

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
COUNCIL

15 MARCH 2017

Report of the Chief Executive
LOCAL GOVERNMENT REFORM

Matter for Decision

Wards Affected: All

SECTION A

Purpose of Report

1. To inform Members of the content of the White Paper “*Reforming Local Government: Resilient and Renewed*” and recommend themes as a response to the consultation.

Background

2. The Cabinet Secretary for Finance and Local Government published his proposals for local government reform in Wales in a White Paper on 31 January. Responses to the consultation must be submitted to the Welsh Government by 11 April.
3. The White Paper poses some 33 questions (at Annex 2). It is proposed to use this framework as a basis for our response.
4. The White Paper makes proposals in relation to:
 - Regional working;
 - The future role for Councils and Councillors;
 - A framework for voluntary merger of Councils; and
 - The future role of community councils.

5. The White Paper argues that change is a necessity if Councils are to be financially resilient and maintain/improve the quality of services during austerity. It advocates a greater degree of regional working so that the longer term goals set out in the Wellbeing of Future Generations (Wales) Act 2015 are achieved.
6. The White Paper makes clear that previous proposals for wide ranging mergers of local authorities were not supported and are therefore no longer being pursued. Taking each of the above themes in turn, we offer a commentary below on the matters arising to illustrate the complexity of what is proposed and some practical examples of the issues which could arise.

SECTION B

Regional Working

7. The White Paper identifies an “enthusiasm” across local government for greater regional working; but acknowledges that this should not be undertaken just for the sake of it: better outcomes and greater resilience must result. It proposes a series of tests to help determine what is most suitable for regional working (but interestingly these criteria are not applied to the Welsh Government’s own proposals!).

Mandatory/Systematic Regional Working

8. The White Paper proposes that mandatory regional working arrangements should strengthen, regularise and simplify existing arrangements. The areas proposed for mandatory regional working include the following areas:
 - i. **Economic Development:** the White Paper recognises the arrangements emerging from the City Deal/City Region approach and proposes to adopt these arrangements as the basis for regional delivery of economic development functions. However, there is ambiguity about the functions to be discharged between the Swansea Bay City Region and the “Growing Mid Wales” area.

There is a suggestion is that one Joint Governance Committee (see Section C below) would cover them both; but the notion also features that it would have “oversight” of the establishment of sub regional arrangements and oversee their working arrangements.

- ii. But oversight is an ambiguous word and Welsh Government needs to clarify what is meant. For example, does it mean that the Joint Committee would have to agree the regional working arrangements and would it have any powers of enforcement over constituent local authorities? If it was not exercising the functions identified as appropriate to the footprint, then it would be doing nothing other than agreeing the initial joint working arrangements and monitoring/ enforcing as required? In these circumstances it might have no operational business on a regular basis.
- iii. Linked to (ii) above, the other question is whether the “jurisdiction” would cover all decisions on joint working or only those decisions where joint working was mandatory? In terms of legally secure decision making, joint committee arrangements should specify the particular statutory powers which are being exercised. The White Paper does not – and there is, in essence, no particular economic development statutory power. It did exist twenty years ago; but that was rolled up into the Well-being power contained in the Local Government Act 2000 (superseded in England by the power of general competence). In reality a bundle of different powers are used to promote economic development – the Well-being power, the power to acquire land and to dispose of it etc.
- iv. In addition, White Paper does not deal with the question of whether economic development can only be carried out through the Joint Committee. Does this mean that local authorities could not act on their own to pursue economic development and regeneration? For example, could the Station Road proposals in Port Talbot or the Neath Town Centre development proposals only be carried out on a regional basis?

- v. No justification is put forward for including Ceredigion and Powys with the Swansea Bay area. The economic links with both are tenuous (beyond the Upper Swansea Valley area immediately across our northern border) and there have also been indications recently that they wish to go their own way anyhow e.g. on skills.
- vi. **Transport:** the White Paper recognises that strategic plans are already prepared on a regional basis and that there is considerable alignment between the transport, economic development and strategic planning functions of Councils. It therefore proposes to adopt the same footprint as for economic development; but this will require a change of approach from the Welsh Government. For example, recently issued guidance on the Local Transport Grant remains essentially directed at individual local authorities.
- vii. **Land Use Planning and Building Control:** it is proposed that regional working be adopted to “improve service quality, provide greater resilience and enhance opportunities or workforce development and progression”. Views are sought on the appropriate footprint to ensure planning and building control services are not too distant from communities. It is also proposed that Joint Planning Boards could be created to ensure democratic oversight of the Planning function, or through a new Joint Governance Committee.
- viii. However, our view is that this area is getting particularly and unnecessarily complicated. As a consequence of the Planning (Wales) Act 2015, the system now operates at five levels from national (UK) to community level. On the face of it, these proposals add further complexity. On building control the point is missed that this is essentially a local service applying national standards.
- ix. **Social Services:** the White Paper recognises the regional arrangements that have already been established for the delivery of social services functions through the Social Services and Wellbeing (Wales) Act 2014. However, whether these

arrangements actually tackle the underlying challenges in the delivery of social care is perhaps a moot point.

- x. **Education Improvement:** the current regional school improvement consortia (ERW in our case) are described and the White Paper seeks views on the range and nature of services that could be most effectively delivered at a regional level. It also references the Additional Learning Needs (ALN) and Education (Tribunal) Wales) Bill and seeks views on what elements of a Council's functions might be a best fit in this area for regional delivery. There is perhaps some scope for integrating inclusion and well-being services with ALN on a regional basis. These issues are under discussion in ERW in the context of the Bill; but no conclusions have been drawn. However, there are other areas where the dialogue (with parents) and the statutory responsibilities are essentially local. Whilst the extant regional arrangements have worked reasonably well (verified by Estyn inspections last year), the dividing lines between regional and local responsibilities have become blurred in some instances.
- xi. **Public Protection:** it is proposed that environmental health, licensing and trading standards should be undertaken regionally "to provide the maximum level of resilience and greater scope for workforce development and progression". But we oppose compulsory regional working on licensing for several reasons.
- xii. It is a non-executive rather than an executive function and, therefore, the proposal that the Member responsible for a particular function should sit on the Joint Committee means that two sets of Members would be involved in public protection, non-executive Members for the licensing function and executive Members for others. Also, the Licensing Committee makes decisions which affect local communities and should be exercised and accessible locally such as licensing individual taxi and private hire drivers and outlets for the sale of alcohol. For example, the regime imposed under the Immigration Act 2016 requires applicants for taxi licences to provide original copies of

documentation in person showing proof of identity and right to work. In parenthesis, we would also argue that many environmental health services are also local services. Lastly, no financial savings will arise from an amalgamation of licensing functions on a regional basis because the licensing function is funded almost entirely by local licensing fees and local authorities cannot lawfully make a profit out of licensing.

Other Potential Regional Working Arrangements

- **Housing:** we acknowledge that housing plays a key role in supporting vulnerable people and in supporting economic development. However, there are no firm proposals made in relation to regional working for the housing functions, perhaps reflecting the fact that half of Welsh Councils have transferred their housing stock and half have not;
- **Waste:** the White Paper claims success in this area (we would dispute this as the existing Joint Committee barely functions). Nonetheless, it suggests further scope for efficiency savings and more consistency from greater regional working;
- **Community Safety and Youth Justice:** neither of these functions is devolved; but an acknowledgement of the need to reflect the design of these against whatever emerges more broadly in terms of regional working. There is an additional point. A recent report from the Auditor General recommended a different, rather “top down” approach to Community Safety. The Police and Crime Commissioner for South Wales disputes this analysis and so do we. But the matter is unresolved. We understand that the Welsh Government is about to launch a review of community safety; and
- **Shared Services:** The White Paper envisages that greater regional working will also present opportunities for delivering support services on a more collaborative basis, including the ability to deliver services through the medium of Welsh; through digital technologies and including the management of assets. We have

no difficulty with this in principle; but in practice there is something of a history in Wales of pursuing such ideas (at some cost to the taxpayer) only to find that the business case wasn't really there.

9. In summary, the Council supports regional working in relation to school improvement, social services and economic development (but the last named largely depends on the outcome of the City Deal negotiations). However, we are not supportive of additional mandatory working on a regional basis in other areas as this would, in our judgement, lead to unnecessary complexity and would also divert resources that would be better invested in ensuring governance arrangements mature to enable regional working in the three areas to be optimised. The White Paper is insufficiently clear about the consequences that may be involved.

SECTION C

Governance and Accountability

10. The White Paper accepts that greater regional working will require different governance to underpin it and that Elected Members remain at the heart of decision making and scrutiny processes. This is probably the key set of issues because it largely determines the relationship between Elected Members (and the Council itself) and the citizen going forward. Some proposals are welcome; but elsewhere there is again a lack of clarity.
11. Basically, it is suggested that decisions would need to take into account the best interests of people across the region, potentially allocating more resources to one local authority area than another. Those exercising the regional functions and those holding them to account would have a duty to consider both local and regional interests. The most appropriate model for regional governance would be a strengthened Joint Committee - termed a Joint Governance Committee (JGC) or variations thereof that could best accommodate the arrangements.

12. Although the White Paper contemplates that the JGCs we would be compelled to create is a new statutory feature, in actuality local authorities have been able to form them for a very long time. But they are not separate legal personalities and in practice lead authorities are appointed to carry out functions on their behalf - although there is joint decision making (sometimes subject to the constituent authorities approving work programmes or budgets). Since Joint Committees are a form of delegation, joint committee agreements and constitutions must identify the exact statutory powers which are to be exercised and joint committees are subject to the same rules of decision making as apply in local authorities generally. Bearing in mind the constitutional oversight role of the JGC it is appropriate to ask which Members will be sitting on the JGC when these decisions were made?
13. However, the White Paper does not knit together the operational and the constitutional oversight functions of the JGC. In terms of membership it suggests that the JGC should be made up of the Elected Member or Members with responsibility for the function being exercised. But one could easily have a JGC dealing with multiple functions where Members would have to drop into and out of the meeting according to the business item then in front of it. Perhaps not an insurmountable hurdle; but hardly simple or an efficient use of time? Ultimately this all depends upon whether these arrangements are seen as truly democratic. The basic point is that the decision makers will have no mandate outside of their local authority area.
14. In terms of finance, it is proposed that a “pooled fund” be established by local agreement through contributions from constituent local authorities. The need for such arrangements to have proper legal effect is acknowledged; but there is no detail within the paper on how this would operate in practice. The proposals would appear to be interim arrangements whilst a wider ranging (and overdue) review of local government finance is carried out. The White Paper discusses regional funding arrangements; but slips between different positions and may blur an important point. It states that there will be a

mandatory financial framework; but the amounts to be pooled would be determined by “local agreement”.

15. Importantly, the framework would also provide for a default arrangement where local agreement was not reached. This is crucial since, if there is a default arrangement for calculating contributions by individual local authorities, where those local authorities cannot walk away from collaboration the individual authority is stuck with the demand made by the JGC or other regional committee. For example, if there is a default contribution system (e.g. contributions based on population) then the individual local authority has to pay regardless of whether it has approved the budget and of the other budgetary demands which it may face. In those circumstances the budget demands of the Joint Committee effectively become something akin to a precept or levy and the decisions of the JGC will have primacy over the decisions of the individual local authorities, which undermine local democracy.
16. The need to provide an appropriate framework for workforce matters is identified and reference is made to the task and finish group of the Workforce Partnership Council in this respect. The Welsh Government considers that there is merit in Ministers having powers to issue statutory guidance on workforce matters; but only in respect of the development of national or regional delivery of public services and is seeking views as to whether such powers would be supported.
17. The White Paper also makes reference to the Public Services Boards (PSBs) that have been recently established and simply comments on the need for them to consider whether there is merit in merging as more regional arrangements become established. This skates over the fact that whilst established by statute (the Future Generations Act), PSBs have no legal personality of their own; no comprehensive governance arrangements underpinning them (in the context of the issues under discussion in this report) and, because of the variable geography, will “fit” on some functions; but not others.

18. In summary, we agree that there is a need to improve governance to support effective regional working. However, there is insufficient detail/clarity within the White Paper to enable the Council to offer definitive views.

Voluntary Mergers

19. The White Paper references the need for further legislation to provide for voluntary mergers of authorities and makes clear that the proposition to merge should have clear support from stakeholders and be supported by a strong business case. The Welsh Government also proposes to legislate to provide Ministers with guidance making powers to support voluntary merger activity.
20. However, this may well prove to be an uphill struggle in the sense that it is currently difficult to identify any appetite for voluntary mergers. The term itself is also somewhat discredited following a first round of activity when three pairs of Councils pursued such mergers only to all be rejected by the Welsh Government. In our view, it is a flawed concept anyway. If two or more Councils chose to pursue a merger, there would inevitably be consequences for those geographically adjacent, other public bodies in the area and partnerships involving very variable geography. In other words, we doubt whether what is effectively a piecemeal approach to reorganisation would work in most/all cases across Wales.

Framework for Local Leadership

21. The White Paper makes clear that Welsh Government will continue to set the framework within which local government can operate and emphasises that this must be flexible to enable local government to meet local needs. There is a commitment to continuing to work with local government to remove unnecessary burdens, for example the current performance reporting framework and there is a commitment to put in place mechanisms that will enable local government to be more innovative such as providing a power of general competence (which is to be welcomed).

22. However, in order that leadership can be distributed more “effectively”, Welsh Government proposes to require Leaders of Councils to set objectives with Cabinet Members, a minimum of twice during an election cycle. Additionally, there will be a duty on Leaders of political groups to promote good standards of conduct by their members and to co-operate with Standards Committees in the discharge of their functions as well other issues such as deadlines for replying to correspondence.
23. It is also proposed to change the way that fire and rescue authorities are governed by replacing existing arrangements with a Joint Governance Committee, with budgets set on a pooled basis by agreement (see above).
24. In terms of corporate governance, the White Paper proposes that corporate governance and audit committees would replace the existing audit committee arrangement, taking on a greater role for challenging performance in their local authority area. It is further proposed that Councils in Wales should have the opportunity to choose a non-executive model of working enabling them to return to the committee system if they so choose.
25. As far as Councillors are concerned, the White Paper reaffirms the Welsh Government’s policy to increase the diversity of people who stand for election. Council meetings will be subject of change too with proposals to make broadcasting of meetings mandatory; facilitating remote attendance and providing the public with the means to better understand how decisions are made and how they can participate in the process. The White Paper also envisages placing duties upon all Councillors to enable their constituents to be in contact with them and to ensure Councillors consistently engage with their public. If a member receives a Standards Committee sanction, s/he could face a by-election if a petition was signed by 20% of the electorate.
26. Again in summary, the commitment of Welsh Government to work with local government to remove unnecessary requirements is

welcomed, including the proposal to revoke the Local Government Wales Measure 2009 in its entirety.

27. We are pleased that the requirement to establish area committees is not to be taken forward as this was not a proposal that the Council previously supported. The emphasis on good corporate governance is also welcome; but it is unclear how the proposed role of the new corporate governance and audit committee in challenging performance sits with the powers of scrutiny committees who, on the face of it, would appear to be undertaking very similar roles.
28. We do not support the proposed duties on Leaders and Councillors that are set out in this section of the report. We consider them to be excessive interference in the system of local democracy and the democratic mandate of Elected Members.
29. A significant change is the proposal that both Members and officers will need to act in the interest of both their local authority and any regional arrangement. In the case of statutory officers, the proposal is that one individual will discharge the regional service responsibilities. This requires further careful reflection.

Community Councils

30. It is proposed that there should be a debate about the future of community councils and Welsh Government intends to commission a comprehensive review of the community council sector, prior to proceeding with any structural reform. The White Paper is weak in this area – and the policy direction remains unclear - but this is an important issue in Neath Port Talbot and elsewhere in Wales in terms of changing models of service delivery (Libraries, community centres, leisure facilities, etc.)
31. There are, however, some more immediate changes that are envisaged such as providing toolkits to support community councils in taking on new services and assets; re-energising ties with principal authorities; facilitating the clustering of smaller community councils;

improving the consistency of community review activity and encouraging more participating in community council elections. These all have merit; but are second order matters.

Elections and Voting

32. There are a range of proposed changes that the White Paper sets out. These include a review of voting arrangements; the potential to create a single electronic register for Wales; the need for candidates to be clearer as to their membership of political parties; preventing Assembly Members from standing as councillors concurrently; the ability for individual councils to determine their own voting arrangements, including the ability to introduce the Single Transferable Vote system.
33. We would urge the Welsh Government to take forward proposed changes to elections and voting arrangements at a much slower pace and to ensure that there is full opportunity for proposals for change to be developed and tested by electoral practitioners so that there is a comprehensive understanding of the impact and implications of any proposed change. It is crucial that the electorate continue to have the highest confidence in the election and voting arrangements.
34. We do not support the proposal that individual councils should have the ability to adopt their own voting arrangements. This appears to conflict with proposals elsewhere which seek to simplify and bring more consistency to arrangements across Wales.
35. The issues of proportional representation, the extension of the franchise to 16-18 year olds and the optimum governance model (i.e. a possible return to the Committee system) are matters for political level debate. The only observation we would make is that if different Councils adopt different systems in some of these areas, it can again only add further to the complexity.
36. There is also a proposal in the White Paper to phase out Returning Officer fees for Welsh elections. **The Chief Executive has a**

pecuniary interest in this matter and as the main author of this report therefore offers no views on the matter (and he will be declaring an interest at the Council meeting). However, should Members wish to discuss it, Mr Rhys George will be on hand to advise as the Chief Executive must withdraw from the meeting in these circumstances.

SECTION D

Conclusions

37. Whilst there are some positive features in the White Paper, it does not really cut the mustard as a blueprint for substantive local government reform. This is the fourth White Paper since the Williams Commission report was published in January 2014 and the debate has now been ongoing in one form or another since the National Assembly elections in 2011. The following seems increasingly apparent:

- There may be a diminishing appetite in the National Assembly, Welsh Government and local government for reform - at least as any sort of priority. If some of the statements about the necessity of reform were to truly resonate, then by now one would imagine that there would be clarity on the way ahead. Instead, there is too much ambiguity;
- Taken in the round, it is far more likely than not that these proposals will add complexity to the relationship between Councils and between them and other public bodies as well as introducing further complexity in the discharge of functions at a time when resources (human and financial) are at a premium. As the White Paper says, further legislation will be required; but local government is already subject to so much of it plus accompanying guidance that it is increasingly difficult to separate the wood from the trees in some areas. If legislation is to compel local authorities to cooperate together through the JGC and other joint committees this will, self-evidently, produce a system where there are multiple collaborations, multiple joint committees and a system where the stresses and strains are compounded by multiple jurisdictions and complex decision

making. This will be difficult for Members and officers to navigate and virtually impossible for the public to understand and hold to account those who they elect. The White Paper makes specific reference to the position of Bridgend County Borough Council in the context of these footprints; but it seems to us that the same issues could arise far more widely.

- Thus it's all too complicated, fragmented and ambiguous. It could establish a layer of non-elected or indirectly elected regional government of different shapes, sizes and compositions throughout Wales with financial primacy over the remainder of local government (perhaps a move towards two tier Local Government without the democratic element of an elected second tier?).
- The proposal is also based on the core premise that more collaboration is some sort of silver bullet; but there is little or no hard evidence to support this argument more than a decade on from the Beecham Report. We would argue that the impact is marginal in an age of austerity. It is reforming and adapting models of service delivery where the real gains are to be found, not in aggregating the status quo essentially.
- We remain of the view that, fundamentally, it is in the citizen's interest to have democratic accountability, statutory functions and responsibilities plus the money all in the same place (wherever it is).
- Thus the former Public Services Minister (Leighton Andrews) very probably got it mostly right - and the danger now is that Councils will be forced to merge at some point if they are overtaken by budget pressures generally or in specific areas such as social care. It would be better to pursue a programme of planned mergers rather than quick and messy ones in a few years' time. But that ship has sailed (or, perhaps more accurately, it is not going to). It would be easy to blame the Welsh Government for this unsatisfactory state of affairs; but

others (including local government itself, think tanks and academia) have hardly added much to the debate since Williams, with a few exceptions. As an aside, the White Paper does make reference to Welsh Ministers possibly taking powers to create Combined Authorities (a proposal previously floated by the WLGA); but their creation does not seem to be on the immediate horizon.

Financial, Workforce & Legal Impacts

38. All such impacts (so far as they are known) are detailed within the body of the report.

Equality Impact Assessment

39. There is no requirement for an equality impact assessment for this report.

RECOMMENDATION

40. That Members authorise the Chief Executive, in consultation with the Leader of Council, to respond to the consultation in line with the comments on the various issues outlined in this report, adding, subtracting or amending matters as Members see fit.

Reasons for proposed decisions

41. To enable the Council to respond to the consultation within the timeframe stipulated in the knowledge that further decisions will be for the incoming Council after May's elections.

Implementation of decision

42. Immediate – but in any event before 11 April 2017.

Appendices

Appendix 1 – Welsh Government White Paper *“Reforming Local Government: Resilient and Renewed”* –

https://consultations.gov.wales/sites/default/files/consultation_doc_files/170130-white-paper-en.pdf

Background Papers

The report of the (Williams) Commission on Public Service Governance and Delivery: January 2014

Welsh Government White Paper: *Devolution, Democracy and Delivery*
Reforming Local Government: July 2014

Welsh Government White Paper: *Devolution, Democracy and Delivery –*
Public Services Staff Commission: October 2014

Welsh Government White Paper: *Devolution, Democracy and Delivery:*
Reforming Local Government: Power to Local People: April 2015

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