was possible, no individual or agency had the legitimacy to make such decisions. In the 'Constitution of Liberty' (Hayek, 1960), Hayek outlined what he saw as the goals of a liberal society and the legitimate role for government. Essentially this was to provide limited public goods (such as national defence), oversee stability of exchange and ensure a

⁴⁰ The Austrian School focus upon the business cycle and the supply side of the economy (rather than demand emphasised by the Keynes). The challenge is therefore to ensure that investment and consequently production are regulated through the setting of interest rates/monetary policy in such a way that balances supply and demand over the business cycle.

legal system that protected private property rights/ allowed the enforcement of contractual obligations. In the three volumes of his 'Law, Legislation and Liberty' (Hayek, 1973, 1976, 1979) Hayek looks to how a constitution and legal order of a liberal society should operate. The chief conclusions here are that that law must be open and transparent, that the Rule of Law must operate and must bind government bodies as much as it binds individuals and that a constitutional arrangement should be in place to ensure adequate checks and balances on the exercise of governmental power.

Ashford (Ashford, 1993) identified several themes which run through the writings of Hayek and it is worth chronicling these below because these observations collectively make the philosophical argument for limited government with the implication that any public services that are provided should be done so in a way which maximises economic efficiency, hence the link to outsourcing services (see Chapter 3) at both a central and local government level,.

1. Spontaneous Order

With a clear echo of the 'invisible hand' of Adam Smith, Hayek maintains that social institutions such as the market have evolved from human action intended to promote self interest, but as a consequence, it also promotes the interests of society. This leads to the conclusion that rules should assume the utmost importance in society. The spontaneous order supports negative liberty (see below) and although it can be reformed in an evolutionary way, reform/revolution arising from any rationalist 'grand' design was cautioned against.

2. The Value of Liberty

Hayek defines liberty in the negative sense in terms of 'minimum arbitrary coercion' rather than through provision of any social rights. Rules should ensure that any interference with liberty is proportionate and justified in accordance with universally applicable law. Hayek considers the dispersal of practical knowledge (say in terms of entrepreneurship, business experiments etc.) as a key aspect of liberty. This fosters a creative society in which there is no guarantee of success and no grand design, but many experiments. Ashford (Ashford, 1993 P.27) quotes Hayek from the 'The

Constitution of Liberty' (Hayek, 1960) in which he contends that 'our faith in freedom does not rest on the predictable results in particular circumstances, but on the belief that on balance it will release more forces for good than bad' (Hayek, 1960 p.31).

3. The Dangers of Socialism/Social Justice

Hayek contended that no government official(s) had either the legitimacy or expertise to command and centrally plan an economy in a way that was more efficient than a market outcome. Without the knowledge dispensed by the price mechanism, economic planning became impossible. In his 'Road to Serfdom' (Hayek, 1944) Hayek contended that the attempt to do so was of itself corrosive of freedom. Hayek also dismissed the idea of social justice contending (as part of the subjective theory of value) that no person or body had either the right or legitimacy to determine what was just in any particular circumstances, claiming that 'Once politics becomes a tug of war for shares in the income pie, decent government becomes impossible' (Hayek, 1979, p.150, Ashford, 1993, p.28).

4. The Principles of a Free Society

It has already been noted that Hayek envisages a free society as rooted in law and rules. The chief principles to be upheld are The Rule of Law and limited government, under which governmental powers are limited by means of a (legally enforceable) constitutional order.

The Impact of Friedman & the Chicago School

MILTON FRIEDMAN (1912-2006) was the most influential figure of the so called Chicago School economists. Through his publications - chiefly 'Capitalism and Freedom' (Friedman, 1962) and a popular TV series (later published) 'Free to Choose' (Friedman, 1980), Friedman makes the case for limited government, argues for the efficiency of market solutions, indicates the perils of government intervention, stresses the importance of tackling inflation (which he regards as an exclusive monetary phenomenon), rejects the trade off between inflation and unemployment

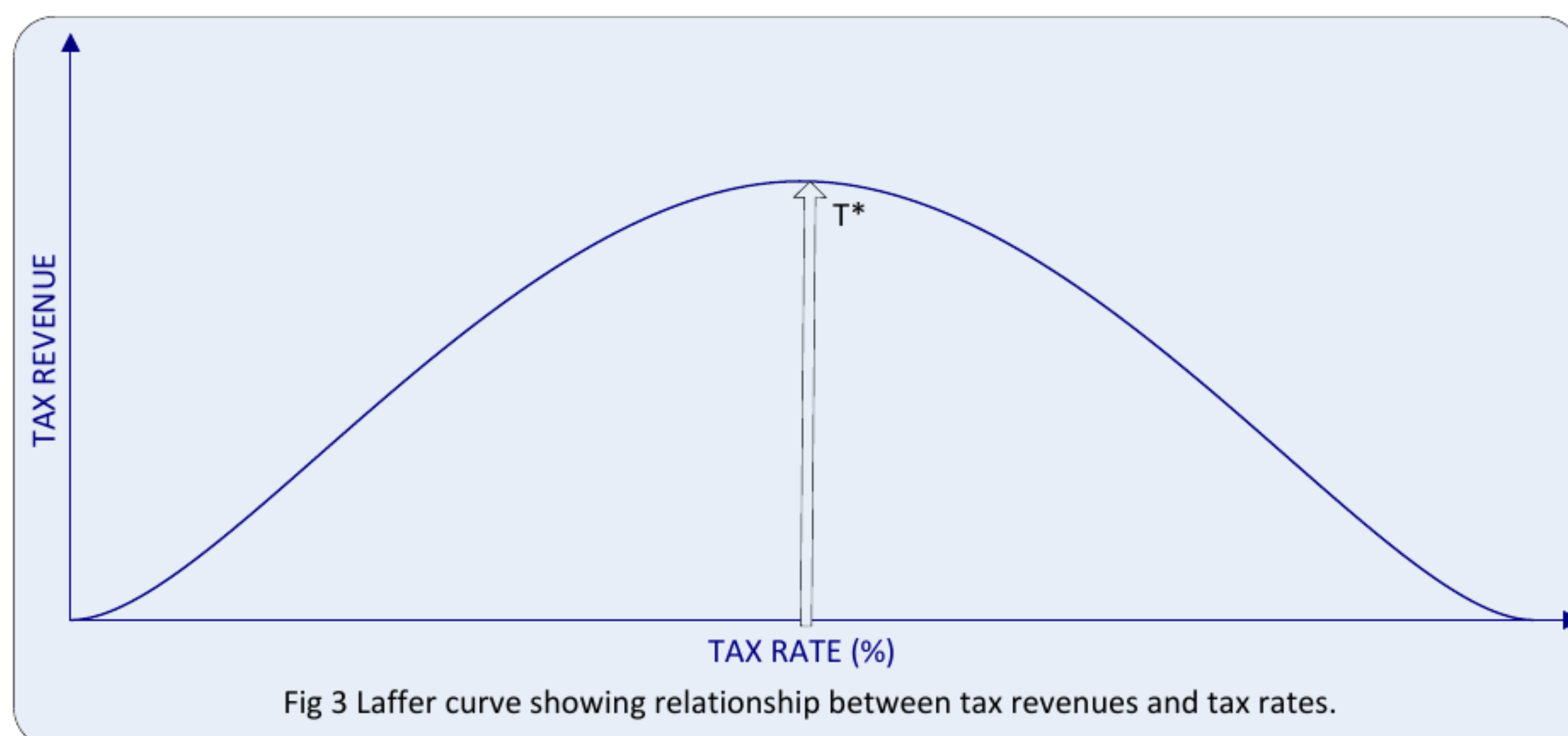
(often considered the hallmark of Keynesian economics) and on this basis rejects the key precepts of the social democratic consensus.⁴¹

Ashford (Ashford, 1993) identified five broad themes which Friedman pursued and it shall be useful to paraphrase/review these here, because collectively they provide justification for monetarist economic management and limited government intervention in the economy and by implication they were highly influential in setting the legal/public policy framework to externalise and outsource public services (see Chapter 3) at both a central and local government level. .

1. Inflation

Friedman regarded inflation exclusively as a monetary phenomenon arising wholly from growth in the money supply. In a modern economy this means that monetary policy through interest rates should be used as a means to control levels of aggregate demand.

2. Relationship between Capitalism & Freedom



Friedman regarded capitalism as a necessary if not sufficient pre-cursor to ensuring (negative) liberty. Economic freedom and political freedom were considered to be

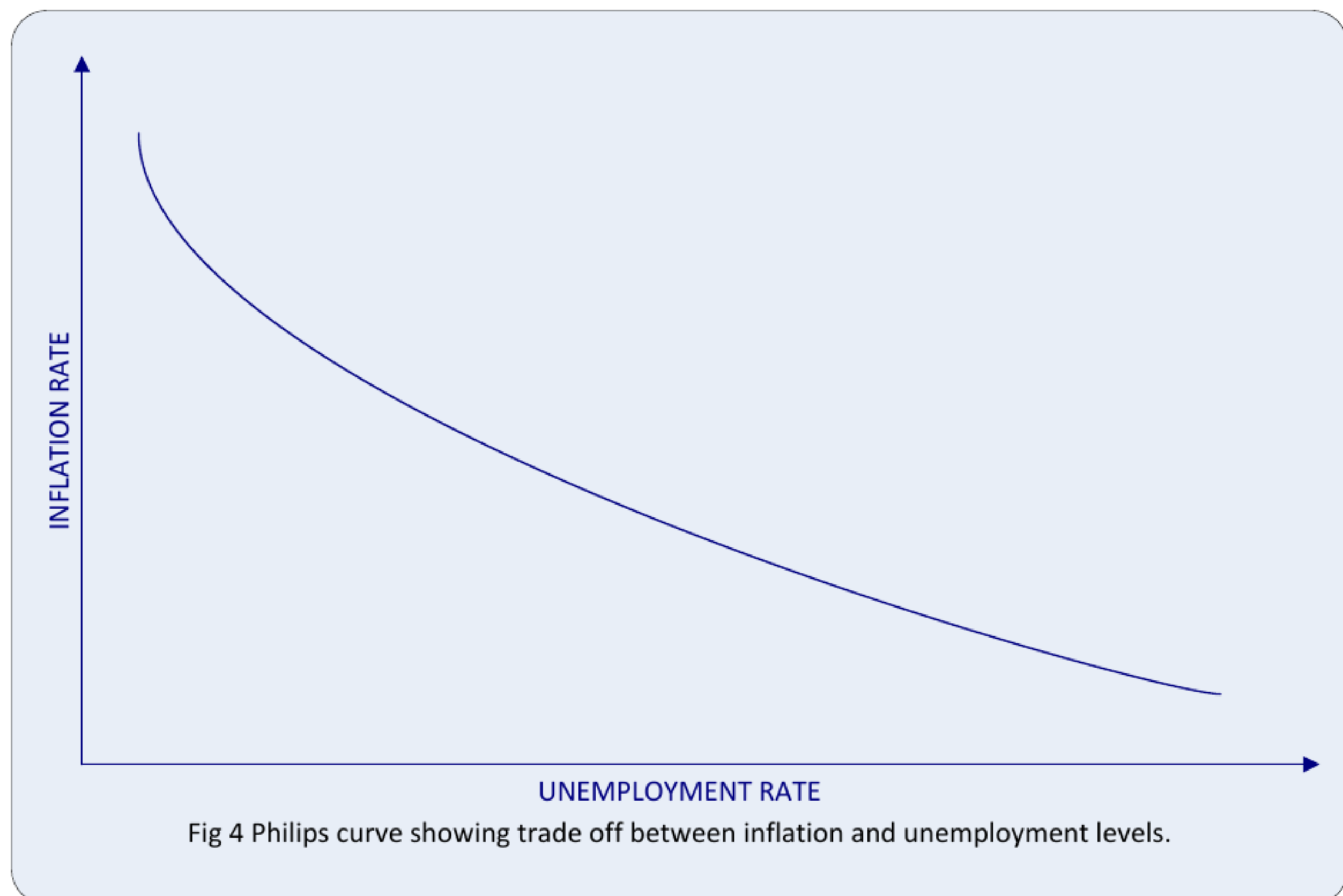
⁴¹ Central to these precepts on a domestic level were the commitment to full employment, the mixed economy and a comprehensive welfare state.

inextricably linked. Friedman maintained that high taxation crowded out enterprise and made the case for a low taxation economy to boost enterprise, effort and economic growth (Friedman, 1962, 1980). In this context, useful reference may be made to the Laffer Curve (Figure 3 above) which indicates that past a certain point ('T*') increases in tax rates lead to reduction in total revenue, because of effort and enterprise is reduced.

3. Perils of Government Intervention

Friedman contended that when governments intervene in the long run, they tend to get the decisions wrong and make the situation worse than otherwise would have been the case. Friedman acknowledges that the motivation behind intervention may be just, but the consequences are always worse. His 'Capitalism and Freedom' (Friedman, 1962) makes the argument against governments trying to enforce a minimum wage and trying to maintain full employment. The former results in more unemployment and the latter in more inflation (and unemployment) in the long run⁴².

⁴² The supposed trade off between inflation and unemployment was central to Keynesian economics and the commitment to maintain full employment by use of 'Demand Management' was a key plank of the Social Democratic settlement



Friedman rejected the idea that there was a trade off relationship between the levels of inflation and unemployment as represented by the Philips Curve (See Figure 4 above) and argued by Keynesian economists in support of the social democratic settlement.

4. Marketisation

Friedman was a staunch advocate of marketised solutions where privatisation was not possible (Friedman, 1980). In a US context this took the shape of looking to voucher systems for provision of public services such as health and education, on the basis that they promoted efficiency and individual choice. These ideas were also picked up in a British context (Bacon & Eltis, 1976, Swann, 1993) with a prospectus of privatisation where possible and marketisation where not and as such have a clear relationship with proposals to outsource the delivery of public services at both central and local government levels. The idea of marketisation has been a key part of the New Right prescription to the problem caused by overload.

5. Limited Role of Government

Friedman advocated a limited role for government, on a similar basis to Hayek (Friedman, 1980).

The Impact of Public Choice Theory

Mention should also be made of the contribution of modern Public Choice theorists (see Chapter 3 of this thesis) (Niskanen, 1971, Tullock, 1965, Buchanan & Tullock, 1962) which in essence accomplished two objectives (1) it identified the governance problem as concentrating benefit on the few whilst dispersing costs on the many and (2) it developed the notion of 'self interested' bureaucrats that were keen to expand the remit of government (Kristol, 1978) – a theme which had earlier been identified by Ludvig Von Mises.

New Right Thought: the Authoritarian Strand

- ROGER SCRUTON
- MAURICE COWLING
- IRVING KRISTOL

Fig 5 Authoritarian Thinkers

- IMPORTANCE OF SOCIAL ORDER
- ROLE OF CIVIC SOCIETY TO UPHOLD SOCIAL ORDER
- DISCIPLINE
- AUTHORITY OF GOVERNMENT
- RESPECT FOR TRADITION

Fig 6 Authoritarian Themes

Libertarian thinkers tended to be driven by economists (notably two Nobel Prize winners - Friedman and Hayek) who stressed the importance of negative liberty and the virtues of free markets because they were desirable in themselves in both promoting liberty and securing the efficient distribution of resources. Authoritarian thinkers such as Scruton, Cowling or Kristol (see Fig 5 above) tended to be philosophers and whilst they were prepared to tolerate free markets, that was not the focus of their efforts nor was it the motivation behind them. Broadly speaking free markets were only desirable in that they supported the status quo in terms of

sustaining an unequal distribution of resources, and as a consequence an inequality in the distribution of social and political power. Authoritarians stress the importance of state authority, order, discipline and respect (see Fig 6 above). It is worth observing that these arguments were not in themselves directed at particular governments, rather the key question was whether government as an institution was overreaching itself and attempting to do too much⁴³. It also complemented the argument advanced by Hayek (Hayek, 1944) that no person or agency had the legitimate right to take decisions in place of an individual other than in very limited circumstances, to ensure the provision of minimal public goods⁴⁴. In the UK it is arguable that the Libertarian wing were the most important, but the authoritarian wing also had an important influence, particularly in shaping the climate of ideas from which the New Right reacted to the crisis of social democracy in the mid 1970's. Taken together these authoritarian writers were less concerned about the technical arguments around economics and monetary policy than the broad implications of maintaining order in society in a way that protected the existing distribution of social, economic and political power – hence the force of the political debates around trade union/government power during the late 1970's.

Philosophical Heritage of the Authoritarian New Right

On a philosophical level, the authoritarian wing drew on an anti-rationalist (small c) conservative heritage that looks to Hobbes (stressing the importance of establishing and maintaining authority) (Hobbes, 1651), Burke (with the emphasis on the importance of cultivating traditions and ensuring reform is incremental) (Burke, 1790) and Oakeshott (combining the importance of building on practical experience with an anti-rationalist sentiment, indicating that theory can only ever be the 'child and not the parent' and that any 'knowledge' can only be provisional and tempered by practical experience, with a consequent rejection of the normative role of political

⁴³ This has clear implications for the remit of the state in areas of social and industrial policy. The Social Democratic consensus assumed the state would be active in these areas whilst the New Right advocate the opposite.

⁴⁴ Although Birch (BIRCH: 1984) argued that the Overload Thesis was time specific – confined to the historical circumstances of the 1970's, it is argued here that even if this was correct it is beside the point – which is that it helped to set the philosophical context to challenge the social democratic consensus and laid the foundation for the hollowing out of the state and the legal/policy regime for outsourcing services at local and central levels that followed that development.

theory (Oakeshott, 1962) coupled with a clear emphasis upon the importance of working within national political traditions such as in England (Greenleaf, 1983) or France (Wright, 1978), thereby setting politics in a strong national context with a view to ensuring that reforms were evolutionary in nature, working with rather than against the grain of history.

The Impact of Roger Scruton

The Cambridge academic (philosopher) Roger Scruton (1947-) was an influential figure in this tradition, not only through his writings chiefly 'The Meaning of Conservatism' (Scruton, 1980) and later 'Arguments for Conservatism' (Scruton, 2006) but also through his creation of the Peterhouse Group (with Maurice Cowling) at Cambridge University and his editorship of 'The Salisbury Review'. The Authoritarian wing of New Right in contrast to its libertarian counterpart, considered state authority, order, discipline, stability and respect as being the most important issues to be addressed. It is worth remarking that this was near impossible to achieve in a state that was gripped by a crisis of Overload. Themes such as maintaining the Rule of Law, ensuring obedience to civil authority and the desire to uphold discipline and respect at all levels of civil society became of central importance. Scruton clearly borrowed from Edmund Burke in adopting his view that government was a social contract with previous and future (as well as current) generations (Burke, 1790). Parallels may also be drawn with Burke's in that both advanced a philosophy that was anti-rationalist, deeply conservative and opposed to social reform. In this sense both thinkers were on the 'strong state' side of the formulation set by Gamble (Gamble, 1988).

The Impact of Maurice Cowling

Maurice Cowling (1926-2005) was a historian, a colleague of Scruton at Cambridge and a fellow contributor to The Salisbury Review. In his writings notably his 'Conservative Essays' (Cowling, 1978) his emphasis is on maintenance of authority, respect and discipline, drawing on deeply conservative ideas dating back to Thomas Aquinas (1225-1274) with an emphasis on 'High Toryism' captured by the notion of

people having a 'station' and performing duties derived from that (published in the ancient 'Summa Theologiae' (Copleston, 1991).

Cowling commended the Thatcher driven free market project only in so far that it was most likely to sustain that position. This draws on the idea that sustaining the Conservative Party in power (which was considered to be most beneficial to the interests identified by Cowling) became less a matter of doctrine and more a matter of statecraft (Huntingdon, 1957) and ensuring that the party had a political programme that was workable and electorally popular (Blake, 2010) to equip them to deal with the challenges of the overload crisis of social democracy in a way that restored respect for state authority and ensured authority, discipline and respect was upheld.

The Impact of Irving Kristol

IRVING KRISTOL (1920-2009) in his 'Two Cheers for Capitalism'(1978) made much the same arguments but from an American perspective, concluding that the system of capitalism was only worthy of two cheers because as a system of capital accumulation it secured economic efficiency and guaranteed individual (negative) liberty. Kristol was however unable to award it the 'third cheer' because the system contained seeds of destruction in the form of social and spiritual malaise that could constitute a threat to the existing social order, hence the emphasis on themes such as authority, order, discipline and respect. Kristol also draws on the Public Choice argument that bureaucrats wish to expand the remit of the government - although unlike the Public Choice school this is seen as a sincerely held political/ ideological view rather than a mere expression of self interest. For Kristol, a limited/minimal state was justified because it was best placed to gain respect, uphold law and order and ensure civil and social discipline. Again, a state gripped by a crisis of overload was not in a position to do that.⁴⁵

⁴⁵ The state was considered to be too weak to command either legitimacy or respect. Although this was arguably restored post 1980 (demonstrated by a substantial reduction in industrial strife etc) it gave the state new problems at central and local levels as it sought to navigate complex policy networks as it tried to implement public policy and became dependent on others as a consequence of outsourcing and the growth of partnership arrangements.

Annex 3 – Outsourcing Issues

Part 1 –The Outsourcing Market

Oligopolistic in Nature

The National Audit Office Report (published 12 November 2013) chronicled how reliant the four large players have become upon the public sector for revenue - Capita (30% of UK revenues are generated by the public sector), Serco (66%), Atos (48%) and G4S (33%). These figures raise questions about quasi-monopolies operating in public sector in addition to other issues such as the transparency of the contracts negotiated, in addition to questions about culture/control, flow of information and openness in relation to charging and profits.

Observations on the Size and Scope of the Market

Given that the procurement market in the UK local government sector alone is now valued at nearly £150bn per annum, it is perhaps no surprise that companies have responded to take a share of the large market. The market however has become dominated by a number of large players (such as EC Harris, Capita or SERCO) who seem to have been convinced that the pursuit of technical efficiency for their client local authority can also yield significant profits for their shareholders. The size and shape of the market offers rich pickings for companies who can take advantage of it. This is perhaps set to increase as local authorities assume more of an enabling and strategic commissioning role rather than being a provider of services themselves.

The size and shape of the market is a reflection of how the outsourcing issue has become increasingly important over the last three decades. This is not restricted to the UK, but is also the case in the USA (Osborne & Gabler, 1992), Europe (Peters, 2001) and the Pacific region (Dromberger & Hall, 1996). The issue needs to be understood in the context of the broader debate concerned with 're-inventing government' which looked to reshape public bureaucracies and the expectations that flowed from them, in response to the crisis of social democracy from the mid 1970's (Brittan, 1975, King, 1975, Birch, 1984). Save to say that the desire to drive

(technical) efficiency gains (in the shape of more output for less input) (Hood, 1990, Boyne, 1998) and the aim of making service delivery more 'customer' focused were the main intentions behind the outsourcing project.

Outsourcing has been applied as much to central bureaucracies as local ones and has touched upon areas as diverse as prison management and refuse collection. This use of outsourcing though has potential implications not only for the management of public services but also for the delivery of political mandates. So it is clear that any decision to outsource local authority services has implications far beyond the particular services that are outsourced. This is in addition to management challenges such as ensuring that there are adequate systems in place to ensure proper performance management, that there is a level of trust that works between politicians, service providers, managers and customers, that the local authority itself has developed a degree of competence to become an intelligent client (which raises issues about if, how and why some local authorities may have developed outsourcing as a core competence and others have not) and this is even before considering traditional management issues such as having adequate systems to generate and utilise appropriate information on service provision, costs, customer satisfaction and public reputation. There is also the point about outsourcing being taken to excess. Some authorities like Barnet LBC have operated large scale outsourcing, which appears to have run into problems, be it the inability to maintain sufficient presence in terms of a corporate core (Lloyd-Jones, 2014) or communications difficulties (). It has not stopped the appeal of the wider project though at authorities such as Northampton County Council which is keen to move away from traditional models of providing services.⁴⁶

⁴⁶ 'Councillors at Northamptonshire back the biggest transformation in 125 years', Local Government Lawyer Newsletter, Monday 23 February 2015 accessed at www.localgovernmentlawyer.co.uk

From Voluntary Competitive Tendering (VCT) to Compulsory Competitive Tendering (CCT)

At this stage it may be useful to identify the distinction between Voluntary Competitive Tendering ('VCT') and Compulsory Competitive Tendering ('CCT'). Prior to 1988, several local authorities put services out to tender on a voluntary basis under VCT. As the name implied, there was no compulsion and it tended to be used for discrete services such as housing construction or legal services. The vast majority of local authority business was carried out in house by employees. The supporting legal framework comprised the common law power to enter into contracts which a local authority derived from its status as a body corporate, giving it perpetual succession in artificial form (see 'Kyd on Corporations' 1793) and a statutory power under section 101 of the Local Government Act 1972 providing for it to take on employees. Save for some minor restrictions introduced in 1980 (by the Local Government Planning & Land Act 1980), it was only The Local Government Act 1988 that first introduced any element of compulsion, requiring authorities to put their services out to tender, as opposed to them being able to do so. The theoretical framework underlying in house provision was drawn from the precepts of the social democratic settlement (such as uniform public services, equal access and no charge at point of delivery) (Stewart & Walsh, 1992).

Best Value

It should be noted that although the element of compulsion was later retracted (under the Local Government Act 1999) with the onset of 'Best Value' based upon the idea of continuous improvement with reference to benchmarking and performance indicators, it continued to draw on the same themes of Value for Money and 3xE⁴⁷ (at the expense of accountability) that inspired the re-inventing government movement (Osborne & Gaebler, 1992) in the US and resulted in CCT in the UK. Although some have argued Best Value heralded a step change with a focus on 'innovation and improvement' (Parker & Hartley, 1997, Entwistle & Martin, 2005) others remain less than convinced (Teisman & Klijn, 2002) indicating that the doctrines underlying both approaches are broadly similar.

⁴⁷ Economy, efficiency and effectiveness.

Part 2 – The Legal Framework

Local Government Planning & Land Act 1980

The first part of the legislative jigsaw was the Local Government Planning & Land Act 1980 - which placed restrictions on District Labour Organisations in local authorities in relation to carrying out works and maintenance contracts, with a view to ensuring a measure of competition and that such contracts were only carried out by a District Labour Organisation in very limited circumstances.

The Local Government Act 1988 - Blue Collar CCT

Prior to 1988 most local authorities only operated with either totally in house provision or VCT. The Local Government Act 1988 introduced Compulsory Competitive Tendering to local authorities across 'blue collar' functions (namely cleaning, contracting and grounds maintenance). It also tightened 'competition rules' to ensure that there was level playing field between internal and external bidders, so that in house bidders (such as a DLO) did not gain an unfair advantage. Furthermore, it introduced a ban on taking into account 'non commercial matters' which were specified in section 17 of the 1988 Act (including labour and race relations) designed to ensure political matters (which arguably were put in place to curb powers of Labour controlled local authorities) did not impact upon tendering decisions. The Act provided wide powers to Secretary Of State to specify and require rectification of breaches with remedies through judicial review available to aggrieved contractors.

The Local Government Act 1992 – White Collar CCT

The Local Government Act 1992 saw the CCT regime extended to White collar/professional services (notably legal services, accountancy and architecture) (Walsh, 1995). This raised questions of how to define and monitor quality (Boyne, 1998) and the relationship with the professions in question who were being subject to tender were not helped by what could be argued was a deskilling process (Bell, 1976) in order to try to specify contract requirements.

As a result of the Local Government Acts 1988 and 1992 the 'internal service providers could only be awarded contracts [for both blue and white collar services] if they submitted the lowest [credible] bids and met prescribed financial targets, typically a requirement to break even after allowing for a capital financing charge' (Entwistle & Martin, 2005 P.234).

The Local Government Act 1999 – Best Value

The difficulties and in particular the costly regime of monitoring led to the introduction of 'BEST VALUE' under the Local Government Act 1999 (See Martin, 1997 and Cirell & Bennett, 1999). The general legislative regime in the 1999 Act was supplemented by policy advice in Circulars (Circular 10/99 subsequently replaced by Circular 03/03). At the heart of the regime was the idea of 'continuous improvement'. The core idea was a reversion to the notion that tendering for services was to be made voluntary again (as it was prior to the 1988 Act) rather than compulsory, but that this was to be policed by policy requirements to measure and benchmark performance and to take appropriate action to ensure that there was continuous improvement. This action could include competition. The Circular advice developed the mantra of the '4C's - Challenge, Compare, Compete and Consult'. This was designed to hail a more collaborative, partnership based approach to procurement (Entwistle & Martin, 2005) requiring local authorities to review and market test services and provide an appropriate solution. There was a requirement to develop annual Best Value Performance Plans and a system of statutory reviews which were initially policed by the Audit Commission, with wide powers for the Secretary of State to intervene. Initially this was linked to the wider 'Comprehensive Performance Assessment' programme that was introduced by the Local Government Act 2003 (and since repealed by the Localism Act 2011) which took benchmarking to a new level, with the development of performance ratings and league tables for local government sector.

Associated Legal Developments

Aligned to these developments around CCT and Best Value, special mention should be made of changes in the law which made it easier for local authorities to enter into contracts with private bodies.

Local Authority Powers to Contract & the Ultra Vires Doctrine

As previously indicated, local authorities have always had power to enter contracts with private bodies under common law. They were also given specific (if limited) statutory powers to contract with specified public bodies under the Local Authority (Goods and Services) Act 1970.

The Ultra Vires Doctrine which was developed at common law, required all public bodies (including local authorities) to act (intra vires) within their statutory powers. Public law therefore operated differently to private law. Whereas private individuals could do anything provided it was not prohibited by law, public bodies could only act if there was a specific common law or statutory power which permitted such conduct. In the event that a local authority acted ultra vires, the contract could not be enforced against it.

This position was thrown into sharp focus in the late 1980's and early 1990's by a rush of litigation concerning what came to be known as the 'Interest Rate swap cases'. The move by several London boroughs to boost their finances by using very sophisticated financial instruments known as interest rate swaps raised serious questions about what could and could not be enforced. Having run up huge losses on sophisticated interest rate swap contracts, the local authorities were successful in arguing that they were void and could not be enforced because they were ultra vires (beyond) the powers of the authority. Many (foreign) financial institutions lost out as a result of legal cases notably (*Hazell v Hamersmith & Fulham LBC* [1992] 2 AC 1 and *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] 1 AC 669).

The consequences from the interest rate swaps fiasco whereby the local authority were able to legally walk away from contracts that had been freely entered into, meant that the private sector became concerned that contracting with public bodies could carry a greater degree of risk than previously realised. If action was not taken to address this problem, it threatened to undermine the whole outsourcing project. The government response to these concerns was to pass the Local Government (Contracts) Act 1997. This enabled a local authority to certify a contract was intra vires and if so certified, the private sector could legally enforce it against the

authority, even if this turned out not to be the case. Needless to say the private sector required such certification as the 'price' to be paid by the local authority in return for their participation in the tendering process. It therefore provided important legal protection for private sector contractors going forward and as such restored a degree of confidence in the outsourcing regime.

The ultra vires doctrine itself has however since been significantly undermined - first by the introduction of the wellbeing power (Section 2 of the Local Government Act 2000) but more recently by the introduction of the power of general competence (Section 1 of the Localism Act 2011). These two general statutory provisions have acted to significantly widen the scope of local government powers, rendering traditional interpretations of the ultra vires doctrine redundant going forward. Again, this should provide a degree of confidence to the private sector when contracting with local government.

The EU Legal Regime

The domestic legal/policy regime was supported by EU legislation, to which it was required to give effect. Private sector contractors have always had recourse to European Union law in the event that they contended that a particular competition did not comply.

The EU regime through Treaty obligations and subsequent Directives (incorporated into UK law) broadly requires that any competition has no quantitative restrictions, is subject to competition through open advertisement across the EU (by way of publication of an OJEU Notice in the Official Journal of the European Union) (for contracts over a specific value) and awards of contracts were to be non discriminatory and are governed by and open pre-published specified criteria. The Public Contracts Regulations 2006 (Si 2006/5) incorporate these principles as they were enacted to give effect to Treaty and Directive Obligations. These Regulations set down a choice of three procedures for the contracting authority to use (open, restricted and negotiated). A new 'competitive dialogue' procedure was later introduced. The difference between the procedures reflects the amount of competition that is required. Suffice to note that the open procedure is assumed

unless the contracting authority can justify otherwise and there are tight restrictions on using the other procedures which require a lesser element of competition.

Companies who tender but are not awarded contracts may make a complaint to the EU Commission if they allege that EU competition rules have been breached, they may also use Judicial Review in the High Court (subject to acting promptly and in any case within a 1 month timescale from the decision complained about) as an administrative law remedy to seek an Injunction (which could prevent a contract being awarded) or a Declaration (that a contract has been awarded wrongly and requiring the process to be re-run).

For the sake of being comprehensive, reference should perhaps be made to the issue of the TUPE Regulations. The Transfer of Undertakings (Protection of Employment) Regulations 1981 were the UK response to implement the EC Acquired Rights Directive 1977. The Directive was intended to protect employment rights/conditions of employees whose business was subject to a takeover. Suffice to say considerable debate and resultant litigation ensued on technical questions such as what constituted a transfer for the purposes of the regulations (Cirell & Bennett, 1994), what exemptions were permitted and the scope of them (economic, organisational and technical) (Cirell & Bennett, 1994) and the extent to which public sector employees could expect the same employment rights/conditions when they transferred to a private sector employer. After some initial doubt, a series of legal cases (South Manchester College v Kenny, Eastbourne BC, and Dines v Initial Healthcare) confirmed that it did apply and although this was at first sight it appeared damaging to the outsourcing project, not least because labour costs make up a large proportion of outgoings (thereby reducing the scope for cost savings) – the appeal of outsourcing has continued to grow, as there has still been scope to cut costs in spite of the TUPE position.

Annex 4A – Greater Manchester Combined Authority Order.

STATUTORY INSTRUMENTS

2011 No. 908

LOCAL GOVERNMENT, ENGLAND

TRANSPORT, ENGLAND

The Greater Manchester Combined Authority Order 2011

Made - - - -

22nd March 2011

Coming into force - -

1st April 2011

This Order is made in exercise of the powers conferred by sections 91 and 93 of the Local Transport Act 2008(a) and sections 103 to 105 and 114 to 116 of the Local Democracy, Economic Development and Construction Act 2009(b).

The Secretary of State, having regard to a scheme prepared and published under section 82 of the Local Transport Act 2008 and section 109 of the Local Democracy, Economic Development and Construction Act 2009, considers that the making of this Order is likely to improve—

- (a) the exercise of statutory functions relating to transport in the area to which this Order relates,
- (b) the effectiveness and efficiency of transport in that area,
- (c) the exercise of statutory functions relating to economic development and regeneration in that area, and
- (d) economic conditions in that area.

The Secretary of State is satisfied that the area to which this Order relates meets the conditions set out in section 103 of the Local Democracy, Economic Development and Construction Act 2009.

The Secretary of State has consulted—

- (a) the district councils for the area comprised in the Greater Manchester integrated transport area,
- (b) the Greater Manchester Integrated Transport Authority,
- (c) the Greater Manchester Passenger Transport Executive,
- (d) such other persons as the Secretary of State considered appropriate.

The councils for the metropolitan districts whose areas are comprised in the Greater Manchester integrated transport area have consented to the making of this Order.

(a) 2008 c.26.
(b) 2009 c.20.

In making this Order, the Secretary of State has had regard to the need to reflect the identities and interests of local communities, and to secure effective and convenient local government.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 94 of the Local Transport Act 2008 and section 117 of the Local Democracy, Economic Development and Construction Act 2009.

Accordingly, the Secretary of State makes the following Order:

PART 1

General

Citation and commencement

1. This Order may be cited as the Greater Manchester Combined Authority Order 2011 and shall come into force on 1st April 2011.

Interpretation

2. In this Order—

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009;

“combined area” means the area consisting of the areas of the constituent councils;

“constituent councils” means the metropolitan district councils for the local government areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford, and Wigan;

“the Executive” has the meaning given by article 9(1);

“financial year” means the period of 12 months ending with 31st March in any year;

“the GMCA” has the meaning given by article 3(2); and

“the ITA” means the Greater Manchester Integrated Transport Authority^(a).

PART 2

Establishment of a Combined Authority for Greater Manchester

Establishment

3.—(1) There is established a combined authority for the combined area.

(2) The combined authority is to be a body corporate and to be known as the Greater

Manchester Combined Authority (“the GMCA”).

(3) The functions of the GMCA are those functions conferred or imposed upon it by this Order or by any other enactment (whenever passed or made), or as may be delegated to it by this Order or any other enactment (whenever passed or made).

(a) This body was established as the Greater Manchester Passenger Transport Authority by section 28(1) of the Local Government Act 1985 (c. 51). It was renamed by virtue of the Local Transport Act 2008, section 77(2) and paragraph 53 of Schedule 4 to that Act.

Constitution

4. Schedule 1 (which makes provision about the constitution of the GMCA) has effect.

Funding

5.—(1) The constituent councils must meet the costs of the GMCA reasonably attributable to the exercise of its functions relating to economic development and regeneration.

(2) The amount payable by each of the constituent councils is to be determined by apportioning the costs of the GMCA referred to in paragraph (1) between the constituent councils in such proportions as they may agree or, in default of such agreement, in proportion to the total resident population at the relevant date of the area of each council concerned as estimated by the Registrar General.

(3) For the purposes of paragraph (2) the relevant date in relation to a payment for a financial year is 30th June in the financial year which commenced two years previously.

PART 3

Transport

Abolition and transfer of functions

6.—(1) The Greater Manchester integrated transport area is dissolved and the ITA is abolished.

(2) On the abolition of the ITA—

(a) its functions; and

(b) its property, rights and liabilities
are transferred to the GMCA.

Adaptation of enactments

7.—(1) This article has effect in consequence of article 6.

(2) In any enactment (whenever passed or made)—

(a) any reference to an integrated transport area; or

(b) any reference which falls to be read as a reference to such an area,
is to be treated as including a reference to the combined area.

(3) In any enactment (whenever passed or made)—

(a) any reference to an integrated transport authority; or

(b) any reference which falls to be read as a reference to such an authority,

is to be treated as including a reference to the GMCA.

(4) Schedule 2 (which amends section 9 of the Transport Act 1968 in consequence of article 6)

has effect, but this does not affect the generality of paragraphs (2) and (3).

Delegation of certain transport functions

8.—(1) There are delegated to the GMCA the functions of the constituent councils—

(a) under section 65 (placing of traffic signs) of the Road Traffic Regulation Act 1984^(a) so
far as it relates to traffic signs that are traffic light signals;

(a) 1984 c. 27. Section 65 was amended by the Local Government and Housing Act 1989 (c. 42) section 153, by the New Roads and Street Works Act 1991 (c. 22) Schedule 8, paragraph 48 and by the Road Traffic Act 1991 (c. 40) Schedule 4, paragraph 29.

(b) under section 23 of that Act (pedestrian crossings) so far as it relates to Pelican and Puffin crossings as defined by regulation 3(1) of the Zebra, Pelican and Puffin Crossings Regulations 1997(a); and

(c) under section 2 of the Road Traffic Reduction Act 1997(b) (duty of principal councils to make reports).

(2) In consequence of subparagraphs (a) and (b) of paragraph (1) the GMCA, in the discharge of the functions delegated to it by those provisions, is to be treated as a highway authority for the purposes of sections 62 and 278 of the Highways Act 1980(c).

(3) In this article “traffic light signal” means a traffic sign of the size, colour and type prescribed by regulation 33, 34, 37, 39, 41, 44, 45, 46, 47, 48, 49 or 52 of the Traffic Signs Regulations 2002(d) or another traffic sign of a like nature prescribed by those Regulations as from time to time amended or by any regulations for the time being replacing those Regulations.

(4) The costs incurred by the GMCA in discharging the functions delegated to it by this article shall, except so far as the constituent councils agree otherwise, be defrayed by the GMCA.

(5) The costs so defrayed shall, for the purposes of section 74(10) of the Local Government Finance Act 1988(e), fall to be treated as expenses attributable to the exercise of the GMCA’s functions relating to transport.

(6) The functions delegated by paragraph (1) are not exercisable by the constituent councils either concurrently or instead of the GMCA, except so far as the GMCA sub-delegates any such function back to a constituent council.

(7) In the application of section 101 of the Local Government Act 1972(f) (arrangements for the discharge of functions) to the GMCA the functions delegated to the GMCA by paragraph (1) are to be treated as if they were functions of the GMCA.

Passenger Transport Executive

9.—(1) In this article “the Executive” means the Greater Manchester Passenger Transport Executive established by the South East Lancashire and North East Cheshire Passenger Transport Area (Designation) Order 1969(g).

(2) The Executive is to be an executive body of the GMCA for the purposes of Part 5 of the Local Transport Act 2008 and Part 6 of the 2009 Act and is to be known as “Transport for Greater Manchester”.

(3) In the application of section 101 of the Local Government Act 1972 (arrangements for the discharge of functions) to the GMCA the Executive is to be treated as if it were an officer of the GMCA.

(4) Where arrangements are in force for the discharge of functions of a constituent council by the GMCA by virtue of—

(a) Part I of S.I. 1997/2400, to which there are amendments not relevant to this Order.

(b) 1997 c. 54.

(c) 1980 c. 66; section 62 was amended by the Transport Act 1981 (c. 56), Schedule 10, paragraph 1, by the Traffic Calming Act 1992 (c. 30) section 1(1), 3 and by the Local Government Act 1985 (c. 51) Schedule 17; section 278 was substituted by the New Roads and Street Works Act 1991 section 23.

(d) Part 1 of S.I. 2002/3113, to which there are amendments not relevant to this Order.

(e) 1988 c. 41; subsection (10) of section 74 was inserted by the Local Democracy, Economic Development and Construction

Act 2009 (c. 20), Schedule 6, paragraph 75.

(f) 1972 c. 70; section 101 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Schedule 10; the Local Government Act 1985 (c. 51) Schedule 14, paragraph 15, Schedule 17; the Statute Law (Repeals) Act 1986 (c. 12); the Local Government and Housing Act 1989 (c. 42) Schedule 12; the Education Act 1993 (c. 35) Schedules 19 and 21; the Local Government (Wales) Act 1994 (c. 19) Schedule 15, paragraph 26; the Police and Magistrates’ Courts Act 1994 (c. 29) Schedule 9; the Environment Act 1995 (c. 25) Schedule 24; the Greater London Authority Act 1999 (c. 29) section 332(1); the Licensing Act 2003 (c. 17) Schedule 6, paragraphs 56, 58; the Children Act

2004 (c. 31) Schedule 5; the Local Government and Public Health Involvement Act 2007 (c. 28), Schedule 13, paragraphs

1, 9; the Planning Act 2008 (c. 29) section 224(1); the Local Democracy, Economic Development and Construction Act

2009 (c. 20) Schedule 6, paragraphs 6, 10; the Marine and Coastal Access Act 2009 (c. 23) Schedule 22, Part 4; and by S.I.

2001/1517, 2002/803.

(g) S.I. 1969/95, amended by S.I. 1973/1727.

(a) section 101(1)(b) of the Local Government Act 1972; or

(b) section 19 of the Local Government Act 2000(a) and regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000(b),

the Executive is to be treated as if it were an officer of the GMCA for the purposes of section 101 of the Act of 1972 and for the purposes of those Regulations.

(5) The Executive has power to discharge any function which is the subject of arrangements entered into with it by virtue of paragraph (3) or (4).

PART 4

Additional Functions

Economic development and regeneration functions

10.—(1) The functions of the constituent councils set out in Schedule 3 to this Order are exercisable by the GMCA in relation to its area.

(2) The functions are exercisable concurrently with the constituent councils.

(3) Any requirement in any enactment for a constituent council to exercise such a function may be fulfilled by the exercise of that function by the GMCA.

Incidental provisions

11. The following provisions shall have effect as if the GMCA were a local authority for the purposes of these provisions—

- (a) section 142(2) of the Local Government Act 1972(c) (the power to arrange for publication of information etc. relating to the functions of the authority); and
- (b) section 222 of the Local Government Act 1972 (the power to instigate and defend legal proceedings).

12.—(1) The GMCA shall have the power to exercise any of the functions described in subsection (1)(a) and (b) of section 88 of the Local Government Act 1985(d) (research and collection of information) whether or not a scheme is made under that section.

(2) For the purposes of paragraph (1) of this article, paragraphs (a) and (b) of section 88(1) of the Local Government Act 1985 shall have effect as if a reference to “that area” were a reference to the combined area.

13. Section 13 of the Local Government and Housing Act 1989(e) shall have effect as if—

- (a) in subsection (4), after paragraph (e) there were inserted—

“(ea) subject to subsection (4A), a committee appointed by the Greater Manchester

Combined Authority;”;

(a) 2000 c. 22.

(b) S.I. 2000/2851.

(c) 1972 c.70. Section 142(2) was amended by the Local Government Act 1986 (c.10), section 3(1).

(d) 1985 c.51, to which there are amendments not relevant to this Order.

(e) 1989 c. 42. Section 13 was amended by the Education Act 1993 (c.35), section 307(1), (3), Schedule 19, paragraph 156(a), (c), (d), Schedule 21, Part 2; the Children Act 2004 (c.31), section 64, Schedule 5, Part 4; the Police and Magistrates’ Courts Act 1994 (c.29), section 43, Schedule 4, Part 1, paragraph 36(a), (b), section 93, Schedule 9, Part 1; the Marine and Coastal Access Act 2009 (c.23), section 184, Schedule 14, paragraphs 12, 14, section 321, Schedule 22, Part 4; the Environment Act 1995 (c.25), section 120, Schedule 24; the Education Act 1996 (c.56), section 582(1), (2), Schedule 37, paragraph 96(1), (2), (3), (4), (5), Schedule 38, Part 1; S.I. 2010/1158, article 5(1), (2), Schedule 2, Part 2, paragraph 38(1), (3), (4)(a), (b), (c), (5)(a), (b), Schedule 3, Part 2; the School Standards and Framework Act 1998 (c.31), section 140(1), Schedule 30, paragraph 22(a), (b); S.I. 2001/1517, articles 2, 6(1)(a), (b); the Local Democracy, Economic Development and Construction Act 2009 (c.20), section 119, Schedule 6, paragraphs 81(1), (3).

(b) after subsection (4) there were inserted—

“(4A) A person who is a member of a committee falling within paragraph (ea) of subsection (4) or a sub-committee appointed by such a committee shall for all purposes be treated as a non-voting member of that committee or sub-committee unless he is a member of one of the constituent councils as defined by article 2 of the Greater Manchester Combined Authority Order 2011.”.

14. The Apprenticeships, Skills, Children and Learning Act 2009(a) shall have effect as if the GMCA were a local authority for the purposes of section 61(1)(c) and section 84(2).

PART 5

Supplementary

Transfer of the Commission for the New Economy etc

15.—(1) The GMCA is to become a member of the Commission for the New Economy Limited and Manchester Investment and Development Agency Service Limited, companies limited by guarantee and registered in England with company numbers 05678007 and 3323710.

(2) The constituent councils are to cease to be members of those companies.

Scheme for transfer of property etc.

16.—(1) Each constituent council must make a scheme for the transfer of its property, rights and liabilities to the GMCA or to the Executive, or to the GMCA and the Executive, as soon as reasonably practicable.

(2) The property, rights and liabilities that are to be the subject of the scheme are those relating to the transport functions of each constituent council delegated to the GMCA by article 8 of this Order.

(3) Any transfers by the scheme are to take effect on such date as may be specified in the scheme.

(4) The requirement in paragraph (1) may be fulfilled by a scheme or schemes made jointly by two or more of the constituent councils.

Continuity

17.—(1) None of the following, that is to say—

- (a) anything in article 6 or 7;
- (b) the transfer or delegation, by this Order or a scheme made under it, of the functions, property, rights or liabilities of the ITA or of a constituent council to the GMCA or the Executive,

affects the validity of anything done by or in relation to the ITA or the constituent council before the date on which the transfer or delegation takes effect.

(2) There may be continued by or in relation to the GMCA or the Executive anything (including legal proceedings) which—

- (a) relates to any of the functions, property, rights or liabilities transferred or delegated; and
- (b) is in process of being done by or in relation to the ITA or constituent council immediately before the transfer or delegation takes effect.

(3) Anything which—

(a) 2009 c. 22. Sections 61(1)(c) and 84(2) were amended by S.I. 2010/1158, article 5(1), Schedule 2, Part 1, paragraph 16(1), (3).

(a) was made or done by or in relation to the ITA or constituent council for the purposes of or otherwise in connection with any of the functions, property, rights or liabilities transferred or delegated; and

(b) is in effect immediately before the transfer or delegation takes effect, has effect as if made or done by or in relation to the GMCA or the Executive.

(4) The GMCA or the Executive shall be substituted for the ITA or the constituent councils in any instruments, contracts or legal proceedings which—

(a) relate to any of the functions, property, rights or liabilities transferred or delegated; and

(b) are made or commenced before the transfer or delegation takes effect.

(5) A reference in this article to anything made or done by or in relation to the ITA or a constituent council includes a reference to anything which by virtue of any enactment is to be treated as having been made or done by or in relation to the ITA or constituent council.

(6) Without prejudice to the generality of this article a levy issued by the ITA under section 74 of the Local Government Finance Act 1988(a) and in accordance with the Transport Levying Bodies Regulations 1992(b) to the constituent councils in respect of the financial year beginning

1st April 2011 is to have effect for that year as if it had been so issued by the GMCA.

Signed on behalf of the Secretary of State for Communities and Local Government

Bob Neill

Parliamentary Under Secretary of State

22nd March 2011

Department for Communities and Local Government

(a) 1988 c. 41; section 74 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 13, paragraph 72, the Greater London Authority Act 1999 (c. 29), section 105(2), the Courts Act 2003 (c. 39), Schedule 8, paragraph 305(a), the Fire and Rescue Services Act 2004 (c. 21), Schedule 1, paragraph 68(2), the Local Government and Public Involvement in Health Act 2007 (c. 28), Schedule 1, paragraph 16, the Local Democracy, Economic Development and Construction Act

2009, Schedule 6, paragraph 75 and by S.I. 1994/2825,

(b) S.I. 1992/2789.

SCHEDULES

SCHEDULE 1

Article 4

Constitution

Membership

1.—(1) Each constituent council is to appoint one of its elected members to be a member of the GMCA.

(2) Each constituent council is to appoint another of its elected members to act as a member of the GMCA in the absence of the member appointed under sub-paragraph (1) (“the substitute member”).

(3) A person ceases to be a member or substitute member of the GMCA if they cease to be a member of the constituent council that appointed them.

(4) A person may resign as a member or substitute member of the GMCA by written notice served on the proper officer of the constituent council that appointed them and the resignation shall take effect on receipt of the notice by the proper officer.

(5) Where a member or substitute member's appointment ceases by virtue of sub-paragraph (3) or (4) the constituent council that made the appointment must, as soon as practicable, give written notice of that fact to the GMCA and appoint another of its elected members in that person's place.

(6) A constituent council may at any time terminate the appointment of a member or substitute member appointed by it to the GMCA and appoint another of its elected members in that person's place.

(7) Where a constituent council exercises its power under sub-paragraph (6), it must give written notice of the new appointment and the termination of the previous appointment to the GMCA and the new appointment shall take effect and the previous appointment terminate at the end of one week from the date on which the notice is given or such longer period not exceeding one month as is specified in the notice.

(8) For the purposes of this paragraph, an elected mayor of a constituent council is to be treated as a member of the constituent council.

Chair and vice-chair(s)

2.—(1) The GMCA—

- (a) must in each year appoint a chair; and
- (b) may appoint one or more vice-chairs

from among its members and the appointments are to be the first business transacted at the annual meeting of the GMCA.

(2) A person ceases to be chair or vice-chair of the GMCA if they cease to be a member of the GMCA.

(3) If a vacancy arises in the office of chair or vice chair, an appointment to fill the vacancy is to be made at the next ordinary meeting of the GMCA, or, if that meeting is to be held within 14 days of the vacancy arising, at the meeting following that meeting.

Proceedings

3.—(1) Subject to sub-paragraphs (3) and (4), any questions that are to be decided by the GMCA are to be decided by a majority of the members and substitute members, acting in place of members, present and voting on that question at a meeting of the GMCA.

(2) Each member, or substitute member acting in that member's place, is to have one vote and no member or substitute member is to have a casting vote.

(3) Questions relating to the following matters require at least 7 votes in favour to be carried—

(a) the adoption, approval, amendment, modification, revision, variation, withdrawal or

revocation of a plan or strategy of the following descriptions—

(i) a sustainable community strategy under section 4 of the Local Government Act

2000(a),

(ii) a local transport plan under section 108(3) of the Transport Act 2000(b),

(iii) such other plans and strategies as may be determined by the GMCA and set out in its standing orders;

(b) the preparation of a local economic assessment under section 69 of the 2009 Act;

(c) the submission of a request under section 124 of the 2009 Act, a multi-area agreement under section 125 or 128 of that Act, or a revision proposal under section 132 of that Act;

(d) the approval of the budget of the GMCA;

- (e) the approval of borrowing limits, the treasury management strategy and the investment strategy;
- (f) the setting of a transport levy;
- (g) the acceptance of arrangements to delegate the functions of any person to the GMCA;
- (h) the amendment of the standing orders of the GMCA.

(4) Questions relating to road user charging require 10 votes in favour to be carried.

(5) The proceedings of the GMCA are not invalidated by any vacancy among its members or substitute members or by any defect in the appointment or qualifications of any member or substitute member.

Records

4.—(1) The GMCA must make arrangements for the names of members and substitute members present at any meeting to be recorded.

(2) Minutes of the proceedings of a meeting of the GMCA, or any committee or sub-committee of the GMCA are to be kept in such form as the GMCA may determine.

(3) Any such minutes are to be signed at the same or next suitable meeting of the GMCA by the person presiding at that meeting.

(4) Any minute purporting to be signed as mentioned in sub-paragraph (3) shall be received in evidence without further proof.

(5) Until the contrary is proved, a meeting of the GMCA a minute of whose proceedings has been signed in accordance with this paragraph is deemed to have been duly convened and held, and all the members and substitute members present at the meeting are deemed to have been duly qualified.

(6) For the purposes of sub-paragraph (3) the next suitable meeting is the next following meeting or, where standing orders made by the GMCA provide for another meeting of the authority to be regarded as suitable, either the next following meeting or that other meeting.

Standing Orders

5. The GMCA may make standing orders for the regulation of its proceedings and business and may vary or revoke any such orders.

(a) 2000 c. 26.

(b) 2000 c. 38. Section 108(3) was amended by section 9(1) of the Local Transport Act 2008. A combined authority is a local transport authority for the purposes of section 108(3) by virtue of section 108(4)(ca), inserted by paragraphs 95 and 96 of schedule 6 to the 2009 Act.

Remuneration

1.—(1) No remuneration is to be payable by the GMCA to its members, other than allowances for travel and subsistence paid in accordance with a scheme drawn up by the GMCA.

(2) A constituent council may, in accordance with its own scheme of allowances, pay a special responsibility allowance to any member appointed by it to the GMCA in respect of duties and responsibilities undertaken as a member of the GMCA.

SCHEDULE 2

Article 7

Amendment of Section 9 of the Transport Act 1968

1. Section 9 of the Transport Act 1968(a) is amended as follows.

2. In subsection (1)(a)—

(a) in subparagraph (i) after “metropolitan counties” there is inserted “except Greater Manchester”;

(b) the word “and” after subparagraph (i) is omitted; and

(c) after subparagraph (i) there is inserted—

“(ia) the metropolitan county of Greater Manchester shall be the area of a combined authority; and”

3. In subsection (1)(b)—

(a) the word “and” after subparagraph (i) is omitted; and

(b) after subparagraph (i) there is inserted—

“(ia) in relation to the metropolitan county of Greater Manchester, the Greater Manchester Combined Authority; and”.

4. In subsections (2) and (3) after “integrated transport area” there is in each case inserted “, the area of the Greater Manchester Combined Authority”.

5. In subsection (5) after “integrated transport area” there is inserted “or the area of the Greater Manchester Combined Authority”.

6. After subsection (5) there is inserted—

“(5A) In this section “the Greater Manchester Combined Authority” means the body of that name constituted by the Greater Manchester Combined Authority Order 2011.”

SCHEDULE 3

Article 10

Economic development and regeneration functions

1. The power under section 144 of the Local Government Act 1972 (the power to encourage visitors and provide conference and other facilities).

(a) 1968 c. 73; section 9 was amended by the Local Government (Scotland) Act 1973 (c. 65) Schedule 18, paragraph 1; by the Transport Act 1985 (c. 67) sections 57(1), 58(2), Schedule 3, paragraph 3, Schedule 8; by the Local Government (Scotland) Act 1994 (c. 39) Schedule 13, paragraph 80(2); and in relation to England and Wales only by the Local Transport Act 2008 (c. 26) section 98(4), Schedule 4, paragraph 2 and Schedule 7, Part 4.

2. The duty under section 8(1) Housing Act 1985(a) (duty of local housing authorities to consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation).

3. The duties under section 82 of the Environment Act 1995(b) (duty to cause a review to be conducted of quality for the time being, and the likely future quality within the relevant period, of air within the authority's area and associated duties).

4. The duty under section 83 of the Environment Act 1995 (duty to designate air quality management areas).

5. The duties under section 84 of the Environment Act 1995 (duties in relation to designated area).

6. The duties under sections 15ZA, 15ZB, 15ZC, 17A, 18A(1)(b), of the Education Act 1996 and the power under sections 514A and 560A of that Act(c) (duties and powers related to the provision of education and training for persons over compulsory school age).

7. The power under section 2 of the Local Government Act 2000(d) (promotion of well-being).

8. The duty under section 4(1) of the Local Government Act 2000 (duty to prepare a strategy for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom) and the power under section 4(2) of the Local Government Act 2000 (power to modify their sustainable communities strategy).

9. The duty under section 69 of the 2009 Act (duty to prepare an assessment of economic conditions).

EXPLANATORY NOTE

(This note is not part of the Order)

This order establishes the Greater Manchester Combined Authority.

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009

Act”) provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise functions relating to transport and to economic development and regeneration in their area.

The Secretary of State may only establish a combined authority for an area where a scheme for such an authority has been published under section 109 of the 2009 Act. This order has been made following the publication of such a scheme on 29th March 2010 by the 10 metropolitan district councils (the constituent councils) whose areas together make up the combined area of the new authority. The scheme is available at www.agma.gov.uk.

Part 2 of the Order establishes the new authority, to be known as the Greater Manchester Combined Authority (“the GMCA”) on 1st April 2011, and makes provision for its constitution and funding.

Article 4 of and *Schedule 1* to the Order make provision for the constitution of the GMCA. This is supplemental to the provision that is made by Part I of Schedule 12 to the Local Government Act 1972 (*see* paragraph (6A) of that Schedule, as amended by the 2009 Act).

- (a) 1985 c. 68. Section 144 was amended by Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), Part 16 of Schedule 34 to the Local Government, Planning and Land Act 1980 (c. 65) and Schedule 17 to the Local Government Act 1985.
- (b) 1995 c. 25.
- (c) 1996 c. 56. Sections 15ZA, 15ZB, 15ZC were inserted by section 41 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), sections 17A and 18A(1)(b) by section 45 of that Act (not yet commenced), section 514A by section 46 of that Act and section 560A by section 47 of that Act.
- (d) 2000 c.22, to which there are amendments not relevant to this Order.

Article 5 makes provision for the funding, by the constituent councils, of those costs of the GMCA

that relate to the exercise of its economic development and regeneration functions.

Part 3 is about the transport aspects of the combined authority. *Article 6* dissolves the Greater Manchester Integrated Transport Area (formerly the Greater Manchester Passenger Transport Area) and abolishes the Greater Manchester Integrated Transport Authority (formerly the Greater Manchester Passenger Transport Authority) and transfers its functions and property, rights and liabilities to the Combined Authority. *Article 7* makes general adaptations to primary and subordinate legislation, so as that references to an integrated transport authority or area are to be treated as extending to the Combined Authority and its area, and introduces Schedule 2 which makes specific amendments to section 9 of the Transport Act 1968.

Article 8 delegates certain transport functions (in particular those relating to the placing of traffic light signals) of the constituent councils to the Combined Authority and provision is made for defraying the cost of discharging those functions. It is further provided that the delegated functions are not exercisable by the constituent councils either concurrently or in place of the GMCA and are to be treated as functions of the GMCA for the purposes of section 101 of the Local Government Act 1972. *Article 9* makes the Greater Manchester Passenger Transport Executive an executive body of the Combined Authority and changes its name to “Transport for Greater Manchester”. Section 101 of the Local Government Act 1972 is modified in its application to the Combined Authority so as to enable it (and a joint committee of local authorities of which the Combined Authority is a constituent authority) to arrange for the discharge of functions by Transport for Greater Manchester. Section 101 of that Act and section 19 of the Local Government Act 2000 (and regulations made under it) are also applied with modifications so as to enable the GMCA to sub-delegate to Transport for Greater Manchester any other functions delegated to the GMCA by the constituent councils.

Part 4 confers additional functions on the GMCA. *Article 10* confers functions of the constituent councils relating to economic development and regeneration. These are set out in Schedule 3 to the Order and are to be exercised concurrently with the constituent councils.

Articles 11 to 14 make some general, incidental provisions relating to the GMCA to enable it to carry out its functions more effectively.

Part 5 makes supplementary provision. *Article 15* transfers the Commission for the New Economy and Manchester Investment and Development Agency Service Limited, companies owned by the constituent councils, to the GMCA. *Article 16* provides for the constituent councils to transfer other property, rights and liabilities via a scheme to be made under this Order. *Article 17* ensures continuity when functions, property, rights or liabilities are transferred by the Order or a scheme made under it.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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Annex 4B – West Yorkshire Combined Authority Order

Draft Order laid before Parliament under section 85 of the Transport Act 1985, section 94 of the Local Transport Act 2008 and section 117 of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

LOCAL GOVERNMENT, ENGLAND

TRANSPORT, ENGLAND

The West Yorkshire Combined Authority Order 2014

Made - - - -

Coming into force - -

1st April 2014

This Order is made in exercise of the powers conferred by section 85 of the Transport Act 1985(a), sections 84, 91 and 93 of the Local Transport Act 2008(b) and sections 103 to 105 and 114 to 116 of the Local Democracy, Economic Development and Construction Act 2009(c).

The Secretary of State, having regard to a scheme prepared and published under section 82 of the Local Transport Act 2008 and section 109 of the Local Democracy, Economic Development and Construction Act 2009, considers that the making of this Order is likely to improve –

- (a) the exercise of statutory functions relating to transport in the area to which this Order relates,
- (b) the effectiveness and efficiency of transport in that area,
- (c) the exercise of statutory functions relating to economic development and regeneration in that area, and
- (d) economic conditions in that area.

The Secretary of State is satisfied that the area to which this Order relates meets the conditions set out in section 103 of the Local Democracy, Economic Development and Construction Act 2009.

The Secretary of State has consulted—

- (a) the metropolitan district councils for the area comprised in the West Yorkshire integrated transport area,
 - (b) the West Yorkshire Integrated Transport Authority, and
 - (c) such other persons as the Secretary of State considered appropriate.
-

(a) 1985 c.67. Section 85 was amended by the Local Transport Act 2008 (c.26) Schedule 4, paragraphs 18 and 30 and by S.I.

2009/107.

(b) 2008 c.26.

(c) 2009 c.20.

The metropolitan district councils whose areas are comprised in the West Yorkshire integrated transport area have consented to the making of this Order.

In making this Order, the Secretary of State has had regard to the need to reflect the identities and interests of local communities, and to secure effective and convenient local government.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 85 of the Transport Act 1985, section 94 of the Local Transport Act 2008 and section 117 of the Local Democracy, Economic Development and Construction Act 2009.

Accordingly, the Secretary of State makes the following Order:

PART 1

General

Citation and commencement

1. This Order may be cited as the West Yorkshire Combined Authority Order 2014 and shall come into force on 1st April 2014.

Interpretation

2. In this Order—

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009;

“combined area” means the area consisting of the areas of the constituent councils;

“the Combined Authority” means the West Yorkshire Combined Authority constituted by article 3(2);

“constituent councils” means the metropolitan district councils for the local government areas of Bradford, Calderdale, Kirklees, Leeds and Wakefield;

“the Executive” has the meaning given by article 8(1);

“financial year” means the period of 12 months ending with 31st March in any year;

“the ITA” means the West Yorkshire Integrated Transport Authority;

“Local Enterprise Partnership” means the Leeds City Region Local Enterprise Partnership;

and

“non-constituent council” means the council for the local government area of York.

PART 2

Establishment of a combined authority for West Yorkshire

Establishment

3.—(1) There is established a combined authority for the combined area.

(2) The combined authority is to be a body corporate and to be known as the West Yorkshire

Combined Authority.

(3) The functions of the Combined Authority are those functions conferred or imposed upon it by this Order or by any other enactment (whenever passed or made), or as may be delegated to it by or under this Order or any other enactment (whenever passed or made).

Constitution

4. Schedule 1 (which makes provision about the constitution of the Combined Authority) has effect.

Funding

5.—(1) The constituent councils must meet the costs of the Combined Authority reasonably attributable to the exercise of its functions relating to economic development and regeneration.

(2) The amount payable by each of the constituent councils is to be determined by apportioning the costs of the Combined Authority referred to in paragraph (1) between the constituent councils in such proportions as they may agree or, in default of such agreement, in proportion to the total resident population at the relevant date of the area of each council concerned as estimated by the Registrar General.

(3) For the purposes of paragraph (2) the relevant date in relation to a payment for a financial year is 30th June in the financial year which commenced two years prior to the current financial year.

PART 3

Transport

Abolition and transfer of functions

6.—(1) The West Yorkshire integrated transport area is dissolved and the ITA is abolished.

(2) On the abolition of the ITA—

(a) its functions; and

(b) its property, rights and liabilities
are transferred to the Combined Authority.

Adaptation of enactments

7.—(1) This article has effect in consequence of article 6.

(2) In any enactment (whenever passed or made)—

(a) any reference to an integrated transport area; or

(b) any reference which falls to be read as a reference to such an area,
is to be treated as including a reference to the combined area.

(3) In any enactment (whenever passed or made)—

(a) any reference to an integrated transport authority; or

(b) any reference which falls to be read as a reference to such an authority,
is to be treated as including a reference to the Combined Authority.

(4) Paragraphs (2) and (3) do not apply to Part 2 of the Transport Act 1968 which is amended in accordance with Schedule 2.

Passenger Transport Executive

8.—(1) In this order “the Executive” means the West Yorkshire Passenger Transport Executive established by the West Yorkshire Passenger Transport Area (Establishment of Executive) Order 1973(a).

(2) Immediately before the coming into force of article 6 the Executive shall be dissolved and all functions, property rights and liabilities of the Executive shall be transferred to the ITA.

(3) Subject to article 7(4) and Schedule 2 and to the following provisions of this article, any reference in any enactment (whenever passed or made) to a passenger transport executive or to passenger transport executives is to be treated, in its application to the combined area, as if it were a reference to the West Yorkshire Combined Authority.

(4) Paragraph (3) does not apply to the following enactments—

(a) in the Audit Commission Act 1998(b)—

(i) sections 11(2)(g);

- (ii) section 30(1), (3); and
- (iii) in Schedule 2, paragraph 4;
- (b) paragraph 28 of Schedule 1 to the Freedom of Information Act 2000(c);
- (c) Schedule 2 to the Local Government Act 1988(d);
- (d) section 33 of the Railways Act 2005(e);
- (e) sections 95, 96, 97, 104(2) and (3) and 137(5) of the Transport Act 1985; and
- (f) section 162(4) of the Transport Act 2000.

(5) The West Yorkshire Passenger Transport Area (Establishment of Executive) Order 1973 is revoked.

Continuity

9.—(1) Nothing in article 6, 7 or 8 affects the validity of anything done by or in relation to the ITA or the Executive before 1st April 2014.

(2) There may be continued by or in relation to the Combined Authority anything (including legal proceedings) which—

- (a) relates to any of the functions, property, rights or liabilities transferred to the Combined Authority; and

- (b) is in process of being done by or in relation to the ITA or the Executive immediately before 1st April 2014.

(3) Anything which—

- (a) was made or done by or in relation to the ITA or the Executive for the purposes of or otherwise in connection with any of the functions, property, rights or liabilities transferred; and

(b) is in effect immediately before the transfer takes effect,

has effect as if made or done by or in relation to the Combined Authority.

(4) The Combined Authority shall be substituted for the ITA or, where appropriate, the Executive in any instruments, contracts or legal proceedings which—

(a) relate to any of the functions, property, rights or liabilities transferred; and

(b) are made or commenced before the transfer takes effect.

(a) S.I. 1973/1729.

(b) 1998 c. 18.

(c) 2000 c. 36. Paragraph 8 was substituted by the Local Transport Act 2008, Schedule 4, paragraph 64.

(d) 1988 c. 9.

(e) 2005 c. 14.

(5) A reference in this article to anything made or done by or in relation to the ITA or the Executive includes a reference to anything which by virtue of any enactment is to be treated as having been made or done by or in relation to the ITA or the Executive.

(6) Without prejudice to the generality of this article a levy issued by the ITA under section 74 of the Local Government Finance Act 1988(a) and in accordance with the Transport Levying Bodies Regulations 1992(b) to the constituent councils in respect of the financial year beginning 1st April 2014 is to have effect for that year as if it had been so issued by the Combined Authority.

PART 4

Additional functions

Economic development and regeneration functions

10.—(1) The functions of the constituent councils set out in Schedule 3 are exercisable by the West Yorkshire Combined Authority in relation to its area.

(2) The functions are exercisable concurrently with the constituent councils.

(3) Any requirement in any enactment for a constituent council to exercise such a function may be fulfilled by the exercise of that function by the West Yorkshire Combined Authority.

Incidental provisions

11. The following provisions shall have effect as if the West Yorkshire Combined Authority were a local authority for the purposes of these provisions—

- (a) section 142(2) of the Local Government Act 1972(c) (the power to arrange for publication of information etc. relating to the functions of the authority); and

- (b) section 222 of the Local Government Act 1972 (the power to prosecute and defend legal proceedings).

12.—(1) The West Yorkshire Combined Authority shall have the power to exercise any of the functions described in subsection (1)(a) and (b) of section 88 of the Local Government Act

1985(d) (research and collection of information) whether or not a scheme is made under that section.

(2) For the purposes of paragraph (1) of this article, paragraphs (a) and (b) of section 88(1) of the Local Government Act 1985 shall have effect as if a reference to “that area” were a reference to the combined area.

13. Section 13 of the Local Government and Housing Act 1989(e) (voting rights of members of certain committees) shall have effect as if—

- (a) in subsection (4) after paragraph (h) there were inserted—

“(i) subject to subsection (4A), a committee appointed by the West Yorkshire
Combined Authority;” and

- (b) after subsection (4) there were inserted—

“(4A) A person who is a member of a committee falling within paragraph (i) of subsection (4) or a sub-committee appointed by such a committee shall for all purposes be treated as a non-voting member of that committee or sub-committee unless that person—

(a) 1988 c.41.

(b) S.I. 1992/2789, amended by S.I. 2012/213.

(c) 1972 c.70.

(d) 1985 c.51.

(e) 1989 c.42.

- (a) is a member of one of the constituent councils as defined by article 2 of the West Yorkshire Combined Authority Order 2014(a); or
- (b) is given voting rights by resolution of the Combined Authority in accordance with paragraph 4(5) of Schedule 1 to that Order.”.

Signed on behalf of the Secretary of State for Communities and Local Government

Name

Parliamentary Under Secretary of State

Date

Department for Communities and Local Government

SCHEDULE 1

Article 4

Constitution

Membership

1.—(1) The Combined Authority shall comprise ten members as provided for in the following sub-paragraphs.

(2) Each of the constituent councils shall appoint one of its elected members as a member of the Combined Authority.

(3) The constituent councils shall agree the appointment of another elected member from three of the constituent councils, so that the constituent council members taken as a whole reflect so far as reasonably practicable the balance of political parties for the time being prevailing among members of the constituent councils.

(4) The non-constituent council shall appoint one of its elected members to be a member of the Combined Authority.

(5) Each constituent council and the non-constituent council shall appoint another of its elected members to act as a member of the Combined Authority in the absence of the members appointed under sub-paragraphs (2) to (4) (“the substitute member”).

(6) The Local Enterprise Partnership shall nominate one of its members to be a member of the Combined Authority (“Local Enterprise Partnership Member”).

(7) The Local Enterprise Partnership shall nominate another of its members to act as a member of the Combined Authority in the absence of the member appointed under sub-paragraph (6).

(8) The Combined Authority shall appoint a member nominated by the Local Enterprise Partnership as a member of the Combined Authority (“Local Enterprise Partnership Member”).

(9) The Combined Authority shall appoint another member nominated by the Local Enterprise Partnership to act as a member of the Combined Authority in the absence of the member appointed under sub-paragraph (8) (“the substitute member”).

(10) For the purposes of this Schedule any reference to a member is to be treated as including a reference to the Local Enterprise Partnership Member.

(11) A person ceases to be a member or substitute member of the Combined Authority if they cease to be—

- (a) a member of the constituent council or non-constituent council that appointed them; or
 - (b) a member of the Local Enterprise Partnership that nominated them.
-

(a) S.I 2014/XXXX.

(12) A person may resign as a member or substitute member of the Combined Authority by written notice served on the proper officer of the Council or the Chair or Vice Chair of the Local Enterprise Partnership (as the case may be) of—

- (a) the constituent council or non-constituent council that appointed them; or
- (b) the Local Enterprise Partnership that nominated them,

and the resignation shall take effect on receipt of the notice by the proper officer of the Council or Chair or Vice Chair of the Local Enterprise Partnership (as the case may be).

(13) Where a member or substitute member's appointment ceases by virtue of sub-paragraph (11) or (12)—

- (a) the constituent council or the non-constituent council that made the appointment shall, as soon as practicable, give written notice of that fact to the Combined Authority and appoint another of its elected members in that person's place;
- (b) the Local Enterprise Partnership must, as soon as practicable, give written notice of that fact to the Combined Authority and nominate another of its members in that person's place.

(14) The Combined Authority shall appoint a member nominated under sub-paragraph (13)(b) at the next meeting of the Combined Authority.

(15) A constituent council or the non-constituent council may at any time terminate the appointment of a member or substitute member appointed by it to the Combined Authority and appoint another of its elected members in that person's place.

(16) Where a constituent council or the non-constituent council exercises its power under sub-paragraph (15), it shall give written notice of the new appointment and the termination of the previous appointment to the Combined Authority and the new appointment shall take effect and the previous appointment terminate at the end of one week from the date on which the notice is given or such longer period not exceeding one month as is specified in the notice.

(17) The Local Enterprise Partnership may at any time terminate the appointment of a member or substitute member nominated by it to the Combined Authority and nominate another of its members in that person's place.

(18) Where the Local Enterprise Partnership exercises its power under sub-paragraph (17), it shall give written notice of the new nomination and the termination of the previous appointment to the Combined Authority.

(19) The Combined Authority shall appoint a member nominated under sub-paragraph (18) and the new appointment shall take effect and the previous appointment terminate at the end of one week from the date on which the notice is given or such longer period not exceeding one month as is specified in the notice.

(20) For the purposes of this paragraph, an elected mayor of a constituent council or non-constituent council is to be treated as a member of the constituent council or non-constituent council.

Chairman and vice-chairman

2.—(1) The Combined Authority must in each year appoint a chairman and a vice-chairman from among its members and the appointments are to be the first business transacted after the appointment of members at the first meeting of the Combined Authority and in subsequent years at the annual meeting of the Combined Authority.

(2) A person ceases to be chairman or vice-chairman of the Combined Authority if they cease to be a member of the Combined Authority.

(3) If a vacancy arises in the office of chairman or vice-chairman, an appointment to fill the vacancy is to be made at the next ordinary meeting of the Combined Authority or, if that meeting is to be held within 14 days of the vacancy arising, at the meeting following that meeting.

Proceedings

3.—(1) Subject to the following sub-paragraphs, any questions that are to be decided by the Combined Authority are to be decided by a majority of the members and substitute members, acting in place of members, present and voting on that question at a meeting of the Combined Authority.

(2) No business shall be transacted at a meeting of the Combined Authority unless at least three members or substitute members appointed by the constituent councils are present.

(3) Each member, or substitute member acting in that member's place, is to have one vote and no member or substitute member is to have a casting vote.

(4) Members appointed by the non-constituent council or appointed from the Local Enterprise Partnership shall be non-voting members of the Combined Authority.

(5) The proceedings of the Combined Authority shall not be invalidated by any vacancy among its members or substitute members or by any defect in the appointment or qualifications of any member or substitute member.

Committees

4.—(1) The Combined Authority shall appoint one or more committees as an overview and scrutiny committee, or as the case may be committees, of the Combined Authority.

(2) The Combined Authority shall appoint members of each of the constituent councils and the non-constituent council to an overview and scrutiny committee appointed by the Combined Authority.

(3) An overview and scrutiny committee appointed by the Combined Authority may not include any member of the Combined Authority.

(4) Each member of the overview and scrutiny committee appointed from the constituent councils is to have one vote and no member is to have a casting vote.

(5) Members appointed from the non-constituent council to the overview and scrutiny committee of the Combined Authority, and members appointed from the non-constituent council or the Local Enterprise Partnership to any other committee or sub-committee of the Combined Authority, shall be non-voting members of the committee or sub-committee but may be given voting rights by resolution of the Combined Authority.

(6) An overview and scrutiny committee appointed by the Combined Authority shall have the power to—

- (a) invite members to attend before it to answer questions;
- (b) invite other persons, including members of the public, to attend meetings of the committee;
- (c) review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the West Yorkshire Combined Authority;
- (d) make reports or recommendations to the Combined Authority with respect to the discharge of any functions which are the responsibility of the Combined Authority.

(7) The power to review or scrutinise a decision made but not implemented under sub-paragraph (6)(c) includes the power to recommend that the decision be reconsidered by the Combined Authority.

(8) Where an overview and scrutiny committee appointed by the Combined Authority makes a report or recommendation under sub-paragraph (6)(d) the committee may—

- (a) publish the report or recommendations;
- (b) by notice in writing require the Combined Authority to—
 - (i) consider the report or recommendations;

(ii) respond to the overview and scrutiny committee indicating what (if any) action the

Combined Authority proposes to take;

(iii) if the overview and scrutiny committee has published the report or recommendations under sub-paragraph (8)(a), publish the response.

(9) A notice served under sub-paragraph (8)(b) must require the Combined Authority to comply with it within two months beginning with the date on which the Combined Authority received the reports or recommendations or (if later) the notice.

(10) The Combined Authority shall comply with a notice given under sub-paragraph (8)(b).

(11) Sub-paragraphs (8)(a) and (10) are subject to section 9FG of the Local Government Act

2000 and to any provision made under section 9GA(8)(a) and the Combined Authority shall be treated as a local authority for these purposes.

Records

5.—(1) The Combined Authority must make arrangements for the names of members and substitute members present at any meeting to be recorded.

(2) Minutes of the proceedings of a meeting of the Combined Authority, or any committee or sub-committee of the Combined Authority, are to be kept in such form as the Combined Authority may determine.

(3) Any such minutes are to be signed at the same or next suitable meeting of the Combined Authority, committee or sub-committee as the case may be, by the person presiding at that meeting.

(4) Any minute purporting to be signed as mentioned in sub-paragraph (3) shall be received in evidence without further proof.

(5) Until the contrary is proved, a meeting of the Combined Authority, committee or sub-committee, a minute of whose proceedings has been signed in accordance with this paragraph is deemed to have been duly convened and held, and all the members and substitute members present at the meeting are deemed to have been duly qualified.

(6) For the purposes of sub-paragraph (3) the next suitable meeting is the next following meeting or, where standing orders made by the Combined Authority provide for another meeting of the authority, committee or sub-committee, to be regarded as suitable, either the next following meeting or that other meeting.

Standing orders

6. The Combined Authority may make standing orders for the regulation of its proceedings and business and may vary or revoke any such orders.

Remuneration

7. No remuneration is to be payable by the Combined Authority to its members, other than allowances for travel and subsistence paid in accordance with a scheme drawn up by the Combined Authority.

Modification of Part 2 of the Transport Act 1968

1. The Transport Act 1968(**b**) is amended as follows.

- (a) 2000 c. 22. Sections 9FG and 9GA were inserted by the Localism Act 2011 (c. 20), section 21 and Schedule 2.
- (b) 1968 c. 73; section 9 was amended by the Local Government (Scotland) Act 1973 (c. 65) Schedule 18, paragraph 1; by the Transport Act 1985 (c. 67) sections 57(1), 58(2), Schedule 3, paragraph 3, Schedule 8; by the Local Government (Scotland)

2.—(1) Section 9 (areas, authorities and executives) is amended as follows.

(2) In subsection (1)(c)—

(a) in sub-paragraph (i), after .England and Wales. there is inserted “(except as mentioned in sub-paragraph (ia))”;

(b) after sub-paragraph (i) there is inserted—

“(ia) in relation to the area of the West Yorkshire Combined Authority, that
Authority;”.

(3) After subsection (6) there is inserted—

“(6A) This section applies in relation to the West Yorkshire Combined Authority as if—

(a) subsections (2) to (4) were omitted; and

(b) in subsection (5), the words “the Executive and any subsidiary of the Executive” were omitted.”

3. In section 9A (general functions of Authorities and Executives), after subsection (11) there is inserted—

“(12) This section applies to the West Yorkshire Combined Authority as if—

(a) the duty under subsection (3) were a duty for the Authority to secure the provision of such public passenger transport services as it considers appropriate for meeting any public transport requirements within its area which in the view of the Authority would not be met apart from any action taken by it for that purpose;

(b) subsection (3A) were omitted;

(c) in subsection (5)—

(i) the words “for the Executive of that area” were omitted;

(ii) for the words “by the Executive for that area, and the Executive” there were substituted “and”;

(d) in subsections (6) and (7), the references to the Executive were omitted.”

4. In section 10 (general powers of Executive), after subsection (9) there is inserted—
“(10) This section applies to the West Yorkshire Combined Authority as if—

(a) in subsection (1)—

(i) in paragraph (xxiii), the words “subject, in the case of a disposal of land, to the approval of the Authority” were omitted, and

(ii) any other reference to the approval of the Authority were omitted;

(b) in subsection (7), the words “the approval of the Authority or” were omitted.”

5. In section 11 (financial duty of Executive), after subsection (3A) there is inserted—

“(3B) Subsection (3A) applies to the West Yorkshire Combined Authority as if the words from “and the Authority” to “the application thereof” were omitted.”

6. In section 12 (borrowing powers of Executive), after subsection (7) there is inserted—
“(8) This section does not apply to the West Yorkshire Combined Authority.”

7. In section 13 (power to make grants)—

(a) the existing text is renumbered as subsection (1);

(b) after that subsection there is inserted—

“(2) This section does not apply to the West Yorkshire Combined Authority.”

8. In section 14 (accounts of Executive), after subsection (3) there is inserted—

“(4) This section does not apply to the West Yorkshire Combined Authority.”

9. In section 15 (further functions of Authority), after subsection (7) there is inserted—

“(8) This section does not apply to the West Yorkshire Combined Authority.”

10. In section 15A (additional provisions as to control of Executive by Authority), after subsection (3) there is inserted—

“(4) This section does not apply to the West Yorkshire Combined Authority.”

11. In section 16 (publication of annual report by Authority and Executive and prevention of improper conduct of subsidiary activities), after subsection (2) there is inserted—

“(2A) In its application to the West Yorkshire Combined Authority, subsection (2) has effect as if—

- (a) the words “jointly by the Authority and the Executive” were omitted;
- (b) “and the Executive” (in the second place) were omitted; and
- (c) for “their respective” there were substituted “its”.

SCHEDULE 3

Article 10

Economic development and regeneration functions

1. Such functions of the constituent authorities as are exercisable for the purpose of economic development and regeneration in reliance on the general power of competence under section 1 of the Localism Act 2011(a).

EXPLANATORY NOTE

(This note is not part of the Order)

This order establishes the West Yorkshire Combined Authority.

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009

Act”) provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to

exercise functions relating to transport and to economic development and regeneration in their area.

The Secretary of State may only establish a combined authority for an area where a scheme for such an authority has been published under section 109 of the 2009 Act. This order has been made following the publication of such a scheme on 31st July 2013 by the constituent councils whose areas together make up the combined area of the new authority. The scheme is available at www.awya.gov.uk/combinedauthority.

Part 2 of the Order establishes the new authority, to be known as the West Yorkshire Combined Authority on 1st April 2014, and makes provision for its constitution and funding.

Article 4 of and *Schedule 1* to the Order make provision for the constitution of the West Yorkshire Combined Authority. This is supplemental to the provision that is made by Part 1A of Schedule 12 to the Local Government Act 1972 (see paragraph (6A) of that Schedule, as amended by the 2009 Act).

(a) 2011 c.20.

Article 5 makes provision for the funding, by the constituent councils, of those costs of the West Yorkshire Combined Authority that relate to the exercise of its economic development and regeneration functions.

Part 3 concerns transport. *Article 6* abolishes the West Yorkshire integrated transport area and its integrated transport authority and transfers all functions rights and liabilities to the combined authority. *Article 7 and Schedule 2* make consequential adaptations to enactments. *Article 8* does the same thing in relation to the West Yorkshire Passenger Transport Executive. *Article 9* provides for continuity in the exercise of functions as between the abolished Integrated Transport Authority and Passenger Transport Executive and the Combined Authority.

Part 4 confers additional functions on the West Yorkshire Combined Authority. *Article 10* confers functions of the constituent councils relating to economic development and regeneration. These are set out in Schedule 3 to the Order and are to be exercised concurrently with the constituent councils. *Articles 11 to 12* make some general, incidental provisions relating to the West Yorkshire Combined Authority to enable it to carry out its functions effectively.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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Annex 5 – Accountability

Romzeck & Dubnick – Four Categories of Accountability

Political - This dimension emphasises the primacy of politics (Kettl, 2014) and considers public servants as functionaries within the system, hence the stress on bureaucrats having to provide an account to politicians within the system (Mulgan, 2000) and in turn for politicians to account to the electorate for delivery of an electoral mandate. This requires consideration to be given to the public interest as well as particular interests of pressure groups through the lobbying process. Such an interpretation is broadly pluralist in conception (Dahl, 1961). This links to the elective and legislative spheres of accountability identified by Rehman & Batool (Rehman & Batool, 2013). The political dimension works best when policy goals are clear often arising from an electoral mandate. This fits into the traditional pattern of 'overhead democracy' whereby politicians hold bureaucrats to account (Redford, 1969).

Legal - This dimension covers the requirement for a legal system which supports the Rule of Law, provides a mechanism for enforcing contracts⁴⁸ and provides remedies for the redress of citizen grievances. This links to judicial and to some extent administrative spheres of accountability identified by Rehman & Batool (Rehman & Batool, 2013). Legal accountability requires two parties one with responsibilities (contractual/administrative) and the other with the ability⁴⁹ to enforce such responsibility (Deleon, 1998).⁵⁰

Bureaucratic - This dimension covers accountability through traditional 'Weberian' organisational structures. It is therefore vertical in nature and stresses the need for bureaucrats to give account to superiors and then for an account to given to political

⁴⁸ These were the arguments made by Hayek in his volumes of 'Law, Liberty & Legislation' (1973, 1976 and 1979) and referred to in Chapter 2 and Annex 2 of this thesis.

⁴⁹ In practice access to remedies will depend upon the ability to obtain legal advice and bearing the risk of high legal costs in the event of a failed legal action.

⁵⁰ Page 550.

masters if required. The bureaucratic dimension works best when goals are clear and means are agreed. This fits into the traditional account of what Redford called 'Overhead Democracy' whereby public officials are accountable to superiors who provide an account to politicians (Redford, 1969).⁵¹

Professional - This links with bureaucratic accountability although it tends to be horizontal and informal in nature as well as vertical. Professional accountability often exists on the basis of personal networks of professional peers who work in various organisations. This dimension is often supported by formal codes of conduct and a requirement to maintain professional development. As well as being accountable within an organisation, professions are regarded as having duties to society as a whole as manifested through professional codes and disciplinary procedures. Professions require an arena of trust to operate within and one conclusion of Romzeck & Dubnick on the Challenger Disaster is that the professionals were not listened to (Romzeck & Dubnick, 1987).⁵² Professional decisions require sound judgement and sometimes inspiration (Thompson & Tuden, 1959) in exercising professional judgement, often in circumstances where policy goals are ambiguous and the means of achievement are not always agreed or understood.

Lateral & Hybrid Accountability

If Deleon is correct in her proposition that policy goals and means are increasingly uncertain (Deleon, 1998) then there is likely to be increased reliance on professional accountability. The key issue about this is that it tends to be lateral in character (although it may also be vertical operating within a traditional bureaucratic structure). This means that accountability is likely to be informal, amongst peers and based upon professional and cultural standards which have been agreed as relevant to the matter in hand. The chief appeal of network forms of governance is that they facilitate flexibility to take decisions. They rely upon a combination of people, with

⁵¹ The reality is of course much more complex as the boundaries between politics and administration are not clear cut, and any management/administrative decision may well have policy consequences as was recognised by some of the founding scholars of Public Administration – (see WILSON: 1887, and GOODNOW: 1900) –but nevertheless 'Overhead Democracy' does give a useful heuristic device to use as a starting point.

⁵² This leads to a re-run of the debate on the balance between professional and political accountability started by Hermon Finer (see FINER: 1941) and Carl Friedrich (see PLANT: 2011) over half a century ago.

particular knowledge and resources in one place (not physically) at one time brought to bear on a particular decision. This gives rise to the notion of social capital (Putnam, 2002) and the importance of organisations (and networks) being able to develop social capital to deal with challenges that confront them. Social capital is reliant upon developing trust and in particular trust developed informally between professional colleagues (Jeffares, 2010). Such trust is built first in the expectation that long term relationships will develop and second in the expectation that this will be beneficial to the goals that the network is trying to achieve. It is suggested that lateral accountability is set to assume increasing importance and that it requires an understanding of the competing priorities and constraints of particular members within the network at any one time. This underscores the importance of professionals understanding priorities of network players and perhaps requires an appreciation that the network must be seen to deliver benefits to all participants (Marsh & Rhodes, 1992). For instance there has to be an acceptance that a company delivering outsourced services must be able to run a profitable contract.

Other Forms of Accountability

Official Inspections

Another aspect of accountability worth mentioning is through the role of external inspection bodies appointed by Central Government, to oversee delivery of particular services. Prime examples would include OFSTED in respect of education and children social services and the Care Quality Commission in respect of adult social care. The extent to which these arrangements contribute towards service improvement is a matter of debate (Miller, 2014), especially in light of the well documented failures in respect of child sexual exploitation at Rotherham MBC (Jay, 2014, Carey, 2015).

Grant Funding Conditions

One consequence of the fragmented governance arrangements surveyed in Chapter 4 of this thesis, is the numerous funding streams that operate in local authorities for particular projects. It has been estimated that in Greater Manchester alone there are over 1,000 funding streams in operation for particular projects (Blond, 2014).

Funding arrangements of this type, for instance from the European Regional Development Fund are subject to grant conditions which require accountability for the sums drawn down and a requirement to apply the monies for the purposes intended. One consequence of this is that it contributes towards silo working at the expense of being able to address cross cutting public policy problems in a holistic way (Myres, 2014, Ritchie, 2014).

Sorenson & Torfing – Democratic Anchorage – Four Reference Points

(1) The Role of Elected Politicians

The key argument here is that elected politicians provide a degree of democratic legitimacy that is not capable of being found elsewhere in the system. Tony Benn famously stated the two most important questions to ask those who exercise power were '(1) who elected you and (2) how can I get rid of you'(Benn, 1981). This is a measure of the importance of democratic legitimacy that only applies to elected politicians. It is also central to the primacy that modern public administration has ascribed to electoral politics (Kettl, 2014). The fact that networks are generally considered to be self governing forces a revision about the idea of political control. As Sorenson & Torfing remind us, this revision took the form of 'meta-governance'⁵³ - which may be considered as a form of arm's length strategic proxy governance. Sorenson & Torfing indicate that 'meta-governance designates the endeavour to regulate self regulating governance networks by shaping the conditions under which they operate. It involves the attempts by politicians.....to construct, structure and influence the game like interactions within particular governance networks.'⁵⁴

Meta-governance involves three aspects - Network Design (questions of who is to be involved, delegation of roles and what is to be discussed), Network Framing (political goals, policy targets, budget allocation, legal framework, performance management and monitoring results) and Network Participation (direct participation by elected

⁵³ Page 202 – also see KOOIMAN: 1993

⁵⁴ Page 202

politicians in the network). Meta-governance is a combination of all three aspects and can be difficult to achieve in practice (Sorensen, 2006).

Sorensen & Torfing claimed that politicians should be directly involved if at all possible, as in the present system they are the only actors capable of delivering democratic legitimacy to the policy process.⁵⁵ They distinguished between an 'A' Team of politicians and a 'B' Team - the former were strategic thinkers, influenced by New Public Management doctrines and sought to 'steer'⁵⁶ policy/implementation on the basis of setting broad policy objectives and holding officials to account. The 'B' Team were more concerned with single issues. Democratic anchorage was considered at its best when the 'A' team oversaw arrangements and the 'B' team actually participated. A further problem however was that the politicians (A Team) were often dependent on officials for much of the steering (Sorensen, 2006) and these officials themselves were split into two groups - entrepreneurial (who were likely to take an active interest) and legalistic bureaucrats (who were not). Sorensen & Torfing remind us that networks can always be abandoned or deprived of influence if they do not deliver what is expected. To this extent it reflects the observation that neither traditional organisations (Agrannoff, 2006) nor the state (local or central) are ever entirely absent and are still important players in modern public administration alongside policy networks.⁵⁷

Sorenson & Torfing were clear that elected politicians were at the heart of the system. The challenge was to involve them more through meta-governance but not to do so in a way that was limiting or over prescriptive, so as to undermine efficiency - as Rhodes remarked, the most difficult lesson of all to learn is perhaps - 'hands off'. The question of member involvement raises issues in the local government

⁵⁵ There is an argument that this interpretation is too restrictive and that further opportunities for popular political participation should be opened up – see Skelcher et al (2013).

⁵⁶ The distinction in the policy implementation/governance literature between 'rowing' (when bureaucracies deliver services direct) and 'steering' (when services are commissioned by government and delivered under an outsourced regime) was set out by Osborne & Gaebler 'Reinventing Government' which became the locus classicus of NPM literature.

⁵⁷ This perhaps underlies the important place that the traditional study of political institutions still occupies in modern public administration (see for instance N.Johnston (1975) 'The Place of Institutions in the Study of Politics', *Political Studies*, 23, pp. 271-283) even if it is complemented by studies in other areas such as public policy and network governance.

environment particularly in relation to the role of community leadership, the representational role of members and the capacity they have to scrutinise decisions taken by key players within and outside the local authority context.⁵⁸

(2) The Relationship between Networks and Groups Represented

This deals with the broader representation of group/sectoral interests within networks. Typically a range of community groups are involved in resolving public policy problems. For instance consider community care policy which would involve working with the NHS as well as the local authority social services department. Consider an urban regeneration project which typically involves government agencies, small business interests, transport operators, housing associations, residents groups and local authority planning and economic development departments. Sorenson & Torfing maintained that each group should be represented and that there must be a method of each interest both selecting and holding their representative accountable for their general actions within the network. This requires provision of information and the promotion of dialogue. The key issue here is that any mandate must be loose and avoid 'tying the hands and feet of representatives through the issuing of closely defined mandates'.⁵⁹

(3) Accountability to the Wider 'Demos'

In contrast to the market based accountability outlined by Scott (Scott, 2006) Sorensen & Torfing see this third anchorage point as being accountability to the 'demos' - the populace of a territorially defined area - not just the recipient of services. In this context it has more in common with the notion of 'Public Accountability' outlined by Romzeck & Dubnick (Romzeck & Dubnick, 1987). Accountability to the wider Demos, means that the role of elected politicians although necessary is not of itself always sufficient⁶⁰. There needs to be a more direct method of accountability, which means fostering an active political culture that expects

⁵⁸ The development of local authority Overview and Scrutiny Committees set up under the Local Government Act 2000 (as amended by the Localism Act 2011) are of critical importance in this context.

⁵⁹ Page 208.

⁶⁰ This leads to a debate about whether the role of politicians should be enhanced – metagovernance (such as Sorensen & Torfing: 2005) or whether avenues for direct participation should be increased (Skelcher et al : 2013)

decision makers to be called to account for their actions. This requires transparency, promotion of dialogue and a high degree of responsiveness so that this dialogue actually impacts in some clear way upon future decisions that are taken. This political culture must prize scrutiny and accountability above all else, demonstrated by a determination to question the allocation and exercise of power in all its forms (Lukes, 1974). This would be promoted not only by elected members but also through local media, professional opinion formers, and interest groups. This culture can be supported by institutional mechanisms (such as Scrutiny & Overview Committees) but such structures on their own would not be enough.

(4) Democratic 'Grammar of Conduct'

This requires networks to operate to broad democratic standards internally and to be prepared to give account for their actions. Rules can be created but of themselves will not be enough. Rules must be embedded in a culture to create a grammar of democratic conduct. This requires an open debate, a willingness to accept different views and a determination to reach a 'rough consensus'.

In the final analysis, Sorensen & Torfing maintained that strong democratic anchorage required an acceptance that any democratic arrangement will not be perfect. The key is to maximise involvement of politicians as meta-governors in both designing networks (rather than delegating this wholly to officials) (Sorensen, 2006) and participating in them.⁶¹ Politicians should also be involved in framing governance networks more (setting broad policy objectives and performance management) although empirical study suggests that they may at present lack the detailed knowledge required to do so effectively (Sorensen, 2006).⁶²

The concept of Democratic Anchorage is perhaps most useful as a heuristic device, particularly in light of the debate about Community Leadership (see Annex 1). Even if

⁶¹ To some extent this is contrary to NPM doctrine (see Osborne & Gaebler 'Reinventing Government', 1992) which saw a strategic split between 'steering' and 'rowing' and indicated the politicians should steer (whilst networks 'row'). Sorensen (2006) suggested that if politicians are to steer they must also know how to row!

⁶² If politicians are to become active in framing the scope of networks, setting policy/objectives etc they need to be able to understand the mechanics and constraints on policy delivery/administration. This implies the need to know how networks row before politicians can steer. They can arguably only acquire this knowledge/experience by direct involvement in the implementation process.

it does not provide the whole answer, it is submitted that it is a useful starting point for considering accountability issues. It has been applied to local settings such as in the Belgian City of Ghent, when it was noted that partnerships had increased ten fold in the quarter of a century to 2013 (Parijs, 2013) where involving elected members was considered to be key in maintaining democratic legitimacy in such an environment.

Annex 6 - Methodology

Role of Interpretivism within Public Administration

As indicated in Chapter 1, this thesis considers the discipline of Public Administration to be part of Political Science (Gamble, 1990). Bevir (Bevir, 1999) observed how the hermeneutic (interpretive) tradition of public administration has played an important role in disciplines from which Public Administration arose. Examples from History, Philosophy and Law will perhaps suffice.

Historians are concerned to understand, relate and interpret historical actors and events, placing them in context. Interpretation and development of narratives are therefore central to the development of the discipline of History.

Philosophers such as Socrates, Aristotle and Plato were concerned with normative questions of how government should operate and the role of individuals and communities in that process. Philosophers have been concerned to consider and apply these ideas in particular contexts. Hobbes was concerned how to maintain order and stability (Hobbes, 1651), whilst Locke (Locke, 1689) and Rousseau (Rousseau, 1762) looked at the nature of the relationship between the government and the governed. Philosophy has traditionally had a focus upon very basic normative questions such as what constitutes the good life, what constitutes good government etc. The interpretive tradition is key to these philosophical debates.

A similar situation arises with Law. Jurists have always been concerned with normative questions around how rules should be made, how they are to be enforced and developing understanding as to how these rules are justified in any particular context. The normative role of jurisprudence therefore links law to philosophy and by implication to hermeneutic tradition of Public Administration. In addition, the need to interpret legislation in order to resolve public or private law disputes, the important role of public law in developing constitutionalism through checks and balances together with the foundation of systems of administrative law to govern the operation

of public bodies, makes clear again just how interpretation has played a very important part in developing Law as a discipline.

Notwithstanding the dominance of Positivism within anglo-american social science, it is clear therefore that Public Administration as a discipline has by looking to its roots in other disciplines, a rich history of interpretivism upon which to draw.

Undermining the Positivist Heritage in Social Science

Positivism Undermined.

The positivist cannon has increasingly come under scrutiny in recent years. Although Political Science (of which Public Administration forms a part) has a strong positivist heritage, there has been a reassessment by some scholars with a rediscovery of hermeneutic traditions outlined above⁶³. Central to this 'interpretive turn' are Rod Rhodes and Mark Bevir (Bevir & Rhodes, 2003, 2007, 2010). Rhodes remarked how difficult it was for a life long positivist to rediscover these traditions and to embark upon the quest to develop interpretivist based research within Public Administration.⁶⁴ This quest was however aided by others (set out below) who had together created an intellectual climate which had begun to doubt the wisdom of the dominant positivist paradigm.

The Impact of Collingwood: Histiography.

In the discipline of history, Collingwood was responsible for developing histiography and central to this was the notion that all history is thought.⁶⁵ This celebrated the importance of interpretation in history and social sciences.

The Impact of Oakeshott: Idealism.

The conservative political philosopher Michael Oakeshott (Oakeshott, 1962) contended that all politics was history. This proposition was also supported by

⁶³ This tradition was emphasised the importance of history, philosophy and law was practised by what many regard to be among the founding scholars of Public Administration such as Bill Mackenzie, William Robson and Norman Chester and practised by later scholars such as Michael Oakeshott and Samuel Finer.

⁶⁴ See Rhodes, R. (2007) 'Understanding Governance: Ten Years On', *Organisation Studies*, Vol 28, No.8 pp.1243-1264.

⁶⁵ See Collingwood, R. (1994) 'The Idea of History' (Oxford: Oxford University Press), First Published 1946.

Greenleaf (Greenleaf, 1983) with specific reference to the English liberal tradition. Again this emphasises the importance of history and interpretation of thought within a particular national tradition rather than looking for scientific causal relationships between variables which Positivism was committed to doing.

The Impact of Bernard Crick: Anti-Positivism.

The English political scientist Bernard Crick has long had an influence on the anti-positivist tradition in British political science (and by implication Public Administration). In his two classics, 'The American Science of Politics' and 'In Defence of Politics'⁶⁶ Crick launched a concerted assault on the use of Positivism disputing the notion that social science could in any way be considered similar to the natural sciences. When these books were published in the late 1950's/early 1960's, the 'behavioural' revolution was at its height and there was optimism that political science could develop theory in the same way that natural sciences could.⁶⁷ Crick took issue with this making clear that social phenomena was not the same as natural scientific phenomena and that history and argument (and by implication interpretation) were central to politics (and by consequence public administration) and that this could and should not be explained or understood by appeal to scientific method or mathematical techniques alone.

The Impact of Clifford Geertz: Thick Descriptions.

Geertz (Geertz, 1973) drew on anthropology to develop the notion of 'thick descriptions' which are common in ethnography. The intention is that these thick descriptions form narratives from the subjects being studied and used for further (interpretive) analysis. The inscription of these is designed to uncover and develop themes to be understood and interpreted in the particular context of what Geertz called a 'web of significance' to the issues being studied.

The Impact of Michael Foucault: Postmodernism

Brief reference has already been made to the writings of Foucault. The focus here is that society is chaotic and complex, with a lot left to chance and any understanding

⁶⁶ See CRICK: 1959, 1962.

⁶⁷ See EASTON (1965)

of it must be the subject of interpretation rather than testable hypothesis and scientific prediction route favoured by Positivists. Crucially this thinking allowed very little autonomy to subjects and very little/no role for reason.

The Impact of Bevir & Rhodes: Decentred Theory (Narratives, Traditions, Dilemmas)

Bevir & Rhodes (Bevir & Rhodes, 1999) placed a focus on the development of narratives and considered this to be the role of social science rather than the generation of theory favoured by positivists. It develops the interpretivist perspective by allowing a role for traditions (which can include social structures and cultures) which set the context and to some extent act as a constraint on actions. It also considers dilemmas, which are seen as particular problems requiring solutions. It is the Bevir & Rhodes tradition upon which this thesis draws because it is broadly within the hermeneutic tradition of Public Administration and fits with the anti-foundationalist ontology of the researcher. In contrast to the post modernist variety of Interpretivism it allows some role for the subject and for reason⁶⁸ by developing the notion situated agency and therefore appears to be the most capable method of understanding the thoughts/action of public administrators in practice.

The Issues of Subject, Reason & Situated Agency

As outlined in above, it is worth noting the difference between the hermeneutic and post modern traditions of interpretivism with respect to the issues of the autonomous subject, the role of reason and the role of structure. The hermeneutic tradition typically considers the subject to be autonomous and considers reason to be universal. The post modern tradition by contrast considers the subject to have almost no autonomy and considers reason to play very little role in decisions, with many decisions and interactions being understood by way of pure chance. The Bevir & Rhodes model adopts a middle course by allowing some role for agency although it acknowledges that subjects are not autonomous and are constrained by traditions. It

⁶⁸ By allowing for an autonomous subject and 'local' reasoning (in contrast to the post modern variety of interpretivism advanced by Foucault which ascribes very little to the reasoning of an autonomous subject and much more to chance).

also allows for 'local' reasoning - which permits decisions to be made and actions to be taken in light of prevailing conditions.

Annex 7A – Thesis Interview Guide

Intro/Background

Introductions etc.....

Q1-16 - Chief Executive/Elected Leader.

Q17-18 (and Q3) - Elected Member.

Q19-22 – Chair of Scrutiny/Scrutiny Officer (Joint Interview)

Separate Schedules – Chair of LEP/Outsourced Provider

Leadership/Management

Partnerships

1. The extent/scale of partnership working within local government

(ANY PARTICULARLY SIGNIFICANT PARTNERSHIPS? ANY SECTORS PARTICULARLY IMPORTANT SECTORS SUCH AS HEALTH OR REGENERATION? Mahoney – Interdependence of sectors, Parijs – partnership working increased ten-fold in Ghent over 20 years)

2. The chief drivers behind partnership working (possibly with critical incidents/examples)

(WHY DID THESE PARTNERSHIPS COME INTO BEING? 'WICKED' CROSS CUTTING ISSUES (WILLIAMS) managerial, financial, political (local political influence), legal (2009 Act Duty to Involve))

3. Comment on the development/importance Community Leadership role

(THE ROLE OF 'PLACE' (Stiglitz) IS PLACE SHAPING IN LONGER TERM PERHAPS MORE IMPORTANT THAN SERVICE PROVISION ?The role of 'place', relationship to the corporate agenda/community strategy, wellbeing powers under s2 LGA 2000 and power of competence under the Localism Act).

Outsourced Services

4. Give an idea of the scale/extent of outsourced services in your authority.

(%BUDGET ON OUTSOURCED SERVICES, ANY PARTICULAR SIGNIFICANT SERVICES OUTSOURCED? SATISFIED OR NOT? This is a fact/information gathering question – are any service areas outsourced more than others? White/blue collar, post CCT, percentage of budget/staff, impact of TUPE and links into the issues at point 5 below on challenges).

5. Thinking perhaps of critical incidents, have there been times when you have been concerned by any aspects of the following:-

(1) shared services with other local authorities

(2) outsourced services

(3) working with third sector bodies?

(Are any aspects particularly problematic and if so why might that be?)

6. Have any services previously outsourced been bought back in house?

7. Considering partnerships/outsourcing in the broader sense (again with reference to critical incidents) do any particular management challenges stand out?

(1) **management challenges** - co-ordination of service delivery/problems of network steering,

does it require a different management skill set to provision of direct services?

(2) **clear objectives** – lack of clear objectives leading to partnership inertia (Huxham)

(2) move towards **pooled budgets** – the role of the finance people

(3) organisational **culture**/management of conflict within multi-agency environment

*comment on importance of **flexibility** and importance of **people** as opposed to structures*

(4) **information governance** - privacy/security issues, challenges around provision of timely information

(5) challenges around **staff management**/employment relations

(6) has multi-agency working meant increased use of **technology**?

(7) any issues around establishing the right **level of trust**

8. What kind of leadership is needed in such a complex environment?

(Servant Leadership (Greenleaf) Boundary Spanner (Williams) Reticulist (Friend), Civic Entrepreneur (Leadbetter & Goss), Trust (Webb, Jeffares, Huxham), non hierarchical (Williamns, Greanleaf), policy entrepreneur (Kingdon) – Interorganisational experience, professional/technical knowledge as a passport, and cognitive ability (Williams)

Outsourcing/Partnerships

9. On the relationship with partners and contractors, comment on the suggestion that partners work long term whilst contractors work short term – is this still true, or are all longer term now ?

Shared Services

10. Comment on the motivation behind the introduction of shared services (with examples if possible)

*(Themes from US Studies - 1. Cost (The gaining of economies seems to be the key driver)
2. Control of employees 3. Services/ local need 4. Inter-authority co-operation
5. Quality Control 6. Benefit to ALL authorities)*

Service Delivery

11. Service provision traditionally been provided as public, private or part of a mixed economy - but new forms such as social enterprise or clubs have been mooted – are they important ?

(Implications of social enterprise/club for accountability).

Accountability

12. Comment generally on what accountability means and how important it is seen.

(Notions of public accountability, market accountability and lateral and hybrid forms).

13. Has there been a critical incident that has crystallised the importance of accountability?

14. The use of administrative/judicial mechanisms – (Judicial Review, Ombudsman, Inspections etc.)

15. The role/importance of Professional Accountability

(Lateral Accountability (MASHAW), Social Capital (PUTNAM), Lack of Professional Accountability (CREWE & KING)

16 Has any critical incident arisen which has given rise to trust issues amongst partners?

(Importance of trust (WEBB) Danger of too much trust (JEFFARES), constantly building reservoir of trust (HUXHAM)).

QUESTIONS FOR ELECTED MEMBERS

17. The extent of the representational role of elected members

(TYPICAL DAY? ANY PARTICULAR SUCCESSES OR PARTICULAR FRUSTRATIONS? Community Leadership, Opportunities to lead wider community participation, Decentralisation/Neighbourhood Governance)

18. Are members adequately resourced/trained for the representational role or could more be done?

QUESTIONS FOR SCRUTINY CHAIR/SCRUTINY OFFICER

19. The operation/utility of the Scrutiny function (with examples) (scope, remit, resources, key studies)

(Structure of Committee etc? Does it work? Critical Incidents - Particular Successes/Failures, Issues of Democratic Anchorage).

20. Are members adequately resourced/trained for the scrutiny role or could more be done?

Scrutiny & Shared Services

21. How does the Scrutiny Committee deal with Shared Services?

(ANY JOINT ARRANGEMENTS - DO THEY WORK? ANY CRITICAL INCIDENTS?)

Scrutiny & Outsourced Services

22. How does the Scrutiny Committee deal with Outsourced Services?

(DO ANY PARTICULAR (CRITICAL) INCIDENTS STAND OUT? DO CONTRACTORS APPEAR BEFORE THE COMMITTEE OR IS IT RELIANT UPON OFFICERS, WHAT INFO IS PROVIDED? SATISFIED OR NOT? DO CONTRACTORS FEED INTO THE POLICY REVIEW FUNCTION AT ALL?) .

The questions from Behn (Behn, 2001) are highly relevant - Funding, Fairness and Performance – What is the role of members (Democratic Anchorage Point 1) – What is the role of publicity in the scrutiny process taking account of the need to inform the public (Democratic Anchorage Point 3) and what role does legal redress/contractual remedies play ?)

Conclusion/exit

Annex 7B – Thesis Letter

Address

Tel: XXXXXXXXXXXX
email: XXXXXXXXXXXX

XX October 2014.

Mr XXXXXXXX,
Chief Executive,
XXXXXXX
XXXXXXX,
XXXXXXX.
XXXXXXX.

BY EMAIL,

Dear Mr XXXXXXXX,

INVITATION TO PARTICIPATE IN A SHORT RESEARCH PROJECT ON LOCAL AUTHORITY GOVERNANCE.

I am writing to you in your capacity as Chief Executive of XXXXXXXX to see whether you would be willing for your local authority to participate in the above research project which I am undertaking as part of my doctoral studies at Huddersfield University, due to be completed next Spring.

I work as a lawyer (on a locum basis) within the Local Government sector, having qualified some 15 years ago. This project however is being conducted within the Business School and is concerned with how governance and accountability operates within local authorities in an environment characterised by outsourced services and partnership arrangements. In particular, I am keen to analyse the experiences and views of those close to the governance process – both elected members and council officers. I am particularly interested in the Birmingham city region, hence the approach to your authority.

The intention is to undertake an analysis of governance and accountability in a modern local authority, with such study being based on the experiences of a set

number of participants drawn from a case study involving two English local authorities.

Each participant would be asked to undertake a one conversation type interview **to be conducted at an agreed time and place over the next couple of weeks.** It would be anticipated that the interviews would vary in length, lasting between 30 and 60 minutes. The intention is that this would be tape recorded so as to allow a transcript to be compiled to form the basis for analysis. It is likely that handwritten notes may also be made during the interview process. Should further clarification be necessary from the answers provided, it is possible that participants would be contacted further by telephone or email. Any responses will remain anonymous and the confidentiality of participants and your local authority will be protected, with any material published as part of the thesis being anonymised beforehand – (unless of course you particularly wished for your authority to be identified).

It is proposed that the study would require the participation of the following:-

1. Chief Executive (60 minute interview)
2. Elected Leader (60 minute interview)
3. Chair of the Scrutiny Committee & Scrutiny Officer (45 minute Joint Interview).
4. Chair of the Local Strategic Partnership. (30 minute interview)
5. An elected local member (30 minute interview)

The purposes of this project are wholly academic – namely to further research in this under researched area of Public Administration and by doing so to enable me to complete my doctoral studies.

Your attention is drawn to the Information Sheet and Consent Sheet which are enclosed herewith. If you are agreeable to your authority taking part in this study, I would propose to approach each potential participant in these terms.

I am more than happy to discuss any aspect of the above with you and may be contacted by email at XXXXXXXXX or by telephone on at any time.

May I thank you for your kind assistance in this matter, which is much appreciated. I look forward to hearing from you soon.

Yours Sincerely,
Mr Alex Strickland.

Annex 7C – Information Sheet

Title of study: Governance and Accountability in The Modern Local Authority: An Exploratory Analysis of Views from Inside and Out with particular reference to partnerships and outsourced services’.

INFORMATION SHEET

You are being invited to take part in this study, which I am conducting as part of my doctoral thesis in the Department of Leadership & Management at Huddersfield University. I am due to complete this research in early part of 2015. Before you decide to take part it is important that you understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with me if you wish. Please do not hesitate to ask if there is anything that is not clear or if you would like more information.

My Background.

I have a longstanding academic and professional interest in the working of local authorities. I hold degrees in Political Science, Law and Public Administration. I am qualified as a lawyer and practice on a locum basis for local authorities in England & Wales specialising in town planning matters and other aspects of local government law.

What is the study about?

The purpose of this study is to explore the nature of complex governance and accountability in a modern local authority (from the viewpoint of those involved within it), in the context of partnership working and the outsourcing/sharing of services.

Why I have been approached?

You have been asked to participate because you hold the position of XXXXXXXX. I am particularly interested in XXXXXXXX, given that it is a key member of the Core Cities Group and is centre stage in the current debate regarding devolution of powers.

Do I have to take part?

It is of course your decision whether or not you take part. If you decide to take part you will be asked to sign a consent form, and you will be free to withdraw at any time and without giving a reason. Obviously, a decision to withdraw at any time, or a decision not to take part, will of course not affect you in any way.

What will I need to do?

If you agree to take part in the research, you may note that it would involve a series of conversation type interviews (with yourself and other officers/elected members as set out in the covering letter) that would be scheduled to last around 30- 60 minutes and the intention is that this would be tape recorded.

Will my identity be disclosed?

All personal identity information disclosed within the interview will be kept confidential and except where legal obligations would necessitate disclosure by the researchers to appropriate personnel.

What will happen to the information?

All information collected from you during this research will be kept secure and any transcripts or information published as part of the final thesis any identifying material, such as names will be removed in order to ensure anonymity. It is anticipated that the research will form part of my doctoral thesis, however your anonymity will be ensured, it will be necessary to use your words in the presentation of the findings and your permission for this is included in the consent form. The tapes shall be kept (securely) for a period of five years in accordance with university regulations but shall be returned to you or at your request destroyed at that point.

Who can I contact for further information?

If you require any further information about the research or matters related to it, please contact me on:-

Name: XXXXXXXXXXXX

E-mail XXXXXXXXXXXX

Telephone: XXXXXXXX