

**The Review of Public Administration
In Northern Ireland**

Checks, Balances and Safeguards

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November 2005

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Foreword

A key feature of the Review of Public Administration is the return of enhanced powers to a local government that functions with broad cross-community support. Discussions between the RPA Team and political parties suggests consensus that ‘whatever form of local government emerged, it would need to be underpinned by a range of statutory safeguards’ in order to achieve confidence and trust. As the RPA’s consultation document put it, ‘[t]hese statutory arrangements should provide a framework of checks and balances under which Councils would conduct their business and should ensure equality and fairness in decision-making.’

A keenness for strong safeguards is tempered by a wish to avoid overly bureaucratic arrangements so as to attain optimum opportunity for innovation and effective decision-making. The parties are agreed on ‘the principle of statutory governance arrangements’ and that ‘a firm proposal to implement statutory governance arrangements as part of the restructuring of local government will provide sufficient confidence to move forward with reform.’¹

Queen’s University Institute of Governance was appointed to assist the RPA with this aspect of its work by examining and reporting on checks, balances and safeguards for local government. A project team was established involving from Queen’s University: Professor John Morison, School of Law and Professor Elizabeth Meehan, Dr Ciaran O’Kelly and Bronagh Hinds, Institute of Governance; and Cardiff University: Professor John Loughlin, School of European Studies. The authors are particularly grateful to the team, for assisting in developing the framework and ideas for research which explored a range of mechanisms in Northern Ireland and other jurisdictions across Europe and drew on an inter-disciplinary roundtable of experts.

We would like to thank colleagues who participated in the roundtable held on 12 September 2005 and commented on earlier drafts of the paper. Along with the project team were: Professor Ian Leigh, Department of Law, Durham University; Chris Game, Institute of Local Government Studies, Birmingham University; Dr Sydney Elliot, School of Politics, International Studies and Philosophy, Queen’s University Belfast; along with members of the RPA Team David Finnegan, Deputy Chief Operating Officer, Dr Debbie Donnelly, Laura Hague, Joan Cassells and Dermot Harkin and Dessie Mitchell, a member of the RPA’s Panel of Independent Experts. Dessie Mitchell was particularly helpful in making detailed comment.

The paper was further enlightened during a working group session held as part of the Accountable Governance: An International Research Colloquium organised by the Institute of Governance at Queen’s University Belfast with the support of the University of New Hampshire and Rutgers University, USA from 20-22 October 2005.

¹ RPA Further Consultation in Northern Ireland, March 2005, p 47

EXECUTIVE SUMMARY

The authors looked at Europe, with particular reference to Britain and Ireland, in examining governance arrangements, particularly checks, balances and safeguards. Structures that enhance and safeguard democracy and parties' participation as well as mechanisms were part of consideration. Suggestions on optimum arrangements for Northern Ireland are drawn from best practice described in the body of the paper. It is recommended that due consideration be given to the following key matters.

Approach

New local government arrangements should be established on best practice, with strong local autonomy supported by solid safeguards (p2). As a matter of principle, legislation, regulation and overview and scrutiny processes should provide generous cover rather than leave gaps (p32 & p41).

Equitable participation by parties in the governance of Councils should be provided for. All democratically elected councillors who commit to non-violence and exclusively democratic and peaceful means should be entitled to have their contribution recognised by others and taken into account in shaping policy and direction for each Council (p6).

Legal and Constitutional Framework

New local government legislation should provide the framework and safety net for effective functioning of local government in Northern Ireland. It should establish the framework and conditions for Councils' principles, purposes, powers, constitutions, standing orders, codes of conduct, protocols, general operations, relationships and oversight supplemented by various statutory and non-statutory guidance and model arrangements (p5).

For reasons of separation of powers and accountability, legislation should provide for the removal of dual mandates; or, at a minimum, the exclusion of those with a dual mandate from key positions in the Assembly and Councils (p34).

New local government legislation and regulation should explicitly refer to Councils' statutory obligations on equality and good relations and duty in local civic leadership for a shared future. This should provide Councils with the 'clear legal, statutory and policy framework' for equality and good relations; and also provide for mandatory guidance (p33).

It is recommended that Government give consideration to strengthening equality safeguards under Section 75 through implementing recommendation arising from the McLaughlin and Faris report and current review by the Equality Commission (p33).

Councils should be required to develop constitutions which should include the principle and purpose of supporting active engagement of citizens in local authority decision-making, with reinforcement in Council procedures, codes and protocols (p39).

Specific Powers

Councils should be given, as a minimum, the power of well-being i.e. the power to promote the economic, social and environmental well-being of those who live in, work in or visit the local area (p3 & p4).

Consideration could be given to Councils having more extensive powers, such as power of general competence i.e. the power to carry on or undertake business or activity, do any act, or enter into any transaction with full rights, powers and privileges; or the authority to act for various purposes instead of specific powers and duties (p4).

Community Plan

Councils' responsibilities to involve relevant public bodies, social partners, Section 75 groups, communities and users in the community planning process should be included in legislation along with the requirement that public bodies take part (p4 & p5).

Councils should be able to hold partners to account on the community plan. Public bodies' relationship vis-à-vis Councils on contributing to and accounting for responsibilities within community plan should be spelt out in legislation and model agreements, with further elaboration in protocols (p5).

Checks and Balances built into Council Structure

Councils are best served by a structure based on Executive, Overview and Scrutiny. The Executive would operate by collective decision-making and be balanced by proactive non-Executive councillors on Overview and Scrutiny Committees. This provides best framework for shared leadership responsibility *and* put stronger checks and balances in place than does a committee system (p13). However, if a streamlined committee structure is chosen this would also be subject to shared responsibility requirements and overview and scrutiny arrangements (p13 & p14).

Executive

Collective decision-making would foster power-sharing; the Executive should be required to make decisions collectively as a matter of good practice. Consideration should be given to placing a statutory duty on Council Executives to plan and conduct business collaboratively (p20).

A protocol for the management of an individual's relations with colleagues and the Executive collectively should be developed. If an element of individual decision-making is agreed it is advisable that criteria are set for portfolio decisions and Executive decisions (p20).

Council constitutions should spell out the different levels of accountability – individual, collective, corporate - in the Executive as well as sanctions for non-compliance with terms of office. Provision should be made for removal from Executive office by way of a Council vote of no confidence by higher threshold cross-community vote (p14).

Good practice in corporate responsibility places an onus on Executive members to represent their corporate decision in public forums, including in the Council, even if some disagree with the decision. Whether meeting in public or private an Executive member should be able to record dissent on a decision at a meeting, but nevertheless be required to represent the corporate decision (p24 & p25).

Executive members should be required take a pledge that includes promises similar to those in the Pledge of Office and code of conduct for the Assembly and goes further to pledge commitment to collective responsibility and decision-making (p14 & p18).

Consideration should be given to requiring Executive members to state whether a policy, regulation or action being introduced is within the competence of the Executive and the authority of the post-holder; and that the decision was reached by consensus or not and, if not, that the Council's duty to the whole community is best served by the decision (p20).

All Executive decisions should be designated Key Decisions. Key Decisions should be publicised in advance in a Forward Plan to enable timely intervention by non-Executive councillors and citizens if required (p19 & p20).

Overview and Scrutiny

Balancing Executive decision-making with effective Overview and Scrutiny is essential, as is ensuring scrutiny in a streamlined committee system (p12 & p13).

Overview and Scrutiny Committees should be politically balanced (p11) and smaller as well as larger parties and independents should have a valuable role in overview and scrutiny (p16). The Scrutiny Committee should be chaired by a councillor from the other side of the community to the leading party on the Executive (p11 & p13); or, in streamlined committee systems, the chair of the particular policy committee under scrutiny (p12 & p14).

Consideration should be given to making provision for independent non-Council co-optees with expertise to be co-opted onto Overview and Scrutiny Committees; in models elsewhere they comprise around one-third of the membership (p11 & p14).

The Overview Committee should be charged with ensuring that social partners, citizens and users can contribute to Council and Executive policy through area and user consultative forums, Section 75 consultations and other formal and informal engagement (p23).

All councillors, especially those serving on the Overview Committee, should be familiar with government policies and assessment mechanisms designed to arrive at decisions that are inclusive, fair, equitable and sustainable. They will need to ensure that local policy-making is consistent and statutory obligations and guidance complied with (p23 & p24).

A set of 'horizontal principles' could be developed against which the Overview Committee, and Executive and Council can check whether Council policy-making is being processed in a way that complies with regional policy and required standards (p23 & p24).

The Scrutiny Committee should have the power of 'call-in' to recall Executive decisions for explanation and further consideration. 'Call-in' could be triggered in a number of ways and a variety of routes should be left open (p23) e.g.

- by the chair of Scrutiny;
- by two/three chairs of sub-committees;
- by decision of the Scrutiny Committee or another committee;
- by one-third of the Scrutiny Committee or the Overview Committee;
- by a set number or percentage of councillors;
- by a set percentage of one party; by written request of 2/3/4 councillors from different parties;
- by a single councillor;
- by petition signed by a set number of the Councils' citizens;
- by citizen petition validated by the Scrutiny Committee or its chair.

The Scrutiny Committee should have the power to hold public hearings on areas of concern within their ambit (p23).

Transparency

Legislation should safeguard transparency in Council business. Consideration should be given to whether:

- there is a balance to be drawn between public, private, semi-private meetings (p24): *or*
- there is a presumption that all Council Committees will be held in public as is the case elsewhere (p38); *and*
- this presumption extends to power-sharing Executives requiring them to work wholly or mainly in public (p24); *and*
- Overview, Scrutiny and other committees are less likely to need private discussion and could be wholly or mainly held in public (p24).

It is suggested that Council Committees, including the Executive, should meet in public as far as possible and the public should have the right to attend meetings of Council Committees, including the Executive (p38). Thus it is important to minimise the business which must be conducted in private (p24). Government's expectation that Councils will give civic leadership towards a shared future by example suggests more movement away from working behind closed doors and greater corporate responsibility is called for (p25).

E-Government is an evolving area that could be exploited more successfully by Councils to provide services and improve consultation. Councils should take the necessary steps to improve e-governance (p17 & p39)

Cross-Community Consensus

Legislation should stipulate that cross-community consensus is required for Key Decisions i.e. key Council decisions and all Executive decisions. Executive decision-making should be managed so as to secure the greatest possible consensus within the Executive and across the Council (p20).

A designation system under which individuals sign up for one or other major side of the community does not adequately reflect the increasing diversity of modern societies and cuts across a councillor's primary duty to serve the whole community. Conversely, requiring cross-community consensus through a model that demonstrates integrated cross-community voting, e.g. high threshold weighted majority, for important decisions sends a strong signal that Councils and councillors are serving the whole community (p21).

The cross-community consensus voting method should be a high threshold weighted majority. The high threshold weighted majority should be established at a set percentage greater than that represented by the majority community on the Council or the Executive, say 75/80%. It should apply to key Council decisions and all Executive decisions (p21).

Parties' security under cross-community consensus could be further safeguarded by giving the right to each party, or two parties jointly, with the agreement of 75% of their number:

- to trigger 'call-in' (see below) of an Executive decision for reconsideration;
- to require the decision to be put to the full Council instead of the Executive and to be taken by cross-community consensus; or
- to require that a decision of the Council be taken by cross-community consensus instead of a less majority vote (p21).

Councils should examine best practice elsewhere and experiment with different forms of decision making such as multi-choice ballots and preferenda that are more amenable to consensus building (p21). It would be valuable to begin to examine and experiment during the transition phase (p41).

Deadlock

Mechanisms should be considered to deal with deadlock including (p24):

- Mediation through a Local Government Ombudsman.
- Independent arbitration referred by the Ombudsman following unsuccessful mediation.
- Sanctions for non-compliance as a final resort e.g. Ministerial intervention to dismiss the Executive or the Council and appoint a Commissioner in their place to fulfil statutory responsibilities until the next election.

Allocation of Council Positions

A comprehensive approach should be adopted embracing all Council positions within an arrangement for proportional allocation, including key posts, membership of standing committees and Council nominees to outside bodies. The allocation of party share of posts should be made once across all posts for the full four year period at the beginning of every new Council cycle. It should allow for rotation of posts on an annual basis (p15).

Three possible methods are (p15 & p16):

- (i) A prescriptive approach legislating for annual rotation of posts and power-sharing across local government and stipulating a specific election/appointment mechanism to apply uniformly to all Councils.
- (ii) A less prescriptive approach requiring annual rotation of posts and power-sharing, prescribing PR as the mechanism but leaving it to Councils to decide which method of PR with its decision signed off by the Minister.
- (iii) A looser approach legislating for annual rotation and proportional power-sharing for all Council structures and posts, allowing each Council to choose its own method of achieving it (from negotiation to election) with Ministerial approval of the chosen method and its result required.

Sanctions for non-compliance should apply e.g. sending in a Commissioner to fulfil statutory responsibilities if deadlock continues for a specified period; possibly holding a by-election for the whole Council if deadlock continues (p16).

Smaller as well as larger parties and independents should have a role in Council committees and may be particularly valuable in overview and scrutiny (p16).

Whether an election mechanism is imposed as in (i) above or chosen as in (ii) above the following systems are recommended in order of merit. Each is best applied for the full four year period of the Council (p17).

- (i) the Quota Greatest Remainder method for all key posts, committee membership and appointments to outside bodies in one pool;
- (ii) the mixed d'Hondt and Quota Greatest Remainder method using d'Hondt to fill specific posts from a pool of key posts such as Mayor, Executive and committee chairs and the Quota system for committee membership and appointments to outside bodies;
- (iii) the d'Hondt method for all key posts, committee membership and appointments to outside bodies in one pool.

Women and other under-represented groups

Opportunities and measures should be created by government and political parties to redress under-representation of women and other interests in elected office in Councils. Party leaders have a major role to play in taking corrective action (p18).

Parties should set up mechanisms to ensure that women councillors are fairly represented among their quota of senior Council posts and outside appointments (p18).

Government should require Councils, and other nominating bodies, to comply with a rule to appoint 40% of either gender to all public bodies (p18).

Councils could be mandated to appoint a majority of women with the necessary skills to Council committees to fill co-optee positions where a committee lacks a fair proportion of women councillors (p18).

Standards Committee and Monitoring officer

The principles of the Independent Commission for Good Governance in Public Services could be incorporated into constitutions, codes and procedures. Councils could use the Independent Commission's Standard's question set to assist them and the public to assess whether or not they are meeting the Standard (p25 & p26).

Councils should have a Standards Committee and a Monitoring Officer with statutory responsibilities and to oversee implementation of and compliance with standards locally (p30)

The Standards Committee must be seen to be fair, independent and above party politics. It should comprise a number independents and non-Executive councillors and be chaired by an independent member (p31). At least one independent must be present for the whole meeting (p28).

Councillors serving on the Standards Committee should have the support of all political parties and the confidence of the Council. It is appropriate to have an equal number of representatives from parties; the Committee should not be overly large, five including independents is a normal size (p28).

The Committee should have at least 25% of its membership who are appointed following public recruitment and ratification by a majority of the Council. There is no upper limit to the number of independent members and a minimum of two is recommended on the grounds that a single independent can become isolated and ineffective (p27 & p28).

The Monitoring Officer's critical role and freedom to operate should be safeguarded. Members and Officers should be required to seek advice from the Monitoring Officer on legality or compliance (p30 & p31).

Codes and Protocols

As is the case in England and Wales, there should be a strong enforceable code of conduct alongside a constitution, standing orders and protocols guiding roles, relationships and procedures within the Council and the Council's interface with others (p30).

The code of conduct should be adopted by Council within a specified time or else imposed. Councillors should be given two months in which to sign an undertaking to follow the code of conduct with failure to sign resulting in their disqualification (p29).

The code should be fashioned to cover circumstances and behaviours in Northern Ireland with special attention paid to framing rules and codes so as to foster trust and respect in conducting Council business among councillors and the public. It is advisable that they guarantee the highest standards of participation, prevent abuse of power, outlaw demonisation of individuals, control provocation, protect openness and transparency and seek to demonstrate civic responsibility and leadership (p30).

A binding protocol should set out Member/Officer roles and relations, covering councillors' roles as Council members, members of party groups, ward members. Clarity is particularly important if an Executive system of government is adopted as there must be transparent separation of powers and responsibilities between Officers and Executive post-holders (p29 & p31).

A model job description for councillors could be prepared to enable the public and prospective candidates, as much as councillors, to understand a councillor's role and limits (p31).

Standards Commissioner and Ombudsman

A Northern Ireland Standards Commissioner or Panel could be appointed by the Minister. The Commissioner/Panel would operate as a safety net, leaving the onus on Council Standards Committees to lead on standards locally (p35).

The Commissioner/Panel could combine the functions of the Standards Board for England, i.e. oversight of ethical standards across the Council and investigation of breaches of the code of conduct, with those of the Audit Commission for inspection of governance standards (but see below re giving this power to the Local Government Auditor). S/he should prepare an annual report to the Assembly on standards in local government (p35).

The Commissioner/Panel would approve Councils' constitutions, standing orders, codes and protocol; and focus on mandatory provisions, good practice models, standards audits, investigation and adjudication on serious or consistent breaches of codes and protocols, application of sanctions. S/he would liaise with Council Monitoring Officers and be able to call upon independent investigators (p30 & p35).

The Local Government Ombudsman in Britain is increasingly being used to determine interpretation of legislation. Disputes in a Council in general could be referred to the Ombudsman who could be the repository of formal shared agreements between parties in a Council. S/he could mediate in event of disagreement over interpretation, progress or break-down on formal agreements; and could appoint an arbitrator by agreement with the relevant parties (p35 & p36).

Consideration could be given to combining the posts of Standards Commissioner and Ombudsman, though there is merit in separating oversight of standards from conciliation in the relationships and process of the Council and councillors (p36).

Local Government Auditor

Legislation could define ‘best value’ more widely and enhance the role of the Local Government Auditor to take account of participation, equality and good relations in deciding whether resources have been spent properly. S/he could undertake governance inspections on these and on functioning of councils following the key lines of enquiry used by the Audit Commission in Britain (p36).

The power of surcharge could be extended to cover consistently inadequate performance in an area or a poor standard across a number of areas (p36).

Northern Ireland Assembly

Councils should report annually in person, through their Mayor and Chief Executive, in public hearing format to the Northern Ireland Public Accounts Committee, or another key committee in the Assembly (p34).

Annual reports should cover governance arrangements and performance; how decisions have been taken; the community planning duty; key policies, programmes and their outcomes; leadership for a shared future including equality and good relations; partnerships; arrangements and success in engaging citizens in Council affairs; financial planning and accountability; and monitoring of the composition of committees and forums (p34).

Annual reports should indicate the extent to which Councils live up to good governance standards, understanding that they should ‘demonstrate the spirit and ethos of good governance which the Standard aims to capture and which cannot be achieved by rules and procedures alone.’ (p25 & p26).

Co-optees, Social Partners and Citizen Engagement

Policy making is best conducted drawing on lessons, expertise and opinions from a wide range of international and domestic sources (p38). Council structures should follow the British and Irish models of partnership including co-opting independent people onto Overview and Scrutiny Committees and other committees and task forces to serve alongside councillors and recruiting independent individuals for the Standards Committee, including as its chair (p14 & p39). Councils, and public bodies, should have a statutory obligation to engage social partners in community planning and other aspects of Council business (p5 & p39).

Successful Area and User Forums in Britain should be examined with a view to developing similar avenues of community and user participation (p39). As is the case elsewhere constitutions could make provision for these consultative forums to meet regularly and have the ability to raise issues and make representation to Council including Executive, Overview and Scrutiny committees (p38).

‘Civic Councils’ or Area Committees of councillors could also provide opportunity for local involvement through facilitating consultation and community engagement on policy (p39).

Council constitutions should include the principle and purpose of supporting active engagement of citizens in local authority decision-making, with reinforcement in Council procedures, codes and protocols. Additionally, it is advisable to safeguard citizens' right of access in Council constitutions, codes and protocols. The public should be able to attend meetings of Council Committees including the Executive which should meet in public as much as possible (p38 & p39).

Each Council should have a published Charter of Services, giving citizens clear rights and remedies in relation to that authority's actions and services (p39). Accessible inter-active mechanisms are required to advance citizens engagement e.g.

- 'People's Question Time' (p40).
- Public petition to Council on matters, including triggering 'call in' of Executive and other committee decisions e.g. by a petition signed by a set number of citizens, or by petition agreed by the Scrutiny Committee or its chair (p40).
- Citizen contribution to Overview and Scrutiny and to committees concerned with Council and councillor standards (p39).
- A citizen complaint about breach of the Council's code of conduct (p40).
- A group citizen petition for a public hearing on general adherence to code of conduct standards in a Council area (p40).
- Citizen petition to Ombudsman to become involved in mediating a longstanding conflict in a Council (p40).
- Citizen petitions for recall of a councillor(s) (p40).
- Ratepayer challenge mechanism adapted with safeguards for public use e.g. a set number of signatures to trigger a public hearing before the Local Government Auditor, Standards Commissioner or Local Government Ombudsman who would have the power to strike out vexatious or frivolous complaints. Some consideration may need to be given to assisting people to make their case (p40).

Capacity Building and Democratic Support

Building the capacity of councillors and officers to assist their steep learning curve through the transition period into the new local government structure is essential. Some areas of training could be designated as compulsory. Intensive training during transition, including on standards, equality and good relations, is recommended to enable new Councils to set high standards from the outset. An infrastructure to support councillors' training and development in the longer term should be explored (p31 & p32).

The appointment of a Democratic Services Officer would assist capacity building through information, training and development support. The role of the Democratic Services Officer should include informing citizens about the constitution and access to Council decision making processes and working in support of councillors in Area or User Forums (p32).

Equality and Good Relations

As part of transition the Equality Commission should assist Councils to examine past progress, outcomes, and difficulties in order to produce enhanced equality schemes for the new Councils and explore how these can be implemented to maximum effect in the new arrangements (p33).

Councils will be required to prepare new Equality Schemes following restructuring and councillors should take a leadership role in ensuring that their equality schemes and annual reports of progress are setting and reaching the highest standards (p32).

There should be a 'clear legal, statutory and policy framework' for equality and good relations, including Councils' duties. This should include mandatory guidance based on the Community Relations Council's good relations framework guidelines, the 'Equity, Diversity and Interdependence Framework' published by the University of Ulster and any direction from the Equality Commission (p33).

Public authorities have special responsibility in providing leadership for a shared future and are expected by OFMDFM to 'set the pace on movement towards a shared future and lead by example.' It is important for there to be public demonstration of shared civic leadership by councillors in the Executive's working relationships and decision-making processes (p19 & p25).

Council good relations plans should be required to take account of the inter-dependency between equality and good relations, fit with Government triennial action plans and be approved by the Office of the First and Deputy First Minister. They should be 'reviewed annually to ensure satisfactory progress against agreed targets'; this should form part of their annual report to the Assembly and provide information to the Community Relations Council for its triennial assessments on the state of community relations (p33).

Transition and Implementation

Key governance principles articulated in this paper could be applied to all forms and levels of local government and appropriately across the public sector. Mechanisms, possibly including a time-limited implementation panel or commissioner, should be put in place to ensure decisions on checks and balances and other matters are fully implemented (p41).

Proposed new powers, structures and arrangements should be monitored and reviewed. A local and regional government research programme in Northern Ireland similar to that in the Office of the Deputy Prime Minister could be established to assist learning, transfer of best practice and comparative study with arrangements elsewhere (p41).

1. TRENDS

Trends in European Local Government

Traditionally democracy was understood as *national* democracy associated with the nation-state with local democracy emanating and deriving its legitimacy from the national level. More recently *regional* and *local* democracy are seen as essential elements of national democracy, with local and regional autonomy, political decentralization and local participation seen as essential elements of “good governance”.

The Council of Europe’s European Charter of Local Self-Government 1985 defines some essential elements of local autonomy as the foundation of local democracy. The Charter has been signed and ratified by 41 of the 46 member states of the Council of Europe, and signed but not yet ratified by two. The United Kingdom signed the Charter in 1997 and ratified it in 1998 to cover England, Scotland and Wales. Ireland signed in 1997 and ratified in 2002, and so Northern Ireland remains the only area in these islands outside the Charter. Northern Ireland should aspire to the same standards and seek to be included under the Charter.

Globalisation, Europeanisation, new public management reforms, shifts in economic production, new patterns of urban and rural residence, new societal forms, changes in levels of education and other developments have brought expectations of change in how democracy and governance operate and perform. Traditional forms of governance which were previously centralised, hierarchical and uniform have given way to more complex systems of relationships characterised by multi-level and “network” governance.

There is a non-hierarchical relationship between layers of government; for example, in France the central state now defines itself as playing a ‘facilitating’ role rather than its traditional top-down and interventionist one and there is no hierarchical relationship among the different levels of territorial government: the region, the department and the commune. Sweden similarly eschews any hierarchical relationships between its counties and municipalities. The general trend in Europe is to increase the autonomy of local authorities including their relations with each other.

At the same time, attempts are being made to strengthen their relationship with the citizenry through increasing their transparency and accountability. It is thought that this will strengthen their political legitimacy and assist them to assert themselves as political actors. In order to heighten these aspects of their political role, there is a trend towards separating Councils from their Executives; in Britain, the move from a committee system to the latter is part of this trend.

Various forms of proportional representation are the most favoured election methods across Europe as they are seen as allowing the fairest representation, thus conferring greater legitimacy. Participation is seen to be a good thing, with the public involved as part of the checks and balances paradigm through local referendums, opinion polls, group participation. The Council of Europe advocates increasing public awareness and facilitating general participation in Council activities as well as participation by

specific groups such as users, those with disabilities, women, ethnic groups, groups from particular geographical areas, etc.

A number of trends illustrate the notion that strong local autonomy is essential for the practice of local democracy. There is a shift away from detailed regulation and *a priori* controls towards *a posteriori* controls of legality and towards non-hierarchical relations between levels of government that is, 'higher' levels of government cannot interfere in the functioning of 'lower' levels, except when the latter are performing tasks on their behalf. This is usually the case when local authorities are allocated grants 'ear-marked' for specific functions. But the general tendency has been to move from 'ear-marked' to 'block' grants which local authorities have greater discretion in spending. There are also counter tendencies; fiscal orthodoxy affecting Eurozone countries and satellite states means that governments' ultimate responsibility for fiscal rectitude leads them to exert greater oversight over local authorities' financial activities. The spread of rights legislation has also led to greater intervention by central authorities and courts in local affairs.

Application to Northern Ireland

To some extent, these trends apply to complex but peaceful societies where there is a fundamental consensus on the nature of the democratic political regime. In some cases, as in the Netherlands, they are examples of consociational democracy in which elites agree to co-operate and not question the foundations of the system². Northern Ireland, in contrast, is a divided society challenged to move towards greater accommodation and consensus. The question is how the model of 'good local governance' prevalent across Europe can be applied in these circumstances to devolve more power from national/regional to local government.

An important lesson, drawn from the transition countries of East and Central Europe, is that it is important to *begin* from best practice in redesigning democratic systems rather than see best practice as an ideal to be reached in the future. This means that in Northern Ireland redesigning the democratic system ought to begin with local democratic best practice, i.e. encouraging the exercise of strong local autonomy. At the same time, given the prevailing circumstances and the need to protect the system from abuse, safeguards are required. Safeguards are forms of control that can include: ministerial intervention, administrative controls, legal and institutional mechanisms; and importantly, the exercise of democratic control by citizens, not just through the ballot-box but by various other mechanisms of citizen participation.

² The Netherlands was divided among Catholic, Protestant, Socialist and Liberal 'pillars' but, during the 19th century, the elites at the top of these pillars agreed to co-operate on a number of issues especially religious vs. secular schools and thus established a system of mutual toleration. Today, the 'pillars' have mostly disappeared but the political culture of toleration remains.

2. FRAMEWORK AND POWERS

Guiding Principles

The Council of Europe sets out a number of principles which should govern the internal functioning of local authorities.³ Designed to ensure that local authorities retain their autonomy, but also that elected councillors and non-elected officials are held accountable for their activities, these are:

- (i) local authorities are subject to the rule of law and the arrangements for supervising compliance with the law must be clearly laid down;
- (ii) the main representatives of the community are elected democratically and periodically, at not too long intervals;
- (iii) throughout their term of office, office-holders should be under the supervision of pluralist assemblies elected democratically and periodically, at not too long intervals;
- (iv) democratic control in the form of public access to information, in particular administrative and budgetary documents, is possible and should be encouraged;
- (v) there is independent external control;
- (vi) there is effective internal control;
- (vii) control is adapted to the size and tasks of the municipality.

Power of Well-Being

The nature of local government in Britain changed in the 1990s with focus on engendering greater accountability, legitimacy and public faith in local government. The idea of an 'enabling' local authority being a 'community leader' working *with* other groups became the new orthodoxy. In their 'community leader' role local authorities were expected to drive services through partnership arrangements and collaboration with private and charitable sectors.

However, the legal framework based on *ultra vires* - that local Councils can only act within powers defined by Parliament - was out of sympathy with these developments. This inhibited local authorities from delegating functions outside the authority and prevented them from forming partnerships, especially if the partner was executing functions outside the authority's remit. In the early 90s, courts' restrictive reading of the meaning of ancillary powers⁴ provoked debate about giving local authorities a general power of competence.

This was eventually modified to a supplementary power of well-being, i.e. to promote the economic, social and environmental well-being of those who live in, work in or visit the local area. The Council's leadership role was strengthened through the requirement to prepare a community plan with local people and social partners, and to consider the objectives and priorities in its community strategy before using the power.⁵ Discretionary powers on entering partnership were also loosened.⁶ As well

³ Council of Europe, *Model Initiatives Package on Public Ethics at the Local Level*, Steering Committee on Local and Regional Democracy, 2004.

⁴ Ancillary powers rule in the Local Government Act 1972.

⁵ See White Paper: *Modern Local Government: In Touch with People 1*, 1cm 4014, HMSO July 1998; see also Local Government Acts 1999 and 2000.

as covering local developments, such as LSPs, health, housing, policing, local area agreements, community plans must take account of relevant government policies and sustainable development, and Councils cannot override specific legislation⁷ and must have regard to Ministerial guidance.⁸

Power of General Competence

The UK *ultra vires* principle ‘requires actions to be justified with reference to a legal power or duty’ in contrast to Western Europe where ‘the constitutional allocation of competencies to public bodies promotes the alternative principle that any action in pursuit of the organisation’s purpose is legal except those that are specifically prohibited to it or are the responsibility of another public body.’ The ‘power of well-being’ is a move towards this more general competency power although subject to constraints.⁹

In the view of some, the limited power of community initiative or well-being is disappointing. Most European systems, with smaller Councils than in Britain, have a wide power of general competence. A general power of competence usually extends capacity to carry on or undertake business or activity, do any act, or enter into any transaction with full rights, powers and privileges that fall within the umbrella of the concept of ‘local affairs’. Northern Ireland could consider a more extensive option than the power of well-being, for example, based on the London model’s underpinning notion that an authority has various purposes instead of powers and duties.¹⁰ Or it could borrow from the approach in the Human Rights Act by giving direction to courts, in new local government legislation, about how local government powers are to be interpreted.

Community Planning

Community planning is central to the role of the local authority as community leader and it is anticipated that Councils in Northern Ireland will have a statutory duty to prepare a community plan. It is important for there to be a clear understanding between regional and local government on respective responsibilities particularly on those areas that fall within the remit of public bodies but also under Council responsibilities for civic leadership in community well-being. This would be assisted by an effective formal mechanism through which councils can raise concerns and influence decisions on policy and service delivery by regional bodies that impact on local responsibility for community planning. The quality of the partnerships that are developed by Councils with respective bodies locally is also significant.

Experience in England suggests that participation of users in community planning is an important aspect to be provided for in legislation.¹¹ It is useful to think about three

⁶ Sections 2 & 4, Local Government Act 2000 Act for England and Wales.

⁷ See Local Government Act 2000, s3.

⁸ Local Government Act 2000, s4 (3).

⁹ Watt P, Richards S, Skelcher C, *Accountability*, RPA Briefing Paper, 2002, p17; also referring to Leigh I, *Law Politics and Local Democracy*, Oxford University Press, 2000.

¹⁰ Greater London Authority Act 1999.

¹¹ Professor I Leigh, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

phases to a community plan: (i) the pre-decision phase that engages citizens as users in Scandinavian-style user committees to shape and advise on plans; (ii) the decision phase in which elected councillors make the decision; (iii) the post-decision phase with opportunity to challenge the decision through user boards, the courts or some other route. It may be advisable to require Councils to involve, health and other bodies as well as social partner organisations,¹² Section 75 interests and users at all stages of the planning process.

A Council's statutory duty to bring partners together in the community planning process may need to be reinforced with a requirement on the relevant public bodies to participate. As the driver of the community plan whose members will be held accountable by the electorate, Councils need to be able to hold other partners to account for delivery on promises made. Councillor members of public bodies (see later re appointment of Council nominees by proportional representation) have a vital role to play on the body and may be expected to report back to local government, but a more formal arrangement is required.

Public bodies are directly accountable to the Minister, but could be made more accountable locally at the same time; it is a matter of identifying primary accountability to the Minister and secondary accountability to Councils. Public bodies' relationship and responsibilities vis-à-vis the Council in relation to planning and accounting for their element of the community plan could usefully be spelt out in legislation, model agreements and protocols. The possibility of multi-annual contracts between the Council and relevant bodies and partners, as is the situation in France, has been suggested for further examination.¹³ Northern Ireland could follow practice in England and Wales where a Council's Overview Committee (see p10) can invite reports from, review and scrutinise performance of public bodies in its area.

Legal Framework for Northern Ireland Councils

Just as happened in modernising government elsewhere earlier this decade, new local government legislation would provide the framework and safety net for effective functioning of local government in Northern Ireland. This approach reflects the view of the Northern Ireland Local Government Association; NILGA's Working Group unanimously agreed that 'a legislative basis supported by codes of practice would be required to secure fair representation.'¹⁴ The legislation could establish the framework and conditions for Councils' principles, purpose and powers; structure and operating procedures; methods of sharing responsibility/posts; power-sharing decision-making methods; provision for model constitutions, standing orders, codes of conduct and protocols that cover internal and external functioning; external relationships and partnerships; relationship with citizens; external accountability, standards and oversight arrangements. These could be further elaborated in guidelines and model arrangements some of which may be statutory.

¹² Social partner organisations include the voluntary and community sector, business, farming/rural development and trade union interests.

¹³ Professor J Loughlin, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

¹⁴ *Checks and Balances*, NILGA RPA Working Group Away Day, July 2005.

Constitution

In England and Wales each Council has its own constitution approved by the Council to a common model. The constitution sets out its leadership arrangements; powers and purpose; members' rights and duties; key officer responsibilities; citizens' rights of access and participation; Council consultative forums; joint arrangements and relationships with other bodies. The constitution outlines the Council's structure covering the division of functions between different parts of the Council such as full Council, Mayor, Executive leadership and overview, scrutiny and standards arrangements.

The constitution also sets out decision-making principles and criteria for Key Decisions, and provides for management by Forward Plan with advance notice of impending Key Decisions. More detailed procedures, codes and protocols are found in standing orders that also come under the ambit of the constitution. These regulate Council business and include protocols for managing relationships between members and officers, codes of ethics, conduct and standards and additional safeguards such as review of Executive decisions through a recall mechanism.

Based on the model constitution, Brent Council outlines the purpose of the constitution as being: to 'support the active involvement of citizens in the process of local authority decision-making; help councillors represent their constituents more effectively; enable decisions to be taken efficiently and effectively; create a powerful and effective means of holding decision makers to public account; ensure that no one will review or scrutinise a decision in which they were directly involved; ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions; and provide a means for improving the delivery of services to the community.'¹⁵

Democratic Participation in Northern Ireland

Modernising government in the particular circumstances of Northern Ireland raises particular challenges for the Review of Public Administration. The right of all those democratically elected to inclusion in and fair share of democratic power is accepted by Government subject to 'commitment to non-violence and exclusively peaceful and democratic means'.¹⁶ Good practice dictates that new local government arrangements are established on the basis that participation and contribution by all councillors is recognised and valued by others and taken into account in shaping the policy and direction of each Council.

How responsibilities in Councils are allocated and decisions made are critical factors in achieving inclusion and balance in representation that reflects the whole community in policy and service outcome. Equitable participation by parties in the governance of Councils is the goal. Recent discussions among some councillors and officers in NILGA led to the conclusion that '[t]he group agreed that the long term goal for local government should be to function as a 'corporate entity' in the best

¹⁵ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

¹⁶ Northern Ireland Act 1998, Schedule 4; *The Agreement*, 1998, p10.

interests of the common good’ with a ‘robust system to guarantee equitable representation of minority interests’ required in the short to medium term.¹⁷

3. STRUCTURES: CHECKS AND BALANCES

Local Government Models in Britain

The challenges of the modernisation agenda in Britain are not so different to those in Northern Ireland. The intention is to achieve more effective governance with transparent and accountable responsibility capable of greater responsiveness to citizens. Councils in England and Wales choose from three possible models of executive leadership:

- (i) A directly elected Mayor, elected for four years, and a Council Manager who is an officer. The Mayor provides political guidance, takes Executive decisions and develops broad policies which the Council Manager puts into practice. The result is a strong Mayor with considerable power also in the hands of an unelected official.
- (ii) A directly elected Mayor, elected for four years, who appoints councillors to a Cabinet. The Mayor has considerable individual power and there is less power shared within the Cabinet than in model (iii).
- (iii) A Council Leader and Cabinet with a ceremonial Mayor. The Leader and Mayor are appointed annually by the full Council. The Cabinet is selected by the Leader and elected annually; they must stand down at the end of the year but can be re-elected. The Leader has no personal mandate and the Cabinet operates through collective decision making.

In addition to the variations of executive model described here certain Councils in England can select an alternative type of system known as a streamlined committee system. It is only available to district Councils in two tier areas where the population is less than 85,000. This option does not involve the creation of an executive and the number of committees is expected to be kept to a minimum.

Direct Elections for Mayor

Direct election of the Mayor by the electorate is a growing tendency across Europe and is generally seen as strengthening the legitimacy of the Mayor, enabling him/her to overcome difficulties arising from a divided or fragmented Council. However, the electoral systems, usually first-past-the-post¹⁸ or two-round majoritarian,¹⁹ can lead to difficulties: a Mayor may be elected by a minority of the electorate thus weakening his/her position in the Council; or where the Mayor and the Council are elected at the same time but on different ballot papers the Mayor may be from a party different from the majority party in the Council thus leading to tension.

¹⁷ NILGA, op.cit.

¹⁸ Cyprus, Slovak Republic, Turkey, in Italian municipalities with less than 15 000 inhabitants and in Spanish municipalities which apply the “open Council” system.

¹⁹ Bulgaria, Germany, Romania, and in Italian municipalities with more than 15 000 inhabitants.

Directly electing the Mayor is sometimes seen as a way of strengthening the visibility and transparency of the local authority vis-à-vis the local electorate. The argument is that by ‘personalising’ the election, through focusing on individuals rather than the more anonymous parties, citizens’ interest will be heightened and participation will rise. While this may happen in some instances there is no evidence that it happens systematically. Directly elected Mayors may result in a large turnout at elections, but they do not necessarily guarantee this as was shown by the recent election for London Mayor in which the well-known Ken Livingstone was a candidate.

Similar points were made to Ireland’s Democracy Commission. It was argued that directly elected Mayors with Executive powers would strengthen elected members’ political and policy making role and involvement in local affairs; a directly elected Mayor would through his/her leadership increase interest in local government and provide a strong counter balance to the appointed Manager. The Republic of Ireland made and then repealed provision for direct election of Council Mayors²⁰ in response to fears that party members would lose to protest candidates or local characters.²¹

In several European countries, proportional representation is used in combination with other methods such as open lists, preferential voting, cumulative voting and cross-party voting making it difficult for one party to achieve an absolute majority in a Council. Coalitions are often necessary, including in the selection of a Mayor within the Council and in the Mayor’s survival. In Spain in 1991 no party received a majority in 45 of the 70 most important municipalities; in 17 the Mayor was not the leader of the strongest party. In some countries when an absolute majority is not obtained, the candidate at the head of the list with the most votes is selected Mayor.

Council/Manager System in Ireland

Some understanding of local government under a Mayor/Council Manager arrangement may be gleaned from the Republic of Ireland where this system has been operating for many years. The Council is the policy making arm, and the Council Manager the executive. The Council is responsible for decisions on important matters of policy and finance, e.g. adoption of annual budget, development and waste management plans. It has powers of oversight and direction of the affairs of the authority generally, and for directing the Manager in the performance of the executive role in certain circumstances. Executive functions are carried out by the Manager appointed through an appointments commission²² who is removable only by a resolution signed by one-third and then passed by 75% of the Council, subsequently approved by the Minister.²³

The Manager’s role is a powerful one and has been viewed as providing a check and balance to the power of councillors. Ireland’s Democracy Commission heard different

²⁰ The Local Government Act 2001 provided for this from 2004; the provision was repealed in the Local Government (No.2) Act 2003.

²¹ TASC Democracy Commission, *The Report of the Democracy Commission, Engaging Citizens: The Case for Democratic Renewal in Ireland*, ed. Clodagh Harris, 2005, p94.

²² The appointments commission interviews candidates and sends three names to the Council; prior to 2001 the Commission appointed. Terms and conditions are set nationally by the Department of the Environment and Local Government.

²³ Local Government Act 2001, Ireland, s146.

views on the relationship of Manager/councillor power and responsibility. Some felt that Managers were unaccountable and had too much power at the expense of politicians – virtually removing political responsibility from councillors - while others believed they took difficult decisions avoided by councillors. The Democracy Commission is of the view that the absence of a professional political executive means Councils appear to lack influence. It suggests directly elected Mayors would improve the situation.²⁴

Directly Elected Mayors in Britain

The Mayor/Manager system in Britain offers greater political influence and accountability than in Ireland given the election status of the Mayor who is directly accountable to the electorate. Directly elected, whether operating with a Council Manager (model (i)) or with a Cabinet that s/he appoints (model (ii)), the Mayor has a clear mandate for leadership and governance. In either model there is a distinct shift to executive management. The role of councillors changes to one with greater focus on holding the Mayor and Executive to account in a variety of challenging ways.

The directly elected Mayor system is a reasonably recent development and will take some time to bed down and present evidence of achievement and satisfaction. In the short term research indicates that '[t]he introduction of an elected Mayor is seen, across all parties and independents – including those sharing the Mayor's party affiliation – as having greatly reduced both the specific and general role and standing of the councillor.'²⁵ This may be due to the need for councillors to develop a 'new set of political skills' to meet the 'specific political dynamics of Mayoral government.'²⁶

Collective Executive in Britain and Ireland

The third option (model (iii)) also offers an executive arrangement, but one in which a Mayor wields less power than in the previous two. Here the executive function is led by a Council Leader, usually the leader of the largest party group. The Cabinet is selected by the Leader and elected by the Council annually. The Leader has no personal mandate and the Cabinet operates through collective decision making.

In this model the Mayor is largely symbolic and ceremonial, but with important functions within the Council. S/he cannot be a member of the Cabinet, presides at meetings of the Council where s/he has a casting vote and can appoint a Deputy Mayor to chair the Council with its consent in the Mayor's absence. Among his/her duties are upholding and promoting the purposes of the constitution, interpreting its application, ensuring the Council is a forum for debate and holding the Cabinet to account and promoting public involvement. Having a Mayor as 'Speaker of the Council Chamber' *and* Leader with Cabinet demarcates the functions of the Council from those of the executive and may increase accountability of the executive; but it is

²⁴ TASC Democracy Commission, op.cit., p94.

²⁵ Copus C, *Mayoral Accountability in English Local Government: The Developing role of the councillor on Mayoral Councils*, p10, International Research Colloquium on Accountable Governance, QUB Institute of Governance 20-22 October 2005.

²⁶ Copus, *ibid.*, p25.

possible to combine the posts so that the Mayor is the leader of the executive.²⁷ If the Mayor is to be leader of the Executive consideration could be given to appointing a council chair who is not a member of the Executive, and preferably not a member of the party leading the executive, in order to enhance executive accountability to the council.

The Republic of Ireland does not operate an executive system although chairs of Strategic Policy Committees along with the Mayor form a Corporate Policy Group. The Corporate Policy Group is not a conduit between the Council and Strategic Policy Committees; rather it handles policies affecting the whole Council. Full decision-making authority lies with the Council to which reports are made.²⁸

Structure of Local Government in an Executive System

The *Full Council* is responsible for agreeing the annual budget and policy framework, major policies, appointing and dismissing the Mayor and Executive, agreeing terms of reference for and appointments to Committees and making bylaws. Non-Executive councillors can raise issues of interest and concern at full Council.

An *Executive* role is performed by the Mayor and Executive together through collective decision-making. The Executive is responsible for policy development, ensuring fit between national/regional and local policies and priorities, making most decisions and implementing the budget and policy framework set by full Council. It has the lead role in delivering on the Council's statutory responsibilities. It develops an annual policy programme in which it identifies policies to be substantially revised during the year, new policies to be adopted, and other key activities. It manages its work by publishing a rolling Forward Plan, prepared monthly for a four month period, which gives advance notice of impending Key Decisions.

Accountability within the Council is provided through strong *Overview and Scrutiny* arrangements. 'The Overview and Scrutiny function should be seen as a continual process of dialogue between the Executive and the Overview and Scrutiny Committees.'²⁹ These Committees function before decisions are made, before they are implemented and after implementation. They have sub-committees and can appoint time limited review task forces to investigate issues. Their roles differ.

The *Overview Committee* assists the Executive in the development of policy options and review through research, analysis and consultation on policies. It takes account of national and regional priorities. It actively involves the community through forums and panels, develops partnership and collaborative working and steers matters through the Council's formal consultation mechanisms. It invites reports from and reviews and scrutinises the performance of public bodies in the Council area. It can initiate time limited investigations.

²⁷ The remainder of the paper is written as if the Mayor and Council Leader were combined in the post of Mayor and the Cabinet is referred to as the Executive.

²⁸ Department of the Environment, Heritage and Local Government, *Strategic Policy Committee Guidelines Update for the Establishment and Operation*, Ireland, GPSO, Dublin, 1999 (<http://www.environ.ie>).

²⁹ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

The *Scrutiny Committee* holds the Executive to account and reviews and scrutinises Council, Executive and committee decisions and performance. It has the power to question Executive and committee members and officers; consider matters from the Council's formal consultations, forums, panels and other sources; gather evidence from others; and make recommendations. It can 'call in' an Executive decision for scrutiny, i.e. ask the Executive to reconsider a decision, but it cannot block it indefinitely or impose its own view. The power of 'call-in', enshrined in a Council's Standing Orders, is exercised if (i) the Scrutiny Committee decides; or (ii) at least 40% Scrutiny Committee members, including voting co-optee, agree; or (iii) 40% of non-Executive members of the Council request.³⁰ A decision that is called-in cannot be implemented until examined by Scrutiny (urgency procedures may be applied), and can be further referred to Council. The Scrutiny Committee may operate with a management board of its chair, vice-chair and sub-committee chairs.

Membership of Overview and Scrutiny

There is a clear division of powers and responsibilities in the Executive system in England and Wales which is evident in the composition of Overview and Scrutiny Committees. Their membership each comprises around 15 councillors who are not members of the Executive and 4 external co-opted members;³¹ there may also be non-voting co-optees. Membership of committees is reviewed each year when a degree of continuity to maintain experience and consistency is sought along with some change. It is possible to serve for several consecutive years but during the Council term all non-Executive members should be able to be a member of one of the committees.

The Overview and Scrutiny Committees are politically balanced. Their chairs and vice-chairs are elected by simple majority by and from councillors on the committee, or by decision of full Council if the committees cannot agree. The chair of the Scrutiny Committee must be a councillor from the opposition party, and chairs and vice-chairs of sub-committees are appointed from different political groups. The party whip does not apply to the Scrutiny Committee.

The Overview and Scrutiny Committees are expected to organise, with some cross party support, a balanced programme over a twelve month period. Criteria on which the programme is determined includes (i) direct impact (ii) legal requirement or statutory need (iii) high priority (iv) evidence of actual or perceived failure (v) public concern or media interest (vi) Executive or Council request.³² The committees must keep Council regularly informed and produce an annual report.

Streamlined Committee System

A qualifying council³³ can choose to adopt a streamlined committee system instead of an executive structure. Within parameters set by government the Council chooses how it is to be structured and function with a committee systems incorporating adequate provision for overview and scrutiny. Arrangements must be specified in the

³⁰ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

³¹ Local Government Act 2000, s71.

³² Brent Council, see website (<http://www.brent.gov.uk/democracy>).

³³ District Councils in two tier areas with a population below 85,000; see *New Council Constitutions: Guidance to English Authorities*, Office of the Deputy Prime Minister, <http://www.odpm.gov.uk>

constitution; this includes the powers and matters reserved to the full council. The full council sets the framework and approves the budget on the basis of proposals from committees. It is recommended there be no more than five policy committees, excluding regulatory committees, with delegated functions to implement the policy framework and put proposals on future plans and budgets to the council for approval.³⁴ Sub-committees are expected to be limited to ‘decision-making in relation to time-limited projects.’³⁵ Government retains the right to impose a statutory limit on the number of policy committees.

Overview and scrutiny is regarded as being as important to the streamlined committee system as to the Executive system. Policy committees are expected to consult relevant overview and scrutiny committees when developing draft policies. Each overview and scrutiny committee combines ‘developing and reviewing policy and holding decision-makers to account.’³⁶ It is advised that there should be more than one overview and scrutiny committee with remits and terms of reference in the constitution ensuring clarity on the areas of oversight of each. They should meet frequently, be cross-cutting and ensure effective input, protected by protocols, of the concerns of all members of the committees.

It is strongly recommended by government, which would consider regulating if necessary, that ‘at least a core group of 5 to 10 councillors have overview and scrutiny as their principle responsibility’ with these members not serving on policy committees except for those with quasi-judicial functions.³⁷ Government is of the view that applying a party whip/line is not compatible with the functions of overview and scrutiny, and that it is appropriate to have overview and scrutiny committees chaired by someone other than a member of the majority party.

Government has been keen to stress that the committee system is not ‘business as usual’ but rather that careful consideration must be given to, for example, the changed role of the council and the impact this has on the structure, style and frequency of council meetings. Of particular importance is how the council discusses and decides the policy framework and budget and accommodates overview and scrutiny reports and debate and public participation.

A power might be retained by the Minister to enable a council to choose to change to an executive system should it consider that economy, efficiency, effectiveness, transparency and accountability are not being met under a committee system; or to enable the Minister to decree that it should change if a council is not be able to deliver continuous improvement to meet requirements under increased powers as is the case elsewhere.

Non-councillors on Council Committees

The modernising government agenda in Britain is notable for making Councils more transparently and regularly accountable to citizens, actively engaging users and

³⁴ This does not include the Standards Committee outlined later.

³⁵ See *New Council Constitutions: Guidance to English Authorities*, Office of the Deputy Prime Minister, <http://www.odpm.gov.uk>

³⁶ See *New Council Constitutions*, *ibid.*

³⁷ See *New Council Constitutions*, *ibid.*

interest groups in policy development and introducing ‘independent’ non-party people onto Council committees. Voting co-optees are around one third of the membership of Overview and Scrutiny while the Standards Committee (outlined later) has a mandatory 25% of independent members. Councils are expected to bring co-optees onto sub-committees and task forces to facilitate engagement with excluded groups, get diverse and fresh perspectives and introduce expertise. Task forces involve and hear from users, providers and expert witnesses. The principle of including non-councillors applies to both the Executive and committee systems of local government.

Although a committee system rather than an executive and scrutiny system operates in the Republic of Ireland, there too the trend is towards engaging non-elected people in Council business. Strategic Policy Committees operate across a range of policy areas to assist Councils in the formulation, development and review of policy. Established to enable councillors to fulfil their role as policy makers better and increase opportunities for partnership, they prepare the groundwork for policies that are then decided upon by Councils. Chaired by a councillor they must draw a minimum of one third of their membership from relevant sectoral interests.³⁸

4. NORTHERN IRELAND STRUCTURES: CHECKS AND BALANCES

Structures in Northern Ireland

Lessons from across Europe, whether through elected Mayors or Cabinets, indicate preference for strong political executives. This must be situated in the Northern Ireland context where the way in which political power, including council posts, is distributed is an important consideration for political parties. The principles of the Belfast/Good Friday Agreement and government policies on equality and a shared future suggest a system in which members of parties are provided maximum opportunity to share responsibility across a range of influential positions. Sharing power is not only the bedrock of the Agreement, it has become common practice to different extents in the majority of Councils and is a central issue for re-organisation of local government.

An Executive with collective decision-making responsibilities, balanced by non-Executive councillors who are proactive in policy development and accountability through Overview and Scrutiny, provides the best framework for shared leadership responsibility *and* strong checks and balances. Balancing Executive decision-making with effective Overview and Scrutiny functioning is essential. As indicated previously an Overview Committee (p10) would engage with the Executive programme, regularly exploring and helping to develop policy to the highest standard. The role of a Scrutiny Committee (p11), chaired by a councillor from the other side of the community to the leading party in the Executive, questions, investigates and reviews Executive and others’ actions.

If a streamlined committee system (p11-12) rather than an Executive arrangement is adopted it is advisable to constrain the number of policy committees to a manageable number; five is recommended. Policy review and scrutiny would be provided through

³⁸ Department of the Environment, Heritage and Local Government, op.cit.

a number of combined overview and scrutiny committees whose core membership would come from people who do not serve on policy committees. The chairs of the overview and scrutiny committees should ideally be from a different party to that of the person chairing the corresponding policy committee, with attention given to cross-community balance and involving smaller parties. If the streamlined committee system is chosen it is advisable that chairs of policy committees form an over-arching co-ordinating arrangement similar to the Corporate Policy Group in the Republic; though less effective scrutiny is provided than in an Executive model. The first institutional model of 'corporate governance' adopted by the Welsh National Assembly functioned through co-ordinating committee chairs; it has since adopted a separate Executive of Ministers.

It is advocated that consideration be given to co-opting independent non-Council members with expertise onto Overview, Scrutiny and other committees with councillors. This would apply whether the model chosen is an Executive with Overview and Scrutiny Committees as in Britain; or the system in England of streamlined committees or Strategic Policy Committees whose chairs form an overarching Corporate Committee as in Ireland.

Executive Accountability

An Executive Member is *individually accountable* for his/her portfolio to the Mayor and colleagues. Executive colleagues are *collectively accountable* to each other in making decisions. The Executive is *corporately accountable* to the Council for its policies and performance.³⁹ Executive members could be required take a pledge that includes promises similar to those in the Pledge of Office and code of conduct for the Northern Ireland Assembly,⁴⁰ and goes further to pledge commitment to collective responsibility in decision-making.

It is advisable that provision be made for removal from Executive office by a cross-community Council vote of no confidence; or dismissal by the Mayor or a majority of the Executive and ratification by the Council. Grounds for removal in South Africa include failing to 'administer his or her portfolio in accordance with Executive policy' or failing to administer in terms of good governance or undermining the spirit of unity and corporate responsibility. Consideration should be given to spelling out different levels of Executive accountability in the constitution as well as sanctions for non-compliance with the terms of office.

Allocation of Council Positions: Posts, Rotation, Timeframe

Stability, innovation, growth and effective performance rely on a mix of continuity and fresh perspectives. How can this be best achieved over the four years of a Council's life within a power-sharing perspective? Should there be annual or bi-annual elections in Council, or should party share of posts be allocated for the four year term at the beginning? What are the options for electing/selecting people/parties to posts fairly between elections and over the life cycle of the Council?

³⁹ The model in the South African constitution.

⁴⁰ Northern Ireland Act 1998, Schedule 4.

Before taking steps to share posts among parties, whether on an annual, bi-annual or four year cycle, it must be established which posts are to be specified in power-sharing arrangements. Are only the Mayor and Deputy Mayor to be considered; or these plus chairs and vice-chairs; or also Executive posts; and other committee positions? It will be necessary to rank and decide on equivalence of posts in order to provide fair rotation of senior positions. Taking the England and Wales model as an example, one might accept Mayor, (Council Leader), chair of Scrutiny and chair of Overview as being on a par with each other; or Executive posts as equivalent to vice-chairs of key committees. There is merit in bringing all Council positions into the frame, including membership of standing committees and Council nominees to outside bodies.

There is value in deciding party share of posts on a rotational basis for the full four year period at the beginning of every new Council cycle. An electoral mechanism could be used for this purpose to ensure that relative party strength is reflected in the decision-making processes of the Council. Each party's share of positions would be known for the life of the Council. Within its annual set entitlement each party's combination of posts could differ from year to year. Actual appointees to posts could be elected or confirmed by Council on an annual basis by requiring parties to nominate afresh each year to fill their quota of posts. This would enable parties to succession plan for particular positions, perhaps encouraging their councillors to prepare themselves for office by shadowing a current post-holder from another party. This approach would increase effectiveness and help overcome concern about retaining expertise in annual appointments to executive government. (See later re implications for improving women's access).

The distribution of portfolios in an Executive deserves specific attention. In Britain the Mayor (Leader) determines membership of the Executive and portfolios. In the Northern Ireland Assembly under d'Hondt the choice is made automatically according to party size. In a Quota system⁴¹ eligible parties receive a quota of Executive posts and it can be left to negotiation between party leaders in the Council to determine which party gets which portfolios in each year. An alternative way of allocating portfolios under a Quota system is by ranking Executive posts in advance with parties choosing portfolios in turn for each of four years according to the strength of their quota. Ranking would be done through inter-party discussion and portfolios can be rotated between parties on an annual basis.

Allocation of Council Positions: Methods

One of the contentious aspects of local government power-sharing is the method by which allocation of posts to parties is to be done. Three possibilities are:

- (i) A prescriptive approach can be taken, legislating for annual rotation of posts and power-sharing across local government and stipulating a specific election/appointment mechanism to apply uniformly to all Councils.
- (ii) A second approach is to require annual rotation of posts and power-sharing and prescribe that PR is used, leaving it to each Council to decide which

⁴¹ The Quota system here means proportional allocation of posts rather than an affirmative action tool.

method of PR it will use with the requirement that its decision must be signed off by the Minister.

- (iii) A third approach is to make annual rotation and proportional power-sharing a statutory requirement across local government for all Council structures and posts; each Council would choose its own method of achieving it subject to Ministerial approval of the chosen method and result.

The second and third approaches can be characterised as a ‘tight-loose’ arrangement⁴² where the framework is set in legislation and choice on how it is implemented is left with Councils/parties; implementation choices range from negotiation to election. For example, under the third approach parties could choose to elect the Mayor in annual rotation, with each year’s Mayor appointing the Executive proportionately each year in consultation with party leaders in the Council; or Executive posts and chairs could be allocated in turn according to party strength to every party that secures a minimum number of councillors; or some other variation. Sanctions for non-compliance would have to apply; for example, sending in a Commissioner to fulfil statutory responsibilities if decisions are not arrived at within a specified period; perhaps eventually holding a by-election for the whole Council if deadlock continues.⁴³

If choice was entirely open it is possible that parties might chose to divide posts so that some party/parties formed the Executive while others led Overview and Scrutiny functions. It is notable that the purpose behind local government modernisation across Britain and Ireland is similar to goals pursued in Northern Ireland – to enable parties, despite political/policy differences, to work more successfully together to deliver for communities. While there is Executive/non-Executive division of power and responsibility, it is not necessary to think in terms of an Executive coming exclusively from one party and Scrutiny coming from another. In Britain Overview and Scrutiny members come proportionately from across all parties.

The intent behind modernising government is to enhance democracy and services for citizens, harnessing available talent and skill for the task. Smaller as well as larger parties and independents should have a role in Council committees and may be particularly valuable in overview and scrutiny. It is important that no councillor feels disenfranchised and councillors are enabled to share power and work collaboratively. This may lead to consideration of a larger Executive than is the norm in Britain. On the other hand, a tighter Executive might be more effective and there are many opportunities for councillors to take part in other committees and task forces.

Allocation of Council Positions: Election Mechanisms

Whether legislation prescribes a uniform system for power-sharing or sets a compulsory goal within which Councils decide on their preferred means, it is likely that one consideration will be an appropriate election method. While there is a view that parties should be encouraged to negotiate, bargain and reach accommodation,

⁴² D Mitchell, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

⁴³ It has been suggested that a financial penalty could accrue for this to pay for a new election e.g. a surcharge on councillors through enhanced powers given to the Local Government Auditor.

others believe that Councils are best served by having an established mechanism that avoids or reduces argument. Possible proportional electoral mechanisms might employ a Quota,⁴⁴ such as STV (Droop Quota) or the Greatest Remainder; or a series of divisors, such as d'Hondt or St Lagüe.

D'Hondt is widely, but falsely, believed to be completely proportional; in fact, it is only partially proportional and is fairer in larger constituencies, benefits larger parties and the smaller the number of positions to be filled the less fair it becomes.⁴⁵ Support for d'Hondt comes from its ability to fill place after place giving automatic right to positions in an order without having to negotiate and parties cannot be blocked from access. A Quota mechanism secures a block of positions to each party, leaving the party to appoint councillors to posts from within their quota. The Greatest Remainder method tends to help smaller parties while STV helps the two largest parties. Whether a Quota method or a Divisor method is chosen, the outcome will be more proportionate and successful when applied to as many posts as possible across the full four year cycle of the Council. The Quota system has the additional benefit of relying on co-operation because parties must negotiate on which posts are allocated to their quota for each year, while d'Hondt does not.⁴⁶

Systems can be mixed and matched, using d'Hondt to fill specific posts from a pool of key posts such as Mayor, Executive and committee chairs and the Quota system for committee membership and appointments to outside bodies. Mixing d'Hondt and the Quota in this way has been applied in a limited way in Northern Ireland Councils.⁴⁷ The following systems are recommended in order of merit. Each is best applied for the full four year period of the Council.

- (i) the Quota Greatest Remainder method for all key posts, committee membership and appointments to outside bodies in one pool;
- (ii) the mixed d'Hondt and Quota Greatest Remainder method applied in the manner described above;
- (iii) the d'Hondt method for all key posts, committee membership and appointments to outside bodies in one pool.

Women and Other Under-represented Groups

Northern Ireland political culture is predominantly white and male. Women and minorities can feel disconnected from politics and their representatives, as can young people. Reduction in the number of councillors may exacerbate the problem of insufficient women elected at Council level resulting in few or no women in certain

⁴⁴ See footnote 36.

⁴⁵ P O'Doherty, *The d'Hondt and Hare/Niemeyer Methods and the Northern Ireland Election of 30 May 1996*, *Political Studies* 46(2), 1998, pp 328-335 argues that d'Hondt is not the best system for NI as it is better in large constituencies. Dr Sydney Elliot, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005 is of a similar view in relation to d'Hondt. See also S Elliot, *Irish Political Studies* 12 (1997) pp 111-122 which indicates that the method used in 1996 election to the Northern Ireland Political Forum and Talks of a mixture of quota (Droop) and the highest average d'Hondt led to the SDLP receiving its entitlement in seats with Sinn Fein, the UUP and the DUP being over-represented.

⁴⁶ Dr S Elliot, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

⁴⁷ D Mitchell, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

‘civic councils’ (if they are introduced) or other forums. Longstanding commitment to checks and balances in representation on political/religious grounds has led many to question why steps cannot similarly be taken to improve gender and other balance. Constitutions of some bodies outside the political field require this among their committee and officerships. There is a view that specific steps by government and political parties to tackle under-representation are overdue and the Review of Public Administration provides an opportunity to redress the deficiency.

Even when elected there are usually less women than men in key Council posts. Their chances may be boosted by women only training but this is not the main factor in increasing opportunity; party leadership has a major role to play in taking corrective action across local government. For example, with a Quota system parties can ensure that women councillors are fairly represented among their quota of senior posts and appointments to outside bodies. Succession planning, preparation for office later in the Council life cycle and shadowing senior post-holders, as is possible with a Quota system conducted for a four year cycle, all provide opportunities for new and under-represented groups to learn skills while simultaneously serving on committees.

Councils, and other nominating bodies, could be required to comply with a rule to appoint 40% of either gender to all public bodies. Similarly, if a system of co-optees to Council committees is introduced these committees could be mandated to appoint women co-optees with the necessary skills if they lack a fair proportion of women Councillors.⁴⁸

5. DECISION-MAKING: CHECKS AND BALANCES

Principles for Decision-Making

A Council Constitution is a legal requirement in Britain. It is the foundation for council operations and sets out the principles which guide decision making:

- (i) proportionality (i.e. the action must be proportionate to the desired outcome);
- (ii) due consultation and the taking of professional advice;
- (iii) respect for human rights;
- (iv) a presumption in favour of openness;
- (v) clarity of aims and desired outcomes; and
- (vi) explanation of the reasons for a decision and the options considered.⁴⁹

Key Decisions

By law Key Decisions in England are those which have significant expenditure or savings or significant effect on communities over two or more wards.⁵⁰ Some Councils have added to this by designating significant effect on communities in a

⁴⁸ For more detailed information and suggestions on increasing diversity in Councils and public bodies with particular reference to women see Hinds B, Gray AM, *Women and the Review of Public Administration*, RPA Briefing Paper, 2005.

⁴⁹ Brent Council constitution, see website (<http://www.brent.gov.uk/democracy>).

⁵⁰ Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, Reg 8.

single ward, in effect significant impact on communities living or working anywhere in the council area, and all Executive decisions as Key Decisions.⁵¹ The Executive must make decisions in line with the Council's overall policies and budget otherwise it must refer the matter to the full Council.

What qualifies as a Key Decision in Northern Ireland needs to be decided according to similar criteria. Key Decisions might include the Council's budget and policy framework, all Executive decisions, decisions with significant impact on communities, major policies, major financial proposals, change to the constitution, standing orders and their codes and protocols, community plan, good relations plan, the Council's equality scheme, etc.

Decision making in practice in England and Wales is based on a rolling Forward Plan prepared and published monthly four months in advance. The approach to ensuring Key Decisions are planned and publicised in advance in a Forward Plan offers the possibility of intervention by non-Executive councillors and citizens and could usefully be adopted in Northern Ireland. However, it will be less effective insofar as the public is concerned unless Councils take steps to improve e-governance.⁵²

The Forward Plan contains all matters subject to a Key Decision, listing the issues, decision makers, decision dates, consultees, steps for representation, and relevant documents. All Key Decisions must be included in the Forward Plan. Papers for Key Decisions must be available to the chair of Scrutiny Committee, and to the public at least three days in advance; and a meeting at which a Key Decision is to be made must be held in public. On urgent Key Decisions, and on decisions that have been left out of the Forward Plan, the Executive can secure the agreement of the chairs of the Overview and Scrutiny Committees to proceed and report the matter subsequently to Council; otherwise the matter must comply with the proper process.

Executive Decision-Making

Each Executive Member is responsible for ensuring that particular areas of Council activity are delivered effectively and there is a balance to be struck between collective and individual decision-making. In Britain where the balance is struck has varied between the parties. The Conservatives veer more towards individual and Labour and the Liberal Democrats towards collective, but this also varies between Councils. Practice in some Councils is that the Executive will only make decisions collectively. In some cases the council indicates that 'for the time being individual members will not make decisions alone but they may do so in the future.'⁵³

Democratic participation is as much about process as structure. Decision-making should be equitable, build trust and relationships. Councillors are expected to provide leadership for a shared future and demonstration of this through the Executive's working relationships and decision-making processes is expected. In South Africa the Executive is expected to function in a manner that gives consideration to the consensus-seeking spirit underlying the concept of government of national unity as well as the need for effective government. Recent discussions among some

⁵¹ Eg Brent Council see website (<http://www.brent.gov.uk/democracy>).

⁵² See Morison J, *E-government*, RPA Briefing Paper, 2002.

⁵³ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

councillors and officers in NILGA led to the group agreeing that ‘the long term goal for local government should be to function as a ‘corporate entity’ in the best interests of the common good’ with a ‘robust system to guarantee equitable representation of minority interests’ required in the short to medium term.⁵⁴ To fulfil the spirit of what is intended means applying this to ongoing work and decisions of the Council and Executive as much as to how parties are represented on committees.

How decisions are made is also an indicator of whether parties are moving from position-sharing to power-sharing. As indicated by Sullivan and Stewart ‘[v]oluntary collaboration relies in large respect on trust, however, and where trust does not exist more formal methods to ensure co-ordination need to be employed.’⁵⁵ Designating all Executive decisions as Key Decision and requiring them to be made collectively would foster power-sharing. Due consideration should be given to placing a statutory duty on Council Executives to plan and conduct business collaboratively.

Those intending to serve in the Executive could be expected to sign a pledge of commitment to collective responsibility and decision-making. If some element of individual decision-making is agreed it is advisable that criteria are set for portfolio decisions and Executive decisions, e.g. Executive decisions on the budget and, within set parameters, individual decisions on elements relating to a portfolio. A protocol for the management of an individual’s relations with colleagues and the Executive collectively would be useful.

An Executive, Executive post-holder or committee chair could be required to make verbal or written statements to the effect that (i) a policy, regulation or action is within the competence of the Executive or the authority of the post-holder in a form similar to that expected of Northern Ireland Executive Ministers introducing legislation;⁵⁶ and (ii) the decision was reached by consensus or not and, if not, that the Council’s duty to the whole community is best served by the decision.

Decision-Making Methods: Reaching Consensus

Key Decisions are most effective when made with full agreement, by consensus/ unanimity if possible and by weighted majority if not. Legislation could stipulate that that Key Decisions must achieve cross community consensus. Executive decision-making should be managed in a manner designed to secure the greatest possible consensus within the Executive and across the Council. The cross-community voting mechanisms for the Assembly are: a majority of members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting;⁵⁷ the support of 60% of the member voting, 40% of the designated nationalists voting and

⁵⁴ NILGA, op.cit.

⁵⁵ Sullivan H, Stewart M, ‘*Joining-up*’ Governance – the Co-ordination and Integration of Arrangements in Northern Ireland, RPA Briefing Paper, 2002, p8.

⁵⁶ Northern Ireland Act 1998, s9.

⁵⁷ Northern Ireland Act 1998, s4(5); ‘designated nationalist’ means a member designated as a Nationalist in accordance with standing orders of the Assembly and ‘designated Unionist’ shall be construed accordingly.’

40% of the designated Unionists voting.⁵⁸ The mechanism used in the Multi-Party Talks added the further dimension of the support of a majority of parties.⁵⁹

The designation system used in the Northern Ireland Assembly, under which individuals have to sign up for one or other major side of the community, does not adequately reflect the increasing diversity of modern society. It also cuts across a councillor's primary duty to serve the whole community; this is a well established principle that is explicitly stated in protocols and codes that must be signed by councillors in other places.⁶⁰ An alternative way to arrive at cross community consensus is by setting a high threshold weighted majority. This system is common in some forums; for example, Member State voting in the European Union and in the United States where two-thirds of the Senate and three-quarters of States are required for some decisions.⁶¹ The requirement of cross-community consensus and the adoption of a model that demonstrates integrated cross community voting, such as high threshold weighted majority, for important decisions would send a strong signal that the Council and councillors are serving the whole community.

To give effect to this, important Council and all Executive decisions could be made on the basis of a set percentage greater than that represented by the majority community on a Council or Executive, say with 75/80% support. Securing cross-community agreement could be further protected by a provision, similar to the Northern Ireland Assembly's petition of concern,⁶² giving a right to each party or two parties jointly triggered by, say, 75% of any party to:

- (i) 'call-in' an Executive decision for reconsideration (see later);
- (ii) require the decision to be put to the full Council instead of the Executive and to be taken by cross-community consensus; or
- (iii) require that a decision of the Council be taken by cross-community consensus instead of a lesser majority vote.

Other decisions could be made with a two-thirds or simple majority. However, it is advocated that Councils examine best practice elsewhere and experiment with different forms of decision making. Some, such as multi-choice ballots⁶³ and preferenda,⁶⁴ allow people to move away from stark oppositional choices.

⁵⁸ Northern Ireland Act 1998, s4(5)(b).

⁵⁹ The Rules of Procedure Multi-Party Talks 1996-98 provided for a majority of members voting, a majority each of designated Nationalists and designated Unionists voting and a majority of parties

⁶⁰ Brent Council 'The overriding duty of the councillors is to the whole community' with a 'special duty to their constituents, including those who did not vote for them', (<http://www.brent.gov.uk/democracy>).

⁶¹ Professor E Meehan, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

⁶² Northern Ireland Act 1998, s42.

⁶³ Ben Barber suggests multi-choice ballot: Yes in principle – strongly for the proposal; Yes in principle – but not a first priority; No in principle – strongly against the proposal; No with respect to this formulation – but not against the proposal in principle, suggest reformulation and resubmission; No for the time being – although not necessarily opposed in principle, suggest postponement.

⁶⁴ The version recommended by the de Borda Institute uses a points system of voting. Highest points are given to the most preferred option, down to 1 point. Points are added up and the highest number of points wins. This means that a divisive proposal attracting 5s and 1s gets an average of, say, 3, while one that gets a few 5s but a lot of 4s would succeed.

Functioning of Overview and Scrutiny in Northern Ireland

Overview and scrutiny are important tools in checks and balances. It allows those not in an Executive capacity to play a significant role by holding the Executive to account, assessing performance, examining effectiveness and quality assuring delivery of services. It is advisable to put overview and scrutiny on a statutory footing in new local government legislation. I&DeA⁶⁵ elaborated on the principles underpinning effective scrutiny developed by the Centre for Public Scrutiny. Scrutiny should:

- (i) provide a ‘critical friend’ challenge to Executive – political parties should neither oppose for the sake of it or abdicate responsibility for constructive critique because of party loyalty;
- (ii) reflect concerns of people and communities through public involvement in scrutiny processes;
- (iii) be independent from the Executive with non-Executive councillors acting as champions for scrutiny;
- (iv) impact on public services through councillors understanding how to manage and time intervention to maximum effect.⁶⁶

It is important that interaction between policy-making and policy scrutiny is based on examination and exploration of differences in policy not sectarian representation. Legislation could set the parameters for this with provision for enforceable codes of ethics and conduct; and laying down that application of various assessment tools, such as equality impact assessment, is required.

Scrutiny

A Scrutiny Committee (see also p11) in effect regularly scrutinizes the Executive Forward Plan and decisions. It has the power to ‘call-in’ Executive decisions and develop a work programme that regularly and effectively reviews Executive policy, decisions and performance. ‘Call-in’ is used if it is thought an Executive line of action contravenes the policy framework or budget agreed by the Council, would have an adverse impact on a community or for some other valid reason. The power can be exercised in relation to decisions which have been alerted in the Forward Plan but not yet taken; or decisions which have been taken but not yet implemented. The Executive must prepare a report on its position in response to the Scrutiny Committee and can be questioned by the Committee.

The Scrutiny Committee can stall implementation of decisions while they are being examined, refer them back to Executive for further consideration, refer them to the full Council if necessary but cannot block Executive decisions indefinitely. The practice has been to limit referral back to one time only on each issue; but the Executive is expected to revisit and reconsider its decision in light of points made to it. Scrutiny powers extend beyond the Executive to the decisions and performance of other committees. Scrutiny is triggered by councillors who have a concern about an

⁶⁵ I&DeA is the Improvement and Development Agency which was created by and for local government in England and Wales; it is independent of government and regulation agencies.

⁶⁶ *A Councillor’s Guide 2005/06*, I&DeA, p46-47.

Executive or other decision. If a decision is ‘called-in’ it cannot be implemented until examined by the Scrutiny Committee.

The ‘call-in’ practice is similar to the Northern Ireland Assembly’s petition of concern. ‘Call-in’ can be triggered in a number of ways and a variety of routes could be left open. For example, it could be by the chair of Scrutiny; by two/three chairs of sub-committees; by decision of the Scrutiny Committee or another committee; by one-third of the Scrutiny or Overview Committees; by a set number or percentage of councillors; by a set percentage of one party; by written request of 2/3/4 councillors from different parties; by a single councillor; by petition signed by a set number of the Councils’ citizens; by citizen petition validated by the Scrutiny Committee or its chair; etc.

The role of chair of the Scrutiny Committee is important when it comes to urgent Executive decisions. This is one reason why it is good practice to have the chair of the Scrutiny Committee held by a councillor from the other side of the community to the Mayor. The Mayor and Scrutiny chair are expected to discuss and reach agreement on progressing urgent decisions thus placing collaboration at a premium.

Transparent reporting, including financial reporting, is essential to accountability. Success is best judged by citizens and users and, as a previous RPA briefing paper argues, accountability needs to address output and outcomes as well as inputs.⁶⁷ Giving the Scrutiny Committee power to hold public hearings is one way of supplementing annual reports, accounts and e-government.

Overview: Standards and Proofing of Policy Decision-Making

The Overview Committee (see also p10) performs a different role to Scrutiny in the Council, though it too has a part to play in checks and balances. The committee’s focus is on assisting the Executive to meet its responsibilities in policy-making. It promotes synergy between national and regional policy priorities and Council policy. It pays particular attention to the work of partnership bodies in the Community Plan, such as education and health, inviting them to appear at the committee to discuss matters, give information or answer questions. It ensures that expertise of social partners and others is incorporated through engaging them in deliberations. The Overview Committee carries the important responsibility of bringing citizens and users into dialogue on Council and Executive policy through area and user consultative forums, Section 75 consultations and other formal and informal engagement. The committee can also look at trends, common strands or critical issues arising in councillors’ case work that might help inform future Council policy and action.

It is essential that the Executive, Overview Committee and all councillors are familiar with and ensure rigorous application of various government policies and assessment mechanisms designed to arrive at decisions that are fair, equitable and sustainable. These include equality impact assessment under Section 75; gender-proofing under OFMDFM’s gender strategy; environmental impact assessment; targeting social need; rural proofing; and requirements under human rights legislation. Council policy and

⁶⁷ Watt P, Richards S, Skelcher C, op.cit. p20.

action could be required to conform with a set of ‘horizontal principles’ such those that apply in the case of EU funding.⁶⁸ Alternatively some or all of the ten characteristics identified for public administration could be used along with others to construct a new set of ‘horizontal principles’ for local government.⁶⁹

Deadlock Mechanism

It is advisable to establish mechanisms to deal with deadlock. The Council’s Monitoring Officer (see later) has a critical role in identifying compliance shortfalls in meeting the Council’s statutory responsibilities, codes and protocols and issuing warnings. Mediation could be introduced through a Local Government Ombudsman (see later) or a previously agreed Independent Panel of Mediators established for this purpose. If mediation proved unsuccessful the matter could be referred by the Ombudsman to an independent arbitration mechanism. As a final resort sanctions for non-compliance could apply; for example, Ministerial intervention to dismiss the Executive or the Council and appoint a Commissioner in their place to fulfil statutory responsibilities until the next election.

Transparent Corporate Civic Leadership

The practice in England and Wales is to conduct most of the Council’s business in public to increase transparency and accountability to the electorate and to maintain citizens’ interest in and connection with the political process. Executive meetings are held in public, as are meetings of Overview and Scrutiny Committees. Northern Ireland’s circumstances may be different, especially where local government operates under prescribed responsibility sharing in an Executive. Nevertheless, thought should be given to which parts of the process should be public, private or semi-private with a view to making discussion and decision-making throughout the Council as transparent as possible. One consideration is whether it should be mandatory for power-sharing Executives to work wholly or mainly in public. Overview, Scrutiny and other committees are less likely to need private discussion and this could be given expression in legislation.

Some may argue for private Executive working to provide space to resolve disagreements on governing out of the public eye; if so it is advisable to isolate and minimise those parts of their business that are to be conducted in private. Abiding by collective decisions of a body, even when in disagreement, is the norm in corporate organisations. It would be good practice to require all Executive members to represent the eventual corporate decision in public forums, including in the Council, even if some disagree with the decision. Whether meeting in public or private an

⁶⁸ Horizontal Principles, *Northern Ireland Community Support Framework 2000-2006*, p31; *Northern Ireland Programme for Building Sustainable Prosperity EU Structural Funds 2000-2006*, p51; *EU Programme for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland 2000 – 2004*, p63 outline the horizontal principles as accountability; balanced intervention/equal opportunities; New TSN/anti-poverty; economic and social sustainability; partnership; locally-based decision making; publicity/ transparency; co-ordination; environmental sustainability.

⁶⁹ *RPA Further Consultation in Northern Ireland*, p10 outline these as ‘democratic accountability; community responsiveness and partnership working; cross-community concerns; equality and human rights (including equity of access); subsidiarity; quality of service; co-ordination and integration of services; scope of the public sector; efficiency and effectiveness; innovation and business organisation’ and ‘local identity’.

Executive member should be able to record dissent on a decision at a meeting, but nevertheless be required to represent the corporate decision. S/he should also be entitled to resign if unable to abide by a decision.

A level of private co-operation exists between parties in most Councils but there is less evidence of public expression of this. Local government's significant role in the Government's shared future agenda suggests greater public demonstration of shared civic leadership is required. Government has said that public authorities have a special responsibility in this matter and they are expected to 'set the pace on movement towards a shared future and lead by example.'⁷⁰ This too suggests more movement away from working behind closed doors and greater corporate responsibility is called for.

Application

The principles and operating practices covered here, and throughout the paper, apply to whatever systems and arrangements are reached by government or adopted by councils and to different levels within the council structure. This includes an Executive arrangement or a streamlined committee system and to any committees, sub-committees, task forces, 'civic councils', Area Committees and similar forums.

6. STANDARDS, CONDUCT, INSPECTION

Good Governance Standards

The Good Governance Standard for Public Services⁷¹ was developed by the Independent Commission for Good Governance in Public Services chaired by Sir Alan Langlands. It builds on the Nolan Principles for conduct in public life⁷² and aims to set a universal standard of good governance that is relevant to local Councils, public bodies and all organisations engaged in the governance of public services and use of public monies. It comprises six core principles:

- (i) Focus on purpose and outcomes for citizens and users.
- (ii) Perform effectively in clearly defined functions and roles.
- (iii) Demonstrate and promote the values of good governance through behaviour.
- (iv) Take informed, transparent decisions and manage risk.
- (v) Develop the capacity and capability of the governing body to be effective.
- (vi) Engage stakeholders and make accountability real.

The Independent Commission advocates that these principles are incorporated into and elaborated in constitutions, codes and procedures to assist in attaining the highest standards of governance; with regular public reports on the extent to which bodies live up to the Standard, understanding that they should 'demonstrate the spirit and ethos of

⁷⁰ *A Shared Future: Policy and Strategic framework for Good Relations in Northern Ireland*, OFMDFM, March 2005, p49.

⁷¹ The Independent Commission for Good Governance in Public Services, *The Good Governance Standard for Public Services*, CIPFA, OPM, 2004

⁷² The Nolan Principles are based on selflessness, integrity, objectivity, accountability, openness, honesty and leadership

good governance which the Standard aims to capture and which cannot be achieved by rules and procedures alone.’⁷³ The Standard includes questions that can assist bodies and the public to assess whether or not the Standard is being met. It is a useful tool for Councils.

Governance Inspection

The Audit Commission in Britain has developed a corporate governance inspection system for Councils. When an inspection is to be carried out it establishes key lines of enquiry, breaks these down into component parts, seeks to discover whether the Council meets only minimum requirements or reaches adequate standards and identifies inadequate performance. The Commission indicates that one of its three imperatives is the attention given to diversity, human rights and user focus.⁷⁴

The lines of enquiry are extensive covering among other things: understanding and implementation of responsibilities towards community, equality of access, appropriate democratic structures, accountability, good governance, policy and decision-making, stewardship of resources, political and management leadership, mutual respect and constructive engagement among councillors and staff, standards of conduct, sanctions and redress, mandatory training for councillors, constitution, transparency, application of codes in practice, functioning of Standards Committee and Monitoring Officer.

The inspection can explore whether there is clear and effective leadership of the Council and the wider community including: setting the climate in the Council and the wider community, approach to shared responsibility for leadership, partnership, whether the challenge function is constructive, whether impact of disunity is contained, openness to challenge from within Council and interest groups, awareness of the need to promote equality and diversity and evidence that this is being done.⁷⁵

Standards Oversight

The Standards Board for England was set up by Parliament in 2001 as an independent body to oversee ethical behaviour of councillors and co-optees on Council Committees. The Board provides guidance and promotes good practice among Councils on the code of conduct (see later) to help Council Standards Committees, Monitoring officers, councillors and co-optees interpret and apply the code. It keeps the code of conduct under review and makes recommendations for change.

The Board investigates breaches of the code through its Ethical Standards Officers. It focuses on allegations that have the potential to damage the public's confidence in local democracy and usually completes investigations within six months. The investigation can make a number of findings and take appropriate action. It may find that the code of conduct has not been broken or that further action is not appropriate. It may refer the matter to the Council's Standards Committee which can take action. If the matter is serious enough the case may be referred to The Adjudication Panel for England, an independent statutory body, which may suspend a member for up to one year, or disqualify them from holding office for up to five years.

⁷³ The Independent Commission for Good Governance in Public Services, op. cit. p2

⁷⁴ Audit Commission, *CPA 2005, Key Lines of Enquiry for Corporate Assessment*.

⁷⁵ Audit Commission, *Key Lines of Enquiry for Corporate Governance Inspection, 2005 Version*.

The Standards Board decides to investigate if the matter is:

- (i) serious enough, if proven, to justify the range of sanctions available to The Adjudication Panel for England or the Council's Standards Committee;
- (ii) part of a continuing pattern of less serious misconduct which is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it short of investigation.⁷⁶

Council Standards Committees

Councils in Britain must set up a Council Standards Committee.⁷⁷ The Standards Committee has five statutory functions: advice to the Council on adopting the code of conduct, monitoring the effectiveness of the code; training members; promoting and maintaining high standards of conduct; helping councillors and co-optees to follow the code. A 'Standards Committee should be proactive by introducing change rather than reacting to events. Ultimately Standards Committees should aim to create and maintain ethical organisations.' They are 'not just about adopting a code ... [but] also about relationships.'⁷⁸ The Standards Board is supported by a Monitoring Officer (see later).

If a matter is referred from the Standards Board of England the Standards Committee holds a local hearing at which the Ethical Standards Officer's (see above) report is considered. If the committee makes a finding of non-compliance with the code of conduct against a councillor it can apply sanctions. These range from no action and censure, through restricted access or partial suspension for 3 months to full suspension for 3 months. Councillors can also be required to apologise and undertake conciliation and training. The finding and sanction is usually made public in the press and on the website of the Council and the Standard Board of England.

The Standards Committee also monitors and reviews the Council's Constitution 'to ensure that its aims and principles are given full effect' and to make recommendations for change.⁷⁹ Council constitutions must be reviewed every five years and the Standards Committee takes responsibility for making sure the constitution is designed to reduce the opportunity for misconduct. The Local Government Act 2000 allows the Council to give the Standards Committee extra functions and many are assessing reports from the Ombudsman and District Audit, dealing with protocols for members and employees, commenting on councillors' allowances and identifying potential ethical problem and risk factors.

The Standards Committee must comprise at least three people, two of whom must be councillors and one an independent person to bring a wider perspective and help increase public confidence. If larger then at least 25% of the Committee must be independent from the Council. There is no upper limit to the number of independent members and a minimum of two are recommended on the grounds that a single independent can become isolated and ineffective. Their appointment must be agreed

⁷⁶ Standards Board of England, see website (<http://www.standardsboard.co.uk/>).

⁷⁷ Local Government Act 2000, s53.

⁷⁸ The Standards Board for England, *Guidance on Standards Committees for Local Authorities*, May 2002.

⁷⁹ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

by a majority of the Council following public recruitment.⁸⁰ In Brent Council the Standards Committee of five members, two of whom are independent, is chaired by an independent. At least one independent must be present for the whole meeting.⁸¹

The Standards Committee does not have to reflect the political balance of the Council as it must be above party politics. It is appropriate to have an equal number of representatives from all parties. Councils are strongly advised that the Standards Committee is comprised of representatives who have the support of all political parties and the confidence of the Council. The Committee does not have to include an Executive member. It is a matter for the Council to consider whether Executive inclusion is appropriate in order to show support and respect or whether it is better to be totally independent. In the event of Executive participation only one Executive member, who cannot be the Mayor, can serve on but not chair the Committee. Party whips are not applied to the Committee as it is regarded as being quasi judicial, considering matters impartially without regard to party loyalty.⁸²

Monitoring Officer

The Council's Standards Committee works with the Council's Monitoring Officer who is responsible for ensuring the constitution operates well and is adhered to. S/he is expected to be pro-active in ensuring good practice, procedures and governance. S/he keeps standing orders, codes of practice and procedures under review; provides guidance, training, protocols and briefings; and gives advice on issues of lawfulness and the Council's powers to act. S/he observes meetings; audits samples of decisions; records and analyses issues; compares practices with other authorities; and monitors complaints and how effectively members are keeping to the code.

S/he liaises with Ethical Standards officers at the Standards Board for England on local investigations and hearings into breaches of the conduct code. The Monitoring Officer is the lead advisor to Executive and Council committees on compliance with the Council's budget and policy framework and has a duty to ensure that Executive decisions and their reasons are made public. No decision can be implemented if it is under scrutiny by the Monitoring Officer for maladministration or being unlawful.⁸³

Code of Conduct

Councils in Britain adopt a code of conduct which must be based on a UK Model code of conduct approved by Parliament in 2001. The code of conduct covers areas of individual behaviour such as members not abusing their position or not misusing their authority's resources. In addition there are rules governing disclosure of interest and withdrawal from meetings where members have relevant interests. Members are required to record on the public register their financial and other interests.⁸⁴

⁸⁰ Local Government Act 2000, s54(4); and Relevant Authorities (Standards Committee) Regulations 2001.

⁸¹ Local Government Act 2000, s53(10); and Relevant Authorities (Standards Committee) Regulations 2001.

⁸² The Standards Board for England, *Guidance on Standards Committees for Local Authorities*, May 2002.

⁸³ Brent Council, see website (<http://www.brent.gov.uk/democracy>); Hackney Council, see website (<http://www.hackney.gov.uk/index/council/departments/law-and-democratic-services.htm>).

⁸⁴ Standards Board of England website (<http://www.standardsboard.co.uk/>).

Mandatory provisions also include to ‘promote equality by not discriminating unlawfully against any person’, ‘treat others with respect’ and ‘not to do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council’.⁸⁵

Council’s can add local rules to the code, and Councillors and co-optees are judged against all the code’s provisions once they are adopted. The code requires councillors to have regard to relevant advice from officers, including the Monitoring Officer, and to inform the Standards Board of England of failure by others to comply.

When the code is adopted by Council, which must be done within a specified time or else it is imposed, councillors have two months in which ‘to sign an undertaking to confirm that they will follow the code of conduct.’ Failure to sign by the due date means ‘they will stop being members.’⁸⁶ Once approved by the Council the code of conduct is sent to the Standards Board of England and councillors are assessed against it at national level. As indicated previously, a complaint against a councillor is investigated by a Standards Board Ethical Standards Officer and can lead to a local hearing by a Council’s Standards Committee or a serious matter being referred to an Adjudication Panel.

Protocols

In Britain Council protocols are developed for a range of relationships and processes. They can cover, for example, principles and procedures for relating to consultative forums, relationships with citizens and users; partnership relationships, handling members’ enquiries on behalf of constituents, etc.

One protocol sets out Member/Officer roles and relations and deals with councillors in each of their roles as Council members, members of party groups, ward members. Its standards are binding and apply to the Mayor and Executive members, all other councillors and co-opted members. They cover matters such as promoting equality by not discriminating unlawfully, treating others with respect, respecting officers’ impartiality, bringing the Council or their office into disrepute, recognising the statutory roles of senior officers, taking cognisance of relevant advice, access to information and documents, consulting with communities, explaining and justifying decisions.

Officers’ duties to councillors are also set out in the protocol, including maintaining impartiality, explaining and justifying advice and decisions, assisting all councillors equally recognising different needs for advice in members’ different capacities e.g. in Executive, Scrutiny, etc., and dealing with party groups. ‘In local government, the doctrine of ultra vires means that elected politicians are not in the same position with regard to their officers as are ministers and civil servants’ and the statutory duties placed on certain local government officers impact their relationship with and accountability to members.⁸⁷

⁸⁵ Statutory Instrument 2001 No3575, the Local Authorities (Model code of conduct) (England) Order 2001, s2.

⁸⁶ Local Government Act 2000, s52.

⁸⁷ Watt P, Richards S, Skelcher C, op.cit. p18-19.

Members and officers are required to seek advice from the Monitoring Officer if in doubt about legality or compliance; for example, about vires or whether decisions of the Mayor or Executive are contrary to the Council's policy framework. The protocol covers Council media relations, members' complaints about officers or services, and breaches of the protocol by members which the Monitoring Officer may act upon in a number of ways.⁸⁸

Standards in Northern Ireland

It is advisable that Northern Ireland follows the pattern of a strong enforceable code of conduct developed for local government in England and Wales along with other parameters for role and relationships in the constitution, standing orders and protocols. Principles and practice operating elsewhere can be added to and adapted for Northern Ireland. Recommendations made by the Standards Board of England as a result of its review of the code of conduct should be examined as part of this process. The Board points to the need for consistent application of rules across all Councils, proper 'balance between protection of decision-making and the vital role of councillors as democratically elected advocates on behalf of their communities' and outlawing bullying among other things.⁸⁹

Due consideration should be given to locating the code of conduct in its appropriate context; for example, fashioning it to cover circumstances and behaviours in Northern Ireland. Attention should be paid to framing rules and codes so as to foster trust and respect in conducting Council business, both among councillors and in the public mind. It is advisable that they guarantee the highest standards of participation, prevent abuse of power, outlaw demonisation of individuals, control provocation, protect openness and transparency and seek to demonstrate civic responsibility and leadership.

New local government legislation could provide the framework as in England and Wales, and a Northern Ireland Standards Commissioner or Panel (see later) could be appointed by the Minister to be responsible for approval and oversight of standards. A Northern Ireland Standards Commissioner/Panel would focus on mandatory provisions and good practice models, standards audits, investigation and adjudication on serious or consistent breaches of codes and protocols, application of sanctions.

Councils would benefit from having a Monitoring Officer with statutory responsibilities and a Standards Committee to oversee implementation and compliance locally. Experience in Britain suggests that strong independent Council Standards Committees should increase their role in enforcement of codes and protocols, thus reducing areas that need to go to a central/regional standards mechanism.⁹⁰ If Council Standards Committees are to have appropriate powers for

⁸⁸ Hackney Council (<http://www.hackney.gov.uk/index/council/departments/law-and-democratic-services.htm>).

⁸⁹ Standards Board for England, *Consultation on the Review of the Code of Conduct: Recommendations to Ministers*, 2004, (<http://www.standardsboard.co.uk/>).

⁹⁰ C Game, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005; Dr Colin Copus, International Research Colloquium on Accountable Governance, QUB Institute of Governance 20-22 October 2005; Standards Board for England, *Recommendations to Ministers*, 2004, (<http://www.standardsboard.co.uk/>).

investigating, deciding upon and sanctioning at local level it is critical that the Committee is seen to be fair, independent and above party politics. It should comprise a number independents and non-Executive councillors and be chaired by an independent member.

A members/officers protocol that clearly defines functions and roles including councillors' different roles will be required. Clarity is particularly important if an Executive system of government is adopted. There must be transparent separation of powers and responsibilities between officers and Executive post-holders. 'The convention exists that officers serve the Council as a whole, not just the political administration'⁹¹ and this should be given clear expression in the protocol so that officers can comfortably service those in a Scrutiny role as well as in the Executive. Clearly the role of the Monitoring Officer is a critical one and the post-holder's freedom to operate should be safeguarded. A councillor model job description would be useful, not just within the Council but for enabling the public to understand the role and authority a councillor holds as well as the limits to an individual councillor's power.

Capacity Building

It is important to start a new enterprise with the intention of reaching the highest possible standard at the outset, and commitment to continuous improvement thereafter. Building the capacity of councillors and officers to assist them through their steep learning curve during the transition period and into the new local government structure is essential. Capacity building can run hand in hand with preparation for implementation of new arrangements; for example enabling Councils to learn good practice through contributing to development of the constitution, codes and protocols. Intensive training will be required initially to ensure that councillors, officers and other staff are sufficiently skilled to exercise new powers and responsibilities. Some areas may be chosen for compulsory training. An infrastructure to support councillors' training and development in the longer term should be explored.

Among other things councillors and officers will want to update themselves on good governance standards; codes of conduct and ethics and pledge of office; new monitoring and scrutiny procedures; government by Executive and Scrutiny (if the model is chosen); the role of the Assembly, a Standards Commissioner and other bodies in holding Councils and their members to account and investigating breaches; roles and functions; consensus-building decision-making; international and domestic human rights and equality legislation and standards and participatory requirements such as Section 75; equality, environmental and other impact assessment tools; freedom of information and data protection; financial and contracting responsibilities; understanding and managing risk; mediation and arbitration; managing partnerships; consultation and engagement processes; sustainability; waste management; environment; planning; local economic development and the social economy.

Democratic Services Officer

⁹¹ Watt P, Richards S, Skelcher C, op.cit., p19

Councillors would benefit from the appointment of a Democratic Services Officer to assist capacity building through providing information, facilitating access to training and developing other learning opportunities. The Officer could also assist in informing citizens about the constitution and access to the Council's decision making processes, and would have a role in working with councillors in Area or User Forums.

7. EXTERNAL ACCOUNTABILITY AND SAFEGUARDS

Legislation and Bodies

There is a role for legislation and authorities outside the local area in making Councils answerable; for example, application of the Human Rights and Freedom of Information Acts, a Local Government Ombudsman, a Standards Commissioner or Panel; the Assembly and audit procedures. As a matter of principle legislation, regulation, overview and scrutiny processes should provide generous cover rather than leave gaps.

In an earlier briefing paper to the RPA Sullivan and Skelcher point out three lines of accountability for LSPs which could equally well apply to Councils with vertical accountability upward to Northern Ireland Assembly/Executive; vertical accountability downward to local people; horizontal accountability sideways eg to agencies in the community plan process.⁹² It is notable that '[t]he expectation of having to render an account ex post is likely to work to control behaviour ex ante.' Stewart, in his ladder of accountability, sets out the areas for attention: accountability for probity and legality; process accountability; performance accountability, programme accountability; policy accountability'.⁹³

Equality and Good Relations

The Equality Commission has a statutory remit in respect of equality and good relations, including fair employment, race relations and Section 75.⁹⁴ Section 75 is an important safeguard within the Council and in its business and external relations. Councils are required to review their equality schemes on a five year cycle,⁹⁵ make annual reports on equality and good relations to the Equality Commission and can be subject to investigation.⁹⁶ Councils will be required to prepare new Equality Schemes following restructuring and councillors should take a leadership role in ensuring that their equality schemes and annual reports of progress are setting and reaching the highest standards. Confidence in local government to deliver equality of access and provision would be improved if new local government legislation and regulation was to mention Councils' statutory obligations on equality and good relations.

⁹² Sullivan H, Stewart M, *'Joining-up' Governance – the Co-ordination and Integration of Arrangements in Northern Ireland*, (also referring to Sullivan, Skelcher 2002), RPA Briefing Paper 2002, p33.

⁹³ Watt P, Richards S, Skelcher C, op. cit., p6, (also referring to Stewart 1994 pp 17-18).

⁹⁴ Northern Ireland Act 1998.

⁹⁵ Northern Ireland Act 1998, Schedule 9 para 8(3)

⁹⁶ Northern Ireland Act 1998, Schedule 9, para 10 & 11; *Guide to the Statutory Duties*, Equality Commission for Northern Ireland, 2005, p35-44.

As part of transition ECNI should assist Councils to examine past progress, outcomes, and difficulties in order to produce enhanced equality schemes and explore how these can be implemented to maximum effect in the new arrangements. It is recommended that Government give due consideration to implementing recommendations to strengthen equality safeguards under Section 75; several were made in a recent review⁹⁷ and others may arise from the current review by the Equality Commission.

From 2007, or later if agreed as part of the RPA process, Councils will be required to prepare good relations plans covering employees and residents. These are expected to 'demonstrate political and administrative agreement on local policies and plans for good relations' and 'must be seen to inform other local planning processes'; this would include Councils' community plans. A 'clear legal, statutory and policy framework' is promised along with reporting arrangements to the Assembly or the Northern Ireland Affairs Committee at Westminster. The opportunity could be taken to reinforce this through specific mention in new local government legislation.

Council good relations plans are expected to fit with Government's triennial action plans and be approved by the Office of the First and Deputy First Minister in order to draw down funds. They will be 'reviewed annually to ensure satisfactory progress against agreed targets.' The plans should take account of the inter-dependency between equality and good relations; and the Community Relations Council's good relations framework guidelines and the 'Equity, Diversity and Interdependence Framework' published by the University of Ulster, along with directions from the Equality Commission, could usefully provide the basis for mandatory guidelines.

The Community Relations Council will provide training, support, advice and guidance and a 'challenge function to district Councils specifically, on their good relations plans'. Intensive training on equality and good relations during transition is recommended to enable new Councils to set high standards of civic leadership for a shared future from the outset. The provision that the CRC should prepare triennial assessments on the state of community relations as part of Government's main triennial report to the Assembly or the Northern Ireland Affairs Committee should enable Councils to judge and improve on progress.⁹⁸

Northern Ireland Assembly

A concern that has arisen in other places and is likely to arise in Northern Ireland is the limitations of administrative mechanisms in holding political decision-makers to account for the content of their political decisions. Judicial review concentrates on the way powers are exercised not on the content of decisions. Administrative mechanisms 'enable investigations and challenge of the decision-making and administration but not the content of the decision'.⁹⁹ This brings into focus the role the Assembly might play in oversight and accountability.

There is a distinction to be made between decisions and rights that affect individuals and those that affect communities. The latter are more political and less amenable to

⁹⁷ McLaughlin E, Faris N, *The Section 75 Equality Duty – An Operational Review*, 2004.

⁹⁸ *A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland*, OFMDFM, March 2005 p47-56.

⁹⁹ Watt P, Richards S, Skelcher C, *op. cit.*, p18.

technical and judicial type decision making. For example, in Brussels, bi-lingual communes that do not provide the required dual-language provision face adjudication at Federal Government Level by a committee comprised of representatives of all parties.¹⁰⁰ In the case of Northern Ireland, a cross-community committee of the Assembly, or an independent Tribunal or Panel, may be useful to adjudicate on similar matters.

The requirement that Councils that account annually to the Local Government Auditor could be reinforced by requiring them to make an annual report in person, through their Mayor and Chief Executive, in public hearing format to the Northern Ireland Public Accounts Committee, or another key committee in the Assembly. This would have the added value of increasing transparency as it is likely to attract media coverage; it would be seen to be a very direct and public form of accountability.

Councils could report on their leadership for a shared future including equality and good relations, cross-community partnership, the community planning duty, key policies, programmes and their outcomes as well as accountability for planning and finance and monitoring of the composition of committees and forums. Reports could also be required to cover governance arrangements and performance, including how decisions have been taken, and their arrangements and success in engaging citizens in Council affairs.

Dual Mandates

Currently 69 of Northern Ireland's 108 MLAs are also councillors. This raises the question of potential conflicts of interest and is a matter of concern in the operation of local government accountability to the Assembly. The European Parliament decision to abolish dual mandates, holding membership of the European and national parliaments, took effect in 2004.¹⁰¹ Dual mandate, holding local government and Dail seats, was removed by law in the Republic of Ireland in 2003.¹⁰² It is recommended that legislation for new local government provides for the removal of dual mandates. At a minimum Northern Ireland could follow the practice in some other jurisdictions where those with a dual mandate are excluded from key positions such as Ministers, Mayor, Council Executive, Assembly or Council committee chairs and vice-chairs,¹⁰³ Well remunerated councillor positions with good terms and conditions and the possibility of holding a senior political office locally may encourage politicians to serve in local government over the Assembly; this would reduce the incentive for holding a dual mandate.

Standards Commissioner or Panel

¹⁰⁰ Professor J Loughlin, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

¹⁰¹ The European Parliament voted in 2002 to abolish dual mandates from the European election in 2004; although the UK negotiated an exemption until 2009.

¹⁰² Local Government (No 2) Act 2003. The main purpose of the Act was to amend the Local Government Act 2001 in order to end dual mandate.

¹⁰³ Professor J Loughlin, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

On the other hand it is argued ‘that the lack of public law tradition in the UK has placed too great a burden on mechanisms of political accountability’, and there is a need for a greater role for legal accountability.¹⁰⁴ NILGA’s members agreed that a ‘formal enforcement and sanction system must be developed firstly at Council level, perhaps delivered by a Council Committee; and secondly through external systems, utilising the offices of a Local Government Ombudsman and/or appeal to the Assembly.’¹⁰⁵

As indicated earlier, a regional Standards Commissioner or Panel could be appointed by the Minister to set and enforce standards. Powers would have to be defined but the framework would be set by the code of conduct and ethics and any pledge of office to be taken by individuals and conditions set for Councils in the context of Northern Ireland. The Standards Commissioner would operate as a safety net rather than the norm, thus putting the onus on Council Standards Committees to lead on standards locally. S/he would have an oversight role for standards over the Council as a whole, groups within the Council and individual councillors.

It is anticipated that a model constitution and code of conduct will be established by legislation. The Commissioner might be given power to approve constitutions, standing orders, codes and protocols ensuring these met the proper standards. The Commissioner role could combine the functions of the Standards Board for England, i.e. oversight of ethical standards across the Council and investigation of breaches of the code of conduct, with those of the Audit Commission for inspection of governance standards; or these latter could reside with the Local Government Auditor. S/he would liaise with the Council’s Monitoring Officer, but also be able to call upon independent investigators. If thought appropriate (or see Local Government Auditor below) s/he could carry out corporate governance investigations following the Key Lines of Enquiry model of the Audit Commission.

The Commissioner would be able to apply sanctions for individual misconduct as in England and might make recommendations on rewards and penalties to the Minister in relation to Council achievement or misdeeds. A system that builds in rewards for co-operative behaviour and uses financial penalties or rewards as means of sanctioning and holding to account is argued for by some.¹⁰⁶ An annual report to the Assembly on standards in local government should be considered.

Local Government Ombudsman

In Britain the Local Government Ombudsman is increasingly being used to determine interpretation of legislation and evidence suggests there is considerable convergence between the Ombudsman’s and judicial review decisions.¹⁰⁷ In the Northern Ireland context the Ombudsman could also be the repository of formal shared agreements

¹⁰⁴ Watt P, Richards S, Skelcher C, op. cit., p18, quoting Flinders MV, *Mechanisms of Judicial Accountability in British Central Government*, Parliamentary Affairs 54(1), 2001, p55.

¹⁰⁵ NILGA, op.cit.

¹⁰⁶ See Corry D, Hatter W, Parker I, Randle A, Stoker G, *Joining-Up Local Democracy, Governance Systems For New Localism*, NLGN, Ch5; Hall D, Jeffrey C, Skeltcher C, Smith J, *The Role of Semi-State Bodies*, RPA Briefing Paper, 2002, p13.

¹⁰⁷ See Leigh I, *Law, Politics and Local Democracy*, Oxford University Press, 2000, p165-168; and see *R Commission for Local Administration ex p. Croyden LBC* [1989] 1 ALL ER 1033.

between parties in a Council. S/he could be approached to mediate in event of disagreement over interpretation, progress or break-down on formal agreements. Disputes in a Council in general could be referred to the Ombudsman. S/he could appoint an arbitrator by agreement with the relevant parties. However, the main focus should be on politicians reaching agreement.

Consideration could be given to combining the posts of Standards Commissioner and Ombudsman, though there is merit in separating oversight of standards from conciliation in the relationships and process of Councils and councillors.

Local Government Auditor

The Local Government Auditor provides another route whereby safeguards can be strengthened. Naturally the auditor checks for financial probity, but his/her financial enforcement role could be further developed by adopting a broader definition of best value. Participation is a key theme in the modernising government agenda and regarded as a 'constituent part of best value'.¹⁰⁸ The Auditor could review a council's participation strategy and service reach when deciding whether resources have been spent properly. This is entirely consistent with the approach of the Audit Commission (see p26) in Britain with its attention to diversity, human rights and user focus which in turn chimes with, and could reinforce, government policy in Northern Ireland on participation, equality and good relations. The auditor could require information annually on, or examine periodically, expenditure in relation to council obligations in these matters; s/he might have cause on occasion to call upon the Equality Commission for its view.

The auditor's interest might extend to effective functioning within a council to ensure that resources are not wasted through inefficient decision-making due to continuously unresolved conflict. Attention to providing effective leadership, shared responsibility and constructive working relationships that contain disunity and deliver results are all central to the key lines of enquiry for local government inspection carried out by the Audit Commission in Britain. They could usefully be adopted in Northern Ireland. The power of surcharge could be extended to cover, for example, consistently inadequate performance in an area of activity or a poor standard across a number.

8. CITIZENS' ROLE IN SAFEGUARDING DEMOCRACY

Participation in Europe

Against a backdrop of declining interest in politics in general and in local politics in particular the Council of Europe and the EU Committee of the Regions have both recommended that participation by citizens and non-citizens be strengthened as a way of strengthening local democracy.¹⁰⁹ At the same time, there can be tension between

¹⁰⁸ Brent Council, see website (<http://www.brent.gov.uk/democracy>).

¹⁰⁹ Council of Europe, *Participation of Citizens in Local Public Life*, Study Series, Local and Regional Authorities in Europe, Report no. 72, adopted June 2000; Committee of the Regions, *Regional and Local Democracy in the European Union*, Report prepared by John Loughlin et al, 1999, Brussels: Publications of the European Community. A second edition of this report was subsequently published

elected representatives, aware of legitimacy derived from the ballot-box, and non-elected groups. Nevertheless, such participation plays its part in the system of checks and balances by increasing the transparency and accountability of local councillors' decision-making, and involvement by citizens in Council affairs on a regular basis is becoming the norm.

Direct participation can occur at three different levels: information and consultation; decision-making; implementation.¹¹⁰ Several countries include a right to information and consultation in local government legislation, particularly where planning or local development issues are concerned. The main local government law in Spain stipulates that local authorities must provide as comprehensive information as possible on their activities and citizens have the right to request copies of agreements concluded by local authorities and to consult archives or registers. Other countries with legislation covering obligatory dissemination of information are: Norway (1992 law); Belgium (1997); Bulgaria; FYRM; Denmark (1995); Ireland (1998); and the UK (since 1985).

There may also be various formal consultation mechanisms: local referendums, popular initiatives, public assemblies or meetings of citizens, the right to speak at Council meetings, right of petition, mandatory public enquires on certain types of issue (eg planning), children's or youth Councils, citizens' juries, citizens' panels, planning cells. Alongside these formal mechanisms there may be more informal methods. In a number of countries, such as the Netherlands, new technologies are harnessed to facilitate consultation. In Finland more than 90% of municipalities have websites, over half of which have feedback channels.¹¹¹

Participation in decision-making is achieved through various means. The primary instrument used in several countries is the decision-making referendum, widely used in Switzerland where almost any issue may be put to local referendum. Citizen/user participation in bodies with decision-making powers is widely used in Denmark, the Netherlands and Scandinavian countries. In Ireland, the national approach of involving social partners is also applied at local level. Elsewhere assemblies of citizens with decision-making powers operate under certain conditions, usually connected to a quorum participating (e.g. in Bulgaria, 30% of the electorate); they may take decisions with the Mayor holding the power to suspend the decision if s/he considers it to be against the community's interests.

Political scientist Robert Putnam¹¹², among others, emphasizes the importance of strong associations in civil society as a condition of healthy democracy. Some countries, such as the Netherlands and Scandinavian countries, have sophisticated systems of participation. Denmark has developed extensive citizen's participation in delivery of public services with users normally in the majority on boards. In Sweden and Finland, extensive welfare services are implemented through associations. Spain has almost integrated associations into its local government system.

as John Loughlin et al., *Subnational Democracy in the European Union: Challenges and Opportunities*. Oxford University Press, 2001 and 2004 (cloth edition).

¹¹⁰ Council of Europe, op.cit., 2000, p. 27.

¹¹¹ Council of Europe, ibid., p. 31.

¹¹² Professor Putnam addressed public policy-makers at QUB Institute of Governance on 15 April 2003.

Participation in Britain and Ireland

Participation is not only key to modernising government, checks and balances can also derive from managing policy development in a socially inclusive manner and from co-opting independents onto Council Committees. The trend in Britain and the Republic of Ireland is towards greater participation of non-councillors and civic society in shaping decisions. The Republic's Strategic Policy Committees (mentioned earlier) bring councillors the benefit of expertise from outside the Council, as well as giving sectoral interests the opportunity of fuller involvement in the policy making process from the early stages when options are more fluid.¹¹³ In addition, consultation with relevant sectors and interests is seen as part of the strategic policy process.

In Britain Councils are required to have co-optees on their Overview and Scrutiny Committees, usually around a third of the membership. An independent member chairs the Standards Committee which must have a minimum of 25% non-Council members. The first principle in the Council's constitution is to support the active engagement of citizens in local authority decision-making and this is reinforced through Council procedures, codes and protocols. The Overview Committee is charged with actively involving the community in policy development and review. Citizens can contribute to reviews in Overview and Scrutiny and to the Standards Board for England if they think a councillor has not complied with the code of conduct.

All Council Committees meet in public. Members of the public may attend meetings, speak at a committee meeting with agreement of the committee and have access to committee papers in advance. There are Area Consultative Forums comprising residents, traders and community representatives that meet four times a year and User Consultative Forums. Chaired by a local councillor the agenda is decided by an autonomous steering group that includes the Council. They raise issues and make representations at all levels of Council including Executive, Overview and Scrutiny.

Participation in Northern Ireland

Of concern to political parties is the possibility of conflict between party policy and mandate and views that others bring to the table. This is something local government has worked through across the rest of Europe.¹¹⁴ Policy making is best conducted drawing on lessons, expertise and opinions from a wide range of international and domestic sources. It is not a one-off event, but an iterative and dynamic process - 'a plurality of actions and decisions'¹¹⁵ - that councillors lead to deliver the best for their constituents and to assist in positioning Northern Ireland advantageously in a rapidly changing world. Ultimate decision making resting in the hands of councillors and engaging others in the process should provide councillors, and parties, with additional information on which to develop their policies. Experience in applying Section 75 over five years suggests that being explicit about the difference, and tensions, between

¹¹³ Department of the Environment, Heritage and Local Government, op.cit., p4.

¹¹⁴ Professor J Loughlin, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

¹¹⁵ McLaughlin E, Faris N, *The Section 75 Equality Duty – An Operational Review*, Vol 1, p12.

participation in consultation/advisory decision making and higher decision making authority and accountability is important.¹¹⁶

New Council structures could be opened to greater public access as is the case in Britain and the Republic. This would include co-opting people onto Overview, Scrutiny and other committees and task forces and recruiting independent individuals for the Standards Committee, including as its chair. Consideration should be given to placing a statutory obligation on Councils, and public bodies, to engage with social partners. It is advisable to safeguard citizens' rights of access in Council constitutions, codes and protocols and each Council should publish a Charter of Services giving citizens clear rights and remedies in relation to the authority's actions and services.¹¹⁷

The RPA proposes the establishment of several 'civic councils' within each council. The designation 'civic councils' was misinterpreted by some as incorporating social partner and community representatives, but the intention is they will be comprised solely of councillors from a specified area. However, they will facilitate local engagement as part of their functions. Nevertheless, it is suggested that similar models to the successful Area and User Forums elsewhere be explored for Northern Ireland. If developed their relationship with 'civic councils' and right of access to the main council structures should be clarified.

E-Democracy

'ICT has important potential to 'facilitate', 'broaden' and 'deepen' participation to enable citizens to share in decision-making that affects them and to improve the quality of decisions by ensuring public debate to inform decision-makers.'¹¹⁸ E-government is an evolving area that could be exploited more successfully by Councils to provide services, improve consultation and become more transparent and accountable. Information on policy and services can be made available to wide and diverse audiences and greater use made of the web. This includes giving advance notice of impending meetings and decisions, minutes and reports, allowing citizens to log views and concerns on Executive and Council policy and enabling their access to overview and scrutiny processes.

Innovations can be introduced to aid consultation. Web dialogue facilitates sharing of knowledge and expertise. Real time chat and regular discussion forums can assist policy development from ideas stage to final proposals. E-working helps Councils measure needs and preferences, explore problems, plan solutions and write policy documents in a more inclusive and collective manner. Online panels of councillors can respond to questions on aspects of Council work. Communities could link to councillors and each other in web forums to discuss the community plan and agree common themes in pre-planning agendas for consultative forums. Councils could

¹¹⁶ See McLaughlin E, Faris N, *ibid.*, p46-47.

¹¹⁷ Liberal Democratic Party recommendation, *Shaping Tomorrow's Local Democracy*, English Green Paper Number 5, 1991, p316.

¹¹⁸ Morison J, *e-government*, RPA Briefing Paper, 2002, p21.

develop online polls and surveys to garner views on potential policy or action, or accept electronic petitions and testimonies.¹¹⁹

Citizen Challenge

The public can complain to the Council about services, the Local Government Ombudsman about procedures and inspect and give views to the auditor on Council accounts, but a range of more accessible inter-active mechanisms are required. Councils could be questioned on an annual report at an annual public meeting. One idea, practised in London, is ‘People’s Question Time’; which offers transparent, participative accountability without the power to make a ‘finding’.

In England and Wales residents can submit petitions to the Council: 5 – 50 valid signatures gives the right to have a response and their view taken into account; at over 50 valid signatures views are notified to the chairs of the Overview and Scrutiny Committees. As indicated previously, ‘call-in’ of Executive and other committee decisions could be triggered by a petition signed by a set number of citizens, or by a signed petition which is then agreed by the Scrutiny Committee or its chair.

A citizen should be able to make a complaint to a Standards Commissioner about a breach of the Council code of conduct. A group of citizens could petition for a public hearing on standards in the Council. An Ombudsman with appropriate powers could be petitioned to mediate a longstanding conflict in a Council. Other checks and balances might include citizens’ petitions for recall of a councillor(s); e.g. in Japan citizens can petition to remove the Mayor and dissolve the Council either separately or jointly.¹²⁰

Judicial review is one avenue of legal challenge but it is not user friendly and cost is a factor for litigants. A Local Government Ombudsman has the benefit of being a free service. The ratepayer challenge mechanism tended to be used for political point scoring by councillors in Britain¹²¹ but could be adapted with safeguards for public use; for example, a set number of signatures could trigger a public hearing before the Local Government Auditor, Standards Commissioner or Local Government Ombudsman who would usually have the power to strike out vexatious or frivolous complaints. Some consideration may need to be given to assisting people to make their case.

¹¹⁹ See Morison J, op.cit.; also <http://wiki.e-consultation.org/tiki-index.php> for North/South Ireland e-consultation study group.

¹²⁰ Dr C Copus, work group session at Accountable Governance: An International Research Colloquium, Institute of Governance Queen’s University Belfast 20-22 October 2005.

¹²¹ However, see survey by Walker B, Delay S, Marsh A, *Challenges to Local Authority Accounts*, London, 1977.

9. CONCLUSION

The authors considered developments in Europe, and particularly in Britain and Ireland, in producing this paper. The proposal to return more powers to local government is in keeping with the best principles of democracy promoted by the Council of Europe.

New local government arrangements should be established on best practice, with strong local autonomy supported by solid safeguards; and as a matter of principle legislation, regulation, overview and scrutiny processes should provide generous cover rather than leave gaps. Assessment of arrangements elsewhere has indicated that this approach and the suggestions made are not unique to Northern Ireland.

The appropriate legal and regulatory framework should provide the necessary safeguards within which Councils will have considerable freedom to operate provided they meet required standards. While oversight and sanctions form part of the proposals emphasis should also be placed on Councils themselves reaching for the highest standards and impressing upon all their councillors the need to comply.

The principles throughout the paper apply to whatever systems and arrangements are arrived at for or by councils including the different levels within the council structure. It would also be valuable for Councils to examine and experiment with different forms of decision-making during the transition phase to determine which are most amenable to consensus building and acceptable to parties.

Reorganisation would be greatly assisted by investment of resources and time by Government, Councils, individual councillors and others in intensive training during the transition period. It is important that opportunities are extended to new people who may be candidates for council office as well as to existing councillors. An infrastructure to support governance training and capacity building now and in the longer term is required.

Transitions are about change and renewal of local government structures should prompt renewal of democratic representation. Government and political parties could use the transition period innovatively to introduce more diversity and holistic representation of the Northern Ireland community. In addition efforts could be made to harness available expertise in support of local government, whether as existing or new councillors or social partners.

While this paper focuses on local government it articulates key governance principles that could be applied appropriately across the public sector. Mechanisms, possibly including a time-limited implementation panel or commissioner, could be put in place to ensure decisions following the review, including on checks and balances, are fully implemented.

It is advisable to keep proposed new powers, structures and arrangements under review, to monitor and assess implementation and research developments and practice. This could be assisted by a local and regional government research programme in Northern Ireland similar to that which exists in Britain under the auspices of the Office of the Deputy Prime Minister.

