



## **Governance, Accountability and Decision Making**

### **1. Purpose and Context**

This paper seeks to provide a narrative to allow the Kirklees Democracy Commission to undertake its enquiries from a starting position of shared knowledge and context. This core theme relates to the development of decision making and governance within Kirklees Council. It forms the basis of the information that will be used as part of consultation, engagement and dialogue with expert witnesses.

#### **Kirklees - the Place**

One of five local authorities in West Yorkshire, the Metropolitan Borough of Kirklees was formed as a result of the Local Government Act 1972 and officially came into existence from 1 April 1974. It covers an area of 157 square miles with a population of around 431,000. The Council merged together the county boroughs of Dewsbury and Huddersfield together with the municipal boroughs of Batley and Spensborough and the urban districts of Colne Valley, Denby Dale, Heckmondwike, Holmfirth, Kirkburton, Meltham and Mirfield. A more detailed picture of Kirklees can be found in the Kirklees Profile produced in October 2015.

### **2. National Framework for Local Government Decision Making**

The Local Government Act 2000 marked the introduction of a new approach to decision making. Underpinning the changes was the desire of the incoming national Labour Government to have greater transparency and accountability in decision making at a local level.

The Act also saw the requirement for Councils to have a Constitution which sets out how the Council operates and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose. The Constitution sets out the basic rules governing the Council's business but also includes more detailed procedures, responsibilities and Codes of Practice.

Prior to 2000, decision making was through a formal Committee structure. There were some statutory requirements such as having a Planning Committee and an Education Committee but other decision making structures were based on local preference and priorities. The majority group generally chaired most of the committees, with membership generally allocated in accordance with political

proportionality rules. The Chair steered the agenda and influenced the content of reports and recommendations.

When councillors reflect on their experience of the former Committee system there is a view by some that more councillors were involved in decision making. It is felt that councillors developed an area of expertise in serving on specific themed committees and participating in debate before the decision was made. An alternative view is that there is an element of “rose tinted spectacles” and the reality was that decisions were largely pre-determined along party political lines and difficult to influence.

Post Local Government Act 2000 the Executive model of governance was introduced. Based loosely on the national government Cabinet / Select Committee model, the new model included a scrutiny function to act as a check and balance to the decision making of the Executive Cabinet.

The Labour Government wanted the public to more easily see who was making the decisions that affected them. A requirement to give advance public notice of key decisions<sup>1</sup> to be made was introduced to support a move away from the public perception of an inaccessible process that saw important decisions being made behind closed doors.

The Act also allowed for a further level of transparency with decision making by individual executive councillors. As yet this is not an option that has been adopted by Kirklees. Whilst single member decision making ensures a very clear line of accountability, it also introduces the opportunity for accelerated and more responsive decision making outside of formal Cabinet meeting cycles. It should be noted that single members decision making still requires a planned meeting at which decisions are made.

In 2011, the Localism Act, the primary legislation of the national Conservative / Liberal Democrat Coalition Government became statute. One of the primary aims of the Act was to further enhance decision making at a local level but formalising opportunities for local communities to influence decisions and get things done for themselves. It aimed to reduce the burden of central performance targets for Council, ease the inspection regime and “reduce red tape” that were considered a barrier to councils, local charities, social enterprises and voluntary groups achieving local ambitions.

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<sup>1</sup> Extract Kirklees Constitution

*A key decision is an executive decision which is likely:*

- *to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or*
- *to be significant in terms of its effects on communities living or working in an area comprising two or more wards.*

Key provisions of the Act included:

- The **general power of competence** giving local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited;
- A **general power that gives councils more freedom to work together** with others in new ways to drive down costs through creative and innovative solutions.
- The **transfer of local public functions from central government** and quangos to local authorities, combined authorities and economic prosperity boards - in order to improve local accountability or promote economic growth.
- **Community right to challenge** – gives groups, parish councils and local authority employees the right to express an interest in taking over the running of a local authority service.
- **Community right to bid (assets of community value)** - local authorities are required to maintain a list of assets of community value which have been nominated by the local community. The Act gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market.
- **Planning system reform** including the Duty for local authorities and other public bodies to cooperate in working together on planning issues.
- **Neighbourhood planning** – the right for local communities to influence the future of where they live, through the development of a neighbourhood plan.
- **Reforming the community infrastructure levy** to make it more flexible and allow it to be spent on things other than infrastructure and go directly to the neighbourhoods where development takes place.
- **Housing reforms** including changes to homelessness legislation, social housing tenure, housing allocation and social housing finance.

Details of further legislation relevant to Executive decision making can be found in the Executive section of this report

### 3. Local Context to Decision Making

Commentators looking at the last decade of decision making in Kirklees might reasonably conclude that it is traditionally a hung authority with no single party having overall political control. Whilst factual to say that since 2000 the Council has been in a position of no single political party having overall control, in the early years of the new metropolitan authority this was not the case. The 1970s and 80s saw a predominance of Labour-led administrations with the Conservatives having a period of control in the mid-1970s. As the Council moved into the 1990's a pattern of no overall control started to emerge with the three main political groups all having the opportunity to influence the make-up of administrations and decision making.

Since 2000 the Council has been in a position of no overall control. The three main political groups moved to a period when the number of elected councillors in each group was very close. With the addition of minority groups on the Council, such as the Green Group, British National Party and some Independent councillors, the ability to form an administration relied on successfully making formal and informal

political alliances or more formal coalitions. Since 2000, all of the three mainstream political parties have had a period of being part of the administration and shaping the policies and decisions which set the direction of the Authority at that time.

The Administration within a council in no overall control has to develop an approach to enable it to approve and implement the decisions it wants to make in line with its political priorities. Whilst one option may be for Cabinet to drive through decisions, it is more usual for Cabinet, working with / through officers, to engage or consult with other political groups to enable them to influence and shape decisions before they are made.

However, in a time of austerity when significant decisions affecting all communities are being made, the decision making context presents new challenges. This is important context for the work of the Kirklees Democracy Commission

### **3.1 Decision Making Framework**

Each year the Council produces a Corporate Plan which sets out the vision and high level priorities for the Council. In February each year, the annual budget is approved by the Full Council, setting out the budget (the three year medium term financial plan), including savings, for each Directorate area. These two documents inform decision making for the municipal year(s) ahead.

In responding to the challenges of austerity, the Council is moving towards developing a new relationship with its communities. The vision set out in the Corporate Plan 2016/17 states a desire for Kirklees to be;

*A district which combines a strong, sustainable economy with a great quality of life – leading to thriving communities, growing businesses, high prosperity and low inequality where people enjoy better health throughout their lives.*

There are two principal strategies that underpin the vision, namely the Economic Strategy and the Health and Wellbeing Strategy. The delivery of each strategy is supported by a number of work streams, with two of the most significant being Economic Resilience and Early Intervention and Prevention.

The Council has concluded that in developing a new relationship with the communities it serves, resources will, in the main, be focussed in the following way:

- To meet statutory requirements - although subject to the challenge of how that might be done differently
- To do those things that only a council can do
- To deliver the Council's vision and priority strategies

There is also funding to support development and innovation as the Council looks to do things differently in its move to evolving into a New Council. This will fundamentally shape and inform the decision that will be taken.

The Cabinet's forward agenda of decisions is driven by the operational and strategic decisions that are required to work towards achieving the vision and delivering the proposals set out in the agreed budget. So it can be seen that initial direction is

agreed at Council, followed by approval of high level actions at Cabinet then delivery at officer level, overseen by an officer board structure, led at Director level.

The structural components of the governance model are summarised below:

### **3.2 Full Council**

Full Council is the one governance body that includes all 69 councillors. In Kirklees meetings are chaired by the Civic Mayor and it meets approximately ten times a year. One meeting is devoted to setting the Annual Budget and Council Tax rate for the year. An Annual Meeting of Council is usually held in May marking the start of the new municipal year and the appointment of governance structures and memberships. The functions of the Council are set out in the terms of reference within the Constitution and include:

- Approving the policy framework and budget (including the Capital Plan )
- Approving policy contained within the policy framework
- Establishing Committees and governance arrangements each year
- Appointing the Leader.
- Agreeing or amending the terms of reference for committees, deciding on their composition and making appointments to them.
- Appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council.
- Adopting an allowances scheme under Article 2.5.
- Confirming the appointment of the Head of Paid Service.
- Receiving reports and recommendations from the Overview and Scrutiny Management Committee and scrutiny panels

The functions are supplemented by items that reflect local views on the role of Council. Successive discussions with councillors over many years, have concluded that the Council meeting is also is an arena to:

- Hold the Executive to account (including Cabinet members reporting back on progress against portfolio objectives
- Engage with the public ( see also section 5 - questions, deputations and petitions)
- Have political debate on issues of local importance on which the Council has responsibility or influence
- Have council wide discussions on key issues, such as significant health proposals affecting the district

There remain concerns that some backbench members find the Council meeting the least productive meeting that they attend. Whilst others enjoy the opportunity to engage in party political debate.

The timing and duration of Council meetings has always been an issue of contention as they have ranged from being too long at 7 hours to shorter at 3 hours but unable to get through the business on the agenda, including motions put forward by political groups for debate.

In recent years the public questions, deputations and petitions part of the Council agenda was moved to the Cabinet meeting immediately preceding Council. However at the 2016 Annual Meeting , this was reversed to enable members of the public to once more put their concerns before all councillors at the Council meeting.

A new addition the 2015/16 agendas was the inclusion in the Minutes of Committees item, of the minutes of the regional Combined Authority that enabled greater transparency for councillors in being able to see and ask questions on the decisions being made at a regional level.

### **3.3 Executive Governance Arrangements**

#### **Adoption of Leader and Cabinet Model**

In May 2001 Kirklees Council agreed to the introduction of an Executive Model of Governance which was known as The Cabinet, and which carried out all the Authorities functions which were not really the responsibility of any other part of the Local Authority, whether by law or under the Council's then Constitution.

Under the model introduced in 2001, the Cabinet consisted of the Leader of the Council, together with at least 2, but no more than 9 Councillors who were appointed to the Cabinet by the Council. The Council was also responsible for allocating specific Portfolio functions to Cabinet Members and for the appointment of a specific Cabinet Member as Deputy Leader.

In relation to Cabinet Portfolio responsibilities, the Leader was able to make adjustments to the detail of Portfolio's or to add additional responsibility as they considered appropriate in light of operational need, though any such change needed to be reported to the next meeting of Council. The Constitution was clear that only the Council could make any other changes to Portfolio's.

In the 2015/16 municipal year, in recognition of the thematic priorities emerging in the move to new Council, Cabinet portfolios moved from being largely Directorate based to including thematic led responsibilities, for example:

#### **Leaders portfolio: Strategic Themes**

- Inward Investment and Business retention
- Strategic Infrastructure Development and Capital Planning
- Communications and Engagement
- Local Plan
- New Council
- Sustainability and Climate Change

#### **Portfolio area: Transportation, Skills, Jobs and Regional Affairs**

##### **Strategic Themes:**

- Regional Relationships/Impact on Kirklees
- Leeds City Region and Local Enterprise Partnership Strategy
- Kirklees Economic Strategy
- Local Development Framework

#### **Function areas: Investment and Regeneration**

- Strategic Planning

- Transportation Strategy
- Housing Investment Strategy (Planning)
- Regeneration
- Strategic Town Centres
- Employment Land Development
- Employment and Skills – Strategy and Delivery
- Addressing Youth Unemployment
- Engagement of Young People in the Local Economy

The Term of Office for the Leader and the Cabinet, under the 2001 Executive Model of Decision Making, was for a maximum of 1 year and the Leader and Cabinet were re-elected at the Annual Meeting of Council on an annual basis.

### **The Mayoral Referendum 2001**

As a result of a public petition the Council was required to undertake a referendum on the question on the adoption of an Elected Mayoral model of decision making. This took place on 4 October 2001 and the outcome was a vote against the introduction of an elected Mayor model of Governance in Kirklees.

### **Legislative background: Local Governance and Public Involvement in Health Act 2007**

Under the provisions of the Local Government and Public Involvement in Health Act 2007 all Councils were required to agree and implement a new leadership model for which there were 2 choices i.e.:

- A directly elected Mayor with a 4 year term
- An indirectly elected Leader with a 4 year term

After an extensive public consultation exercise the Council agreed to the implementation of an indirectly elected Leader, which was approved at the meeting of Council in December 2009. The main differences between the original model of Executive Governance, implemented in 2001, and the indirectly elected Leader model, the model currently in place within Kirklees were:-

- The Leader would be appointed for a 4 year term (or until the expiry of the Leaders term of office)
- All Executive functions would be invested directly in the Leader who could delegate them as appropriate (under the old arrangement the scheme of delegation was approved by Full Council)
- Cabinet Members and Portfolios were appointed by the Leader rather than Full Council.

### **The Current Arrangements**

Under the current arrangements the Leader of the Council, after appointment by the Council, is required to appoint and advise the Chief Executive, in writing, of his / her Cabinet, which could consist of the Leader plus a minimum of 2 Cabinet Members up to a maximum of 10 Cabinet Members. The arrangement in Kirklees has been for the appointment of 9 Cabinet Members including the Leader and Deputy Leader.

As well as appointing a Deputy Leader the Leader is also required to appoint a Cabinet Member with statutory responsibility for children.

### **Transparency Arrangements**

Meetings of the Cabinet are subject to the Councils Access to Information Procedure Rules, which require meetings to be summoned, with the relevant Agenda and supporting reports to facilitate decisions to be taken, to be made available to the public at least 5 clear working days prior to the meeting. Meetings are held in public unless a report contains confidential information that satisfies the legal requirements of the Local Government Act 1972 that justifies categories of information that can be taken in private.

Also, on the introduction of the Executive (Cabinet) model of Governance in 2001, the Council was required to implement and publish a Forward Plan of Key Decisions. The Plan of Key Decisions was published on a monthly basis and gave notice, with a minimum of 28 days' notice, of significant decisions that were to be taken by the Executive. The criteria as to decisions that constitute a significant decision in Kirklees was agreed as decisions involving expenditure or savings of £250k or more in any one financial year or decisions that had a significant impact on 2 or more electoral Wards within Kirklees. This criteria for identifying key decisions is still in place in Kirklees to date.

In September 2012 Regulations were introduced that made it a requirement for the Forward Plan of Key Decisions to be published on a 'rolling' basis, giving 28 days' notice of all Key Decisions as described above and this is included and publically accessible on the Council's website. These Regulations also introduced a requirement for 28 days' notice to be given of all private reports to be considered by the Executive. This notice has to include the reason it is recommended that the report should be considered in private session and gives an opportunity for objections to reports being considered in private being made by Councillors or members of the public.

There is a requirement to publish the detail of any objection or comment received with regard to the intention to consider a report in private session in accordance with the 2012 Regulations.

The Cabinet can, if it so wishes, establish, Committees to take responsibility for specific areas of work. Currently there is a Cabinet Committee – Local Issues , which looks in the main at highways issues and recently a Cabinet Committee - Assets, was established which will consider proposals for the future use of the Council's land and property assets.

The view of the revised decision making arrangements varies. The Cabinet model means there is greater transparency around where the majority of decisions are made. However there is a view that decision making powers are vested in a very small number of councillors. This is an important consideration as part of the Kirklees Democracy Commission's work.



### 3.4 Overview and Scrutiny

Established in 2000 as a check and balance to the Executive, Overview and Scrutiny is a function that has always divided opinion amongst councillors, not only in Kirklees but nationally. In 2015 the Association for Public Service Excellence (APSE) produced the Two Tribes report looking at the local government modernisation agenda including the cabinet and overview and scrutiny model. The 2577 responses to an online survey indicated a perception of disengagement and a “waning influence” among non-executive councillors. A third did not believe that scrutiny committees were an effective means of holding the executive to account.

These findings are in sharp contrast to the increasing expectations placed on Overview and Scrutiny in holding a critical role in challenging decision makers and performance by digging under the headlines. For example the Francis Report identified the importance of the statutory health scrutiny role in proactively seeking information about the performance of local health services ...; in challenging the information provided to it by commissioners and providers of services ...and testing this information by drawing on different sources of intelligence<sup>2</sup>

Significantly 2014/2015 also saw the publication of the Jay and Casey reports on to safeguarding and organisational culture failures in Rotherham Council. The reports highlighted the need for an effective challenge from elected members both at Cabinet and Scrutiny level. The Casey report defined that challenge as “ setting aspirational targets, knowing how far to stretch the organisation, asking searching questions, drilling down into information and data, ensuring targets are kept to and agreed actions implemented”

Overview and Scrutiny acts as the check and balance to the decision makers, holding them accountable for the decisions they are taking. Scrutiny is not a decision making body but can influence decisions before they are made and make recommendations to the Executive. Scrutiny has a role in looking at areas of service delivery and making recommendations for improvement. The scrutiny role extends to partner organisations

Scrutiny has a strong tradition in Kirklees with the 1990’s seeing an early form of scrutiny being carried out by Scrutiny Commissions, policy and quality reviews. The Commissions were established by Council and looked at broad areas of work, involving partners affecting the citizens of the borough cutting more closely, such as the implications of the New Roads and Street Works Act.

The majority of legislative Scrutiny requirements and powers are reconfirmed in the Localism Act 2011. The primary requirements are attached at Appendix 1. The formal powers with potential for the most impact are the power to scrutinise substantial variations to the provision of local health services and the power to call in and formally review decisions of Cabinet prior to their implementation. Currently the Council has delegated all formal health scrutiny powers to the Scrutiny function. This includes the power to establish Joint Health Scrutiny Committees to work with

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<sup>2</sup> Dept of Health : Local Authority Health Scrutiny - Guidance to support Local Authorities and their partners to deliver effective health scrutiny June 2014

other local authorities to look at proposals for significant changes to local health services and where concerns cannot be resolved to refer them to the Secretary of State for independent review.

Following the budget decision for the 2014/ 15 municipal year, it was recognised that governance structures, including Overview and Scrutiny, would require consideration to ensure that they are fit for purpose within the new, smaller Council. As part of developing options for a way forward, the Overview and Scrutiny Management Committee(OSMC) wanted to understand the views of stakeholders regarding the current approach to Scrutiny in Kirklees and what needed to be considered for the future. The emerging headline views are set out below.

### **Valued characteristics of Scrutiny:**

The independent nature of Scrutiny in Kirklees is valued with the emphasis on early involvement and influence being seen as positive. Scrutiny was able to bring a fresh pair of eyes to an issue and when working well it can achieve positive change.

The cross party nature of Scrutiny was seen as a strength, providing an opportunity for non-executive councillors to influence issues and as a good “apprenticeship” for new councillors. In addition the inclusion of members of the public as statutory and voluntary co-optees was valued as they offered a different, independent perspective to discussions.

The work of indepth single issue, Ad Hoc Panels was seen as valuable. Equally Health Scrutiny work, including the Joint Health Overview and Scrutiny Committees, were identified as good scrutiny practice in Kirklees.

### **Areas for improvement**

Stakeholder feedback suggested that Scrutiny needed to refocus on its key role of holding the decision makers to account To achieve this Scrutiny needed to be more effectively integrated into the decision making process. This would enable a more proactive than reactive approach. In addition Scrutiny needed to develop a more strategically focussed approach to developing a work programme. There was a risk that “pet projects” were being considered with no clear rationale for the work, at the expense of scrutinising strategic priorities and decisions to be made by Cabinet.

### **Current arrangements for Overview and Scrutiny in Kirklees.**

The 2015/16 municipal year saw a deliberate back to basics approach to Scrutiny. Structures have been reduced to an Overview and Scrutiny Management Committee and a Health and Social Care Scrutiny Panel. Throughout the year Joint Health Scrutiny Committees have been meeting to carry out statutory health scrutiny investigations, for example scrutiny of the proposals to reconfigure health services in Calderdale and Huddersfield. In addition four Ad Hoc Scrutiny Panels have been set up to carry out time limited priority pieces of work, such as, Child and Adolescent Mental Health Services In Kirklees.

During the year there were three Cabinet decisions called in for review. The call in process allows for Scrutiny councillors but also any 5 non-executive councillors to

submit grounds of concern to call in a Cabinet decision prior to its implementation. Whilst Scrutiny in Kirklees tries to be non-party political, there is the potential for call in to be perceived as being party politically motivated. A piece of work is currently on going to look at call in procedures in light of learning from recent hearings. What is apparent is that Kirklees is in line with other West Yorkshire Authorities in terms of the number of called in decisions.

### **3.5 Area-based decision making**

Following the outcome of public consultation in 2001, the Council introduced an area dimension to decision making in 2002. Early reports suggest that the introduction of Area Committees was recognition that a Council depends on engagement with residents for its legitimacy and effectiveness. Experience indicated that involvement was most effective where there was a strong community identity.

Local Areas Committees were seen as building on what councillors already did including;

- strengthening local community engagement and community coherence;
- bringing local understanding and service expertise together in developing responses to local issues;
- bring local understanding and residents' priorities to bear on issues of resource allocation and service scheduling;
- provide the basis for increased accountability of service providers to local communities and to allow a local input to the Council's overview and scrutiny arrangements;
- provide the basis for fully informed and locally accountable decision making where responsibility has been devolved by the Council's cabinet.

Over the years the approach to area governance has changed dependent on the intended outcomes of different administrations. The most recent iteration was established in June 2014 when four district committees were set up to replace the seven area committees. The district committees are Batley and Spen, Dewsbury and Mirfield, Huddersfield and Kirklees Rural. The membership comprises all councillors from wards that fall within the district boundary. The committees have retained the same delegations and powers as the former area committees. The Committees are supported by the Area and Neighbourhoods Action Team separate to other governance support.

Establishment of the four district committees was the start of a period of transition. Future development being considered includes the option to devolve more responsibility to the district committees and looking into mechanisms to promote innovation at neighbourhood/ward level. This has included the devolving of elements of executive decision making, including funding allocation within specified criteria. Most recently a portion of the New Homes Bonus funding was delegated for District Committee determination. It also has responsibility for Estate Improvement Budgets and aspects of the implementation of the grounds maintenance policy.

The vision and main purpose of the district committees is set out on appendix 2 of the report.

### **3.6 Quasi-Judicial Committees**

Decision making structures also include the following quasi-judicial committees:

Licensing and Safety Committee  
Strategic Planning Committee  
Planning (Huddersfield) Area Sub Committee  
Planning (Heavy Woollen) Area Sub Committee  
Appeals Panel

Decision making within such committees is governed by legal requirement, for example refusal of a planning application must be on the grounds of material considerations. Committees are often cross party and usually reflect political proportionality rules although voting on party political lines is not appropriate within the decision making framework for such committees. Councillors can be placed in difficult positions when the community they represent is strongly opposed to an application but there are minimal planning reasons for refusal.

The majority of quasi-judicial decisions can be held to account immediately through review by an external appeals mechanism. For example, an appeal to the Planning Inspectorate or in the case of refusal to grant a license, through appeal to the Magistrates Court.

Recently quasi-judicial decision making has seen influence of the need for consistency on a regional level. The Regulatory Panel which dealt with applications to grant or renew taxi licenses has been delegated to officers in the light of learning from recent events in Rotherham and the need to share information across the region to ensure consistent, informed decision making.

### **3.7 Health and Wellbeing Board**

With effect from 1 April 2013 Kirklees Council was required to establish a Health and Wellbeing Board. Health and Wellbeing Boards were established across the country to enable local authorities to take a strategic approach to providing integrated health and local government services. The board brings together local councillors, the NHS, public health, adult social care, children's services and HealthWatch, to jointly plan how best to meet local health and social care needs. The Board (HWB) was established as a Committee of the Council with effect from the 1 April 2013

Government Guidance stated that Health and Wellbeing Boards should be council committees. A core of prescribed voting members included representatives of the Clinical Commissioning Groups, Councillors, HealthWatch and appropriate Directors of the local authority. It was the first time officers had a vote on a council committee. There was an option to extend the membership further and invite other voting members, such as Health Trusts and voluntary sector providers to join the board. In Kirklees the decision has been taken to maintain a small membership to try to maintain the strategic influence of the board, rather than moving to a larger structure that could risk becoming a "talking shop". Across the country practice has varied. In Kirklees the board meets about 10 times a year, whereas others may only meet once every six months.

In Kirklees the Board has recognised the limitations of the committee format and continues to explore how it can work in a more developmental way to share ideas and tackle the large strategic issues.

### **3.8 Local committees**

There is also an opportunity for Councils to establish committees based on local preference and priority areas of work. In Kirklees these include the Policy Committee that can establish task and finish groups to review areas of policy. The Council also established the Child Sexual Exploitation and Safeguarding Member Panel which has ensured that the recommendations arising from the Jay and Casey reports have had dedicated consideration in the context of how services are delivered in Kirklees.

### **3.9 Outside Bodies**

There are a range of bodies external to the Council that Councillors can serve on. These include regional bodies such as the Combined Authority, where councillors from each authority work together on issues of regional significance, for example transport infrastructure. Other partner bodies such as the Fire Authority also operate on a regional level and make strategic decisions.

There are also a wide range of charities and voluntary organisations seeking Council nominees to serve on their committees. These range from organisations that work across the district to ward based local trusts that may allocate small amounts of legacy funding within specific communities. There are currently 90 bodies on the Council's Outside Bodies list that request a Council nominee. Of these 151 places are available on 67 bodies to be appointed annually. The remaining bodies are appointed via nominations from the appropriate District Committee.

It should be noted that sometimes the nominee is prescribed, ie the Leader of the Council or ward members of Golcar ward. On other occasions the political Group Business Managers will propose nominees, and they may sometimes be a party supporter, former councillor or an appropriate member of the local community.

## **4. Delegated Decision Making**

Delegation is a means of allocating matters to the appropriate level whilst ensuring that the council's business is dealt with in the most efficient way. Some matters will require the approval of all members of the Council or the Executive, whilst others, can be dealt with by specific committees or by individual Cabinet members or officers. There is also provision for the Executive to arrange for the discharge of any of their executive functions by a joint committee or by the Executive of another local authority

Part 3 of the Council's Constitution, Responsibility for Functions, sets out each body and officer and lists the functions for which they have delegated powers. It includes the Cabinet member portfolios, the terms of reference of all committees established by Council, and the responsibilities of the Chief Executive and all Directors. Full Officer Delegation Schemes are included on the website together with information about significant decisions to be taken by officers. Also included are the

responsibilities of officer boards. The Financial Procedure Rules and Contract Procedure Rules which contain some additional delegations of responsibility are also set out in the Constitution.

A number of joint committees are included, such as West Yorkshire Joint Services Committee which has responsibility for trading standards, archives, archaeology and grants to voluntary organisations; and Yorkshire Purchasing Organisation which was originally established in 1976.

The Council has separate arrangements for the management of its housing stock, delegated under Section 27 of the Housing Act 1985 to the council's arms-length company Kirklees Neighbourhood Housing.

Any named officer may make arrangements for any function delegated to him or her to be exercised by a member of staff within his/her department whom he/she considers to be appropriate.

The important principle in any delegation scheme is the need for all decisions taken to be clearly recorded and the officer /body responsible for taking the decision, clearly identified. In 2012 the Access to Information Regulations required the recording of Executive officer decisions and in 2014 further regulations required the recording of officer decisions in respect of regulatory functions. It should be noted that delegated key decisions are still subject to Scrutiny call in procedures.

## **5. Support to Decision Making Structures**

In the same way that decision making structures and processes have evolved in line with legislative requirement and local preference, so the supporting officer structures have also seen corresponding changes and restructuring driven by the reduction of resources.

Traditionally, support to decision making structures has been through a Committee Services team. Each member of the team taking responsibility for support to specific committees and wider democratic activity. In 2001, a dedicated Overview and Scrutiny team was established to provide independent and specialised support to the developing Scrutiny function. There was a lead Scrutiny Team Manager and also an Executive Team Manager.

In 2013, as part of the reviewing of services in line with budget reductions, direct support to decision making moved to a more generic model. Within the team there is a managerial split which recognises the need to maintain a separation between Scrutiny and the Executive. At practitioner level, a hub approach has been developed to ensure that skills and knowledge for each activity are not vested in a single officer. Each area of work has a manager and practitioner lead supported by other officers. In this way officers whose experience may previously have been limited to one or two areas, can develop a broader range of skills and knowledge of decision making processes in multiple areas. Principal officers have some responsibility for the development of other governance officers. In this way not only does the approach have the flexibility to support the competing demands of current structures, it is also addressing some of the succession planning issues that most areas of the council are facing.

## 6. Public role in decision making

A further consideration as part of effective decision making is not only the transparency and legality of the process but also how those affected by the decision have the opportunity to express their views and influence the process should they wish to.

Consultation is a key mechanism to enable public input into the decision making process, whether as part of a statutory duty to consult or an informal gathering of views at an early stage of developing proposals. In the current period of austerity and significant impacts on service provision, the need to ensure effective and fair public consultation is a key component of informed decision making. Together with considering the equality impacts of proposals, effective consultation is essential should there be any formal legal challenge to a decision. The Government is not prescriptive in what constitutes effective consultation but the underpinning principle is that type and scale of the consultation should be proportionate to the potential impacts of the proposed decision. The aim should be to achieve real engagement rather than following bureaucratic process.

Recent case law has emphasised that consultation requirements will vary from one context to another and should be assessed on an individual basis. The Government principles are augmented by the general principles derived from case law known as the "Gunning principles", which are:

- Consultation should occur when proposals are at a formative stage;
- Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
- Consultations should allow adequate time for consideration and response;

There must be clear evidence that the decision maker has considered the consultation responses, or a summary of them, before taking its decision.

Currently Council decision making structures allow for the following means of public engagement:

- District Structures, decision making at a local level with attendance by local people. Ability to apply for funding to support local initiatives.
- Ability to co-opt members (other than on Cabinet), as used by Overview and Scrutiny who have both statutory education co-optees but also lay member co-optees who are members of the public recruited through open advert.
- Applications to quasi-judicial bodies such as Planning and Licencing allow for the public to submit statements both supporting or objecting to applications. This includes both written submissions or verbally addressing the Committee prior to the decision being made.
- Scrutiny meetings where a called in decision is under review, have a period of time set aside to allow public views. The views need to be relevant to the reasons for the call in.
- Public agendas include items that allow public questions, the submission of deputations and petitions

In respect of petitions, although no longer a statutory requirement, the Council continues to have a Petitions Scheme which allows the public to log and submit petitions both on line and as paper copies. The scheme indicates the following options for where a petition might be submitted for consideration /response:

- Referring the issue to your local ward Councillors
- Referring the issue to the Council's Overview & Scrutiny Committee
- Referring the issue to the Councils Cabinet
- Referring to a District Committee
- Referring the issue to another relevant Committee
- Holding an Inquiry
- Commissioning relevant research
- Organising a public meeting
- Mounting a wider public consultation
- Meeting with the Petition Organiser or representatives of signatories
- Providing a written response outlining the Council's views on the subject

If a petition reaches the 3000 signatures, there is the option to trigger a debate at the Full Council meeting. Alternatively a petition may be submitted to Scrutiny for consideration or for a named officer to attend the meeting to explain the reasons for the decision.

With the significant decisions to be made, the Council identified the need to develop an ongoing dialogue with the public at an early stage, branded as "Time to Talk" Initial discussion sessions were held in local communities, fronted by ward members to start the conversation about the significant challenges the Council would facing which would impact on all communities within Kirklees.

One example of where the Council's processes have evolved in recent years can be illustrated through the budget development process. The Council is required to consult on budget proposals and approaches have developed over recent years.

In 2012 only 13 responses were received to the budget consultation; in 2013 there were 517 responses; in 2014 a total of 4595 responses across two phases (1679 in Phase 1 and 2916 in Phase 2); and in 2015 a total of 1410 responses were received. It was suggested that the level of response emphasised the increasing awareness of the budget challenges faced by the council and the strength of feeling amongst local people. In 2014, the budget consultation required more intense and wider engagement with specific, potentially affected groups, as it consulted on specific budget changes for 2015-18.

Of the 1410 questionnaire responses in 2015, all were received online. There were also had 2 separate comments via email, plus an additional 3 responses to the open text question via social media (*Facebook*).

Of the **1410** completed questionnaires the majority (90% - 1229 people) came from Kirklees residents. 272 responses (20%) were from Kirklees Council employees - many of whom are also Kirklees residents. There were 22 responses on behalf of local community groups/organisations and 13 on behalf of local businesses.

The responses from South Kirklees were 69% compared to 27% from North Kirklees. In addition the Council meeting in January had access not only to a



summary of responses to the specific questions asked but also any additional comment submitted.

In 2016 the budget preparation was supplemented by a budget debate attended by a panel of Political group leaders, independently chaired, who answered questions from members of the public.

As already described in section 2 there are formal ways in which the public can get involved in decision making at a local level through the community measures introduced as part of the Localism Act.

### **6.1 Kirklees E-Panel**

The Council also a citizens e-panel made up of people that live, work or visit Kirklees or have a local link to the area. The e-panel gives people the opportunity to help shape the future of local services by taking part in approximately three online surveys per year. This will help the council to prioritise the things that are most important to residents and to know how well the Council is doing in different areas so it can try and improve. The aim is to ensure that the membership of the e-panel roughly reflects the make-up of communities across Kirklees District.

### **6.2 Web Based technology**

Recent years has seen an acceleration in forms of web based technology that inform and facilitate public engagement in decision making, for example the use of webcasting of public meetings. In Kirklees this is used for meetings of Cabinet, Full Council, some Overview and Scrutiny meetings, such as the Joint Health Scrutiny Committee looking at proposed changes to health services in the Calderdale and Huddersfield area.

The webcast is supplemented by a Twitter feed although usage is limited. It tends to be comments from politicians, individuals who are politically active and local Press representatives on what is happening at the meeting.

A brief overview of Council webcast viewing figures and trends is attached at appendix 3 and collates the viewing figures (hits) and trends for webcasts. Previous patterns illustrate that a limited of number people view the webcast as the meeting is in progress, however those numbers significantly increase with those who view meetings through the archive facility.

### **6.3 Accountability**

The standard response to the question of how local decision makers are held to account is “through the ballot box”. The reality is that the ballot box is only one part of a complex multi-layered system by which local government decision making is held to account.

In the move to decentralise, national Government concluded that:

*An effective local accountability system will be based on a web of different checks and balances rather than any one single lever. This reflects the fact that local bodies*

*have a number of different accountability relationships. To local people as users or taxpayers; to local third parties for their contribution to collective goals, especially where they are pooling resources; and to the centre for the funding they receive and their contribution to national outcomes<sup>3</sup>,*

The following are a range of typical accountability mechanisms that apply to Local Government:

- National statutory inspection regimes - to test the effectiveness of the Council's approach to the provision of Services, for example OFSTED. By drilling down, external inspection regimes look at the impacts of the high level decisions on the client /service user.
- Statutorily prescribed appeal mechanisms are embedded in most areas where the Council is exercising quasi judicial powers. These enable an independent overview of the original decision and the power to overturn and impose an amended decision. This includes appeals to the Planning Inspectorate, licensing related appeals to the local Magistrates Court and Tribunals.
- Local Government Ombudsman - whilst not looking specifically at decisions, the Local Government Ombudsman can look at the administration of the processes surrounding decision making and can make recommendations for amendment to decisions as a result of maladministration or in some cases financial compensation for significant maladministration.
- National Government intervention - In some instances the quality of decision making underpinning the running of local services is considered to be so inadequate as to warrant national government intervention. This leads to the taking over of the running of some or all areas of service provision and strategic decision making, for example Children's Services in Doncaster and more recently services in Rotherham.
- Within Council structures there are mechanisms for accountability. As explained on page 10 of this report, the most obvious of these is Overview and Scrutiny which includes the power to call in decisions of the Cabinet and publicly hold individual portfolio holders to account for the decisions the Cabinet has made.
- Party political opposition – where a local authority is made up of more than one political party, the political opposition will hold the decision makers to account. This may be as part of discussions at public meetings or subsequently through other media mechanisms. Kirklees Council meetings include a holding the executive to account item that enables questions to be put to Cabinet portfolio holders.
- Local media - Within a local authority area there may be a number of different local press agencies whose approach to the reporting of Council decisions will vary. Some may see their role as informing their readers whilst others generally have a critical voice which will put a particular emphasis on

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<sup>3</sup> Department for Communities and Local Government - Accountability: Adapting to Decentralisation -2011

a decision that has been made and be a strong voice in publicly holding a Cabinet / Council to account for a decision that has direct implications for the public.

## **7. Key Lines of Enquiry**

The Commission's key lines of enquiry for this theme have been developed with the above mentioned context in mind. They form the basis of the key issues that will need to be explored further in order for conclusions and recommendations to be developed which will determine the future role of the councillor in Kirklees. The key lines of enquiry are as follows:

- As we look to involve the public more, how do we ensure we have decision making arrangements that are enabling, clear, co-ordinated, agile and take place at the right level?
- How do we ensure transparency, accountability and the right checks and balances are in place?
- What are the implications for governance and accountability in the context of devolution, the Combined Authority and the potential move to a Mayoral model
- What governance model and approach is best suited to deliver the above?
- How do we make a virtue of the opportunities presented by digital and mobile technologies to improve our governance and decision making arrangements?

**Summary of principle requirements of an Overview and Scrutiny function in a council operating a Leader and Cabinet model of governance**

The principle legislative requirements are:

- The requirement to have a minimum of one Committee to carry out scrutiny functions
- The power to review or scrutinise decisions made by the Executive
- One statutory Scrutiny Officer post ( cannot be Chief Executive or Monitoring Officer) ( the post can be part of an officer's wider responsibilities).
- A statutory requirement to respond to recommendations.
- The local authority is required to invest formal health scrutiny powers (in Kirklees this is in the current Wellbeing and Communities Scrutiny Panel)
  - The health scrutiny body has statutory powers to set up Joint Health Scrutiny Committees to investigate significant variations in health services, where the proposals cut across local authority areas.
- Executive/Officer requirement to attend scrutiny to answer questions.
- Ability to refer issues to O&S (A panel member or member of LA) (O&S to determine if appropriate issue for scrutiny)
- Crime and Disorder – devote at least one meeting a year to consideration of crime and disorder issues. This may include Scrutiny of the CSP partners in the context of the Community Safety Plan
- Flood risk – must scrutinise flood risk management functions
- Must have a Councillor call for action mechanism

## **Vision for District Committees**

The District Committee Chairs' vision for 2015-16 sets out the role of the committees for the following year.

These statements, submitted to the full Council meeting in March 2015, in summary are to:-

- Prepare the district for the changes ahead as part of the move to New Council.
- Explore how district committees can support early intervention and prevention, economic resilience and helping communities to do more for themselves and each other.
- Make the Council's Economic Strategy and Joint Health and Well Being Strategy meaningful across the district.
- Develop a closer working relationship between the district committees and Cabinet.
- Work with partners and the community to make the most of all resources available to achieve the best outcomes possible for our communities.

The committees will support local delivery of the 2 New Council themes:-

- *Early Intervention and Prevention* - tackling issues early to delay or prevent bigger problems from occurring (e.g. preventing family breakdown & keeping people healthy for longer, so that social care interventions are required later or not at all).
- *Economic Resilience* - building resilient communities where people are skilled and have economic opportunities.

The 2 themes are underpinned by:-

- *Health & Wellbeing* - improving the health and wellbeing of local people by maximising the independence of individuals by focusing on the assets and strengths that individuals, families & communities have to help themselves.
- *Social Action* - building capacity in our communities and creating the right conditions for local communities to take action for themselves and for others.

The **main purposes** of the District Committees are to:

1. Be responsible for functions delegated to them by the Cabinet; currently these are for budgets, decisions on residential and visitor parking permits and the naming and re-naming of streets in cases of disputes
2. Be a district vehicle for:
  - Consultation on Kirklees wide strategic planning
  - Influencing services at district level

- Prioritising how services are targeted across the district
3. Provide strategic overview, influence and performance challenge to key service areas, initially:
    - Education
    - Community Safety
    - Streetscene
    - Housing/tenant liaison
  4. Develop a Plan of Place for the district which sets out the committee's vision, what it plans to achieve and how it will measure that.
  5. Engage in area consultations and participatory budget exercises.

The full terms of reference terms for the committees are set out in Article 10

**An Overview of Webcasting Viewer Statistics**

**Viewing Statistics**

There are several ways the viewing statistics can be interpreted, but all evidence points to their being an ongoing increase in online engagement. Below are examples of viewing activity.

1. **All Webcast Meetings** - Overall viewing figures for meetings over the last 3 years have increased significantly.

| <b>All Webcast Meetings</b>          | <b>Live Viewing</b> | <b>Archive Viewing</b> |
|--------------------------------------|---------------------|------------------------|
| January '15 to June '16 (18 months)  | 3,604               | 81,382                 |
| July '13 to December '14 (18 months) | 1,722               | 44,233                 |
| Total over 3 year period             | 5,326               | 125,615                |

The last 18 months viewing figures of both 'live' and 'archive' views of all webcasts, by comparison to the 18 months prior, have increased by 52% and 45% respectively.

2. **Budget Council** – At first glance these viewing figures appear to contradict the overall picture presented above.

| <b>Budget Council</b> | <b>Live Viewing</b> | <b>Archive Viewing</b> |
|-----------------------|---------------------|------------------------|
| 2014                  | 220                 | 1,016                  |
| 2015                  | 322                 | 651                    |
| 2016                  | 120                 | 401                    |

Although there was a rise in live viewing of one of the most significant meetings of the year from 2014 to 2015, live viewing figures in 2016 were nearly half those generated two years previously. The archive figures also reflect this, although an ongoing increase in archive figures will see this gap narrow over time.

It is conceivable however, that these viewing figures are as a result of the budget itself. In 2014, there was a significant amount of interest in what services may be cut, coupled with all political groups fighting their corner for what budget they wanted allocating where. Public and staff interest through media coverage, were also heightened at this time, as they likely viewed in order to see how they may be affected.

Initial live interest in the 2015 budget has not been backed up by archive views, with 2016 showing even less live interest. Conversely to 2014, there appears to be awareness from councillors, public, staff and media that there is little left in the budget to debate, with the path on the MTFP two years prior.

This could be interpreted as evidence that where there is enough public interest in issues on the agenda to be debated, supported by media coverage, viewing figures are positively affected.

3. **Annual Council** – These figures support evidence of a growing interest in webcast meetings year on year, in the case of both ‘live’ and ‘archive’ viewings.

| <b>Annual Council</b> | <b>Live Viewing</b> | <b>Archive Viewing</b> |
|-----------------------|---------------------|------------------------|
| 2014                  | 88                  | 736                    |
| 2015                  | 33                  | 1,518                  |
| 2016                  | 229                 | 794                    |

Whilst the live viewing figures show a large drop from 2014 to 2015, when compared to the archive viewing of these two years, even at a year younger the 2015 archive has been accessed more than twice the number of times.

In considering the 2016 meeting, live viewing was up nearly 62% on 2014. The archive viewing figures of 2016, in context of the meeting being only a few weeks old, have already surpassed those of 2014 two years previous.

4. **Cabinet Meetings** – Live viewing figures are often seen, mistakenly so, as the benchmark by which the success of webcasting should be measured. However, it is the archive viewing figures that hold the most value.

| <b>Cabinet Meetings</b> | <b>Live Viewing</b> | <b>Archive Viewing</b> | <b>Total</b> |
|-------------------------|---------------------|------------------------|--------------|
| 12 January 2016         | 7                   | 2,173                  | 2,180        |
| 22 September 2015       | 108                 | 1,917                  | 2,025        |
| 25 August 2015          | 18                  | 1,253                  | 1,271        |
| 16 June 2015            | 10                  | 1,220                  | 1,230        |

The January 2016 and September 2015 Cabinet Meetings have the top two grossing viewing figures of all webcast meetings over the last 3 years, despite low (particularly in the case of January) live viewing.

All four meetings appear in the top 20 most viewed meetings out of a total number of 223 webcast meetings. In considering the very young age of the meetings and that other meetings have had a much longer period of time to grow their archive audience, this indicates both the importance of the archive viewing (over live viewing) and the growing interest of people engaging with webcast meetings.

5. **Issue Based Research** - Statistical spikes in archive viewing of webcast meetings can be caused through issue based relationships between different types of meeting.

In the case where decisions and referrals are made at various meetings, where by an issue (in the form of an agenda item) follows a path from one type of committee to another.



The webcast archive can therefore be used as a repository to track the path of such a decision, what was debated at each stage, when and by whom. Researching the webcast footage provides context beyond the formal minutes of a meeting.

| <b>Issue Related Meetings</b> | <b>Date</b>  | <b>Live Viewing</b> | <b>Archive Viewing</b> |
|-------------------------------|--------------|---------------------|------------------------|
| Council                       | 29 July 2015 | 59                  | 1,276                  |
| Cabinet                       | 22 Sept 2015 | 108                 | 1,917                  |
| OSMC                          | 23 Oct 2015  | 229                 | 405                    |
|                               |              | <b>396</b>          | <b>3,598</b>           |

These three meetings all had one topic in common, the future of libraries provision in Kirklees.

Archive viewing statistics are significantly higher than normally expected. Whilst 'Council' archive viewing figures are matched by several other Council meetings, the 'Cabinet' and 'OSMC' archive viewing numbers are unusually high.

Each meeting had higher than average live viewing figures for meetings of that type.

This can be evidence of demonstrable public awareness and interest in the issue of libraries, in the moment of live streaming and in the value of connected debates across the timespan of the meetings.

Significantly, the live viewing figures of the OSMC meeting which addressed this Libraries issue, has the second highest live viewing figures of any other webcast meeting. Interestingly, the highest live viewing figures for a webcast meeting were also from a scrutiny meeting; 254 people viewed live the 'Calderdale and Kirklees Joint Health Scrutiny Committee' in January 2016.

### **Supporting information:**

Discussion document Local Area Committees 2003-4 – Rob Vincent  
 District Committees Handbook - 2015  
 The District Update October 2015 – Kirklees Observatory  
 Summary of Localism Act – DCLG 2011  
 Eversheds Consultation note

Changing to a Committee System in a New Era  
<http://www.lqiu.org.uk/wp-content/uploads/2014/12/Changing-to-a-committee-system-in-a-new-era.pdf>

Rethinking Governance  
<http://www.local.gov.uk/documents/10180/5854661/rethinking+governance+-+practical+steps+for+councils+considering+changes+to+their+governance+arrangements/6f1edbeb-dbc7-453f-b8d8-bd7a7cbf3bd3>

