

Voice to Choice Project

Legal and Constitutional Issues

1. The proposed delivery vehicle for the Voice to Choice Project has to fit within the local government legal framework which is based on piecemeal, complex primary and secondary legislation and statutory guidance. There are various options which may be pursued, although as the law currently stands, it is fair to say that none of these appear to provide a complete solution.
2. There are broadly 3 types of arrangement which may be considered:
 - **area board or forum with advisory and consultative role;**
 - **area committee with decision-making powers exercising executive and / or non-executive functions;**
 - **joint arrangement, including a joint committee with decision-making powers exercising executive and / or non-executive functions;**

The statutory guidance is clear that when deciding whether and how to make such arrangements the principal aim should be to ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision-making.

Area Board or Forum

3. This is by far the most flexible and inclusive option which, overall, best meets the proposed terms of reference for a Community Area Board as set out in Appendix A. There is explicit statutory power for a local authority or two or more local authorities to appoint a committee to advise them on any matter relating to the discharge of their functions, whether executive or non-executive functions. Such committees (or boards) may include, with voting rights, any members who are not members of the local authority. They may, therefore, include the wide range of membership envisaged in Appendix A, with each representative member having voting rights. The rules on political balance do not apply to these bodies.
4. The role of an area board of this kind would be to advise the local authority, the Cabinet, a Cabinet Member or Officer with delegated powers on the exercise of their functions. This would apply to both County Council and District Council functions. Whilst the formal decision-making responsibility and accountability would remain with the Council, Cabinet, Cabinet Member or Officer, as the case may be, the area board would be able to take an active part in shaping and influencing policy and local decision-making as envisaged in the Terms of Reference in Appendix A.

Area Committee with Decision- making Powers

5. A local authority may make arrangements for the discharge of both executive and non-executive functions by area committees. Such area committees:
 - need not be politically balanced provided certain requirements are met;
 - can only include members of the local authority who are members for electoral divisions or wards wholly or partly contained within the area for which the committee has functions;
 - must not have functions in respect of an area of the local authority which is larger than 2/5 of the local authority in terms of either area or population;
 - can include voting members who are not members of the local authority but only in respect of a limited range of functions prescribed in regulations [including property management; promotion of tourism; festival management; certain joint county / district functions discharged by a joint committee].
6. Whilst the statutory guidance expects a local authority to consult parish and town councils before establishing an area committee, the law does not extend to allowing parish or town council representatives to serve as full voting members across the range of functions allocated to that area committee. To this extent it does not achieve parity of voting rights across the three tiers of government, nor does the full range of membership envisaged in Appendix A sit comfortably with this model.
7. Any functions delegated to an area committee should form part of a comprehensive scheme a delegation which sets out clearly:
 - those functions which have been delegated to which area committees and the budgets associated with those functions; and
 - the terms of the arrangements for those delegations.

Joint Arrangements / Joint Committees

8. Two or more local authorities may enter into arrangements to discharge functions jointly. This may include establishing a joint committee either to advise the local authorities in matters of joint interest or to discharge functions. This may include the exercise of both executive and non-executive functions. An example of this is the Customer First Joint Committee, which is responsible for the joint exercise of functions on behalf of the County Council and the 4 District Councils in Wiltshire. The joint committee is set up by means of a comprehensive agreement which

sets out the functions which are delegated (these may be exercised concurrently with the Cabinet) and the rules of procedure to be followed in the exercise of its business.

9. The legislation would appear to allow parish and town councils to participate in joint arrangements, including membership of a joint committee (and, therefore, voting rights) although quite how this would operate in practice is difficult to say, bearing in mind the convoluted secondary legislation governing the composition and membership of joint committees.
10. Voting rights would not extend to persons who were not members of the participating authorities. As with the area committee with decision-making powers it would not accommodate the full range of membership with voting rights as envisaged in Appendix A.
11. Overall, the structure of a joint committee would appear to be more rigid and formal than what is envisaged for the Community Area Boards. Furthermore, as we would be looking towards setting up 20 joint committees, this would be extremely time-consuming and resource intensive, both in terms of the establishment of the joint committees and the conclusion of appropriate agreements, and the provision of support in their operation.

Conclusion

12. Having regard to the proposed terms of reference of the Community Area Boards my advice would be to start with the first option of an area board advising the relevant Councils on the discharge of their functions, including those of the Council and Cabinet and those functions delegated to Cabinet Members and Officers. This would provide the Community Area Board with a real opportunity to shape and influence policies and decisions both locally and more widely.
13. The structure and operation of the Community Area Boards will evolve over a period of time and may be reviewed in the light of experience or the implementation of new enabling legislation providing greater freedom and flexibilities for these purposes.

Ian Gibbons
Head of Legal and Democratic Services
1st March 2006