

Durham District Councils' Forum

Response to 'Councils' proposals for Unitary Local Government – an Approach to Implementation'

CLG – Councils’ Proposals for Unitary Local Government

County Durham District Councils’ Response.

Executive Summary

- The Durham Districts welcome the opportunity to help shape the guidance as to how new forms of governance in the Country and potentially our own County could be implemented. However, CLG will be aware that the Durham Districts have instigated judicial review proceedings against the Government with regards the imposition of Unitary Local Government in County Durham. It is therefore without prejudice that we offer our comments.
- The Durham Districts would have preferred a Shadow Authority as is being instigated in Cheshire. The benefits of this would have been a clear separation between the running of existing councils and the establishment of a truly new entity with a body of councillors properly mandated democratically to fulfil their duties.
- We accept that CLG concludes that a Transitional Authority is the most practical and pragmatic way of establishing a new council although we can only support this reasoning if it is backed up by early elections and, in the interim, a strong Joint Committee with decision-making powers.
- We welcome the strong commitment to building a truly new council, even if a Transitional Authority route is used, and urge that all other related decisions support this ethos. A new council is essential if CLG wish to see “flagship” councils developed rather than amalgamations of present practice.
- We strongly support CLG’s conclusion that elections to the new council are undertaken in 2008. We believe that this is the only way to ensure a truly new council, with a new and modern culture, is built in County Durham. Elections in 2008 give councillors the democrat mandate to take the necessary decisions in building local government of the future in County Durham. The public and stakeholders of County Durham, whose confidence in democracy has been dented in this process, would expect no less; as would our staff.
- Elections in May 2009, on the other hand, will lead to a continuation of the old style and culture with discussions, over the next 18 months, being bogged down in governance and roles and responsibilities rather than building a new council.
- We welcome the proposal to introduce a Joint Committee (JC) to oversee the establishment of the new council. However we believe that the JC’s decision-making powers will be critical to the success of the new council and this becomes even greater should elections be delayed to 2009. We welcome the suggested membership, which would, under the proposal, incorporate representation from all affected councils. We have already

declared our willingness to be involved in the JC and are keen to commence work prior to the Implementation Orders.

- Equally, we support the establishment of a Joint Implementation Team with supporting work streams. We urge CLG to promote inclusion of all principal councils and support improvements in design of the new council over and above that in original bids.
- In continuing to run efficient services, it is essential that the budget setting processes for the final year of District Council budgets, 2008-9, are allowed to proceed as normal. We would question whether it is really the intention of CLG that District Councils would be prohibited from setting their budget and would suggest some rewording is necessary.
- Urgent clarification of the intended use of clause 27 "... if a direction is issued, contracts let after 31 December 2006 will count against the limits...". is required. Should this be an aggregate then this will cause stagnation within affected areas.
- We welcome the commitment, in dealing with HR matters, to fairness and equity in the process but are disappointed that CLG has ruled out a Staffing Commission to deal with such matters. We consider a National Protocol an absolute minimum in these circumstances. We do not believe that redundancy and severance terms, redeployment opportunities and policies regarding prior consideration can be left to the vagaries of individual bidders' financial cases, rather that they should be affordable within the original criteria laid down by CLG in the invitation to bid document.
- We believe it is essential that the new council has the very best staff at its disposal and would support an open recruitment process not just for the Chief Executive but also the new council's Directors and statutory officers, i.e. all members of the new council's Corporate Management Team.
- The City of Durham and Sedgefield Borough will be writing to CLG separately with respect to the preservation of ceremonial arrangements.

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County Durham District Councils’ Response.

1. Introduction (Para 1-19)

- 1.1 We welcome the opportunity to help shape CLG guidance for implementation of new forms of governance in the Country and potentially in County Durham.
- 1.2 CLG will be aware that the seven District Councils within County Durham have instigated judicial review proceedings as we do not believe that the Government has acted lawfully in its proposed implementation of Unitary Local Government in County Durham.
- 1.3 Notwithstanding these opinions, the District Councils take a responsible and pragmatic approach and it is therefore without prejudice that we offer the following comments to Government in order to gain the most positive outcomes for the communities we serve.
- 1.4 We have stated our commitment to work together to explore how this can be best achieved in County Durham. In addition, we have worked jointly with the County Council in raising awareness of the CLG proposals amongst our local stakeholders and to encourage feedback to CLG.
- 1.5 Overall we are keen to see that any new council is just that, a **new** council, capable of delivering the outcomes of the local government white paper, and not just something that “looks new”.
- 1.6 We accept that CLG have approved bids on their merits; in County Durham the bid which was written by one council now affects eight councils, all of which have a valid contribution to make in the reshaping of local government.
- 1.7 We suggest that Councils must ensure that further development of approved proposals comply with the criteria laid down by CLG within the *Invitations to Councils in England to make proposals for future unitary structures* and that any significant departures from original bids be approved by CLG.
- 1.8 We note the Government has utilised the services of a group of experts, however we urge Government to take account of the opinions of those who will be living, working and delivering services in affected areas in order to implement proposals.

2. Implementation (Para 20-26)

- 2.1 The District Councils welcome the statement regarding the introduction of a **New Council** within the County (and all affected areas) and it is with this principle in mind that we base our comments regarding transition, elections, representation and in particular, staffing.
- 2.2 We consider it essential that a level playing field exists between all affected authorities as this will help to ensure that any new organisation has the right organisational culture. To be effective, a team spirit needs to be built between all affected councils during any transition.
- 2.3 We see great danger in para 22, which effectively contradicts the concept of a new council and leads the way for a takeover and continuation of the existing County Council with its current culture and operations. Whilst we note that CLG wish to avoid the impression of takeover, the use of terms such as “working with successful bidders” and the uncertainty that surrounds the actual decision making powers of the Joint Committee undermines this principle.
- 2.4 We also comment that the takeover concept works both ways whereby the perceived successful council could view any attempts at joint work as a takeover of intellectual property by the unsuccessful councils. In addition, should elections be delayed until 2009 decisions could be made by the ruling political group of the successful bidder which could embed the existing culture and so undermine the new council’s operations post 2009, because of the wish to ensure a continuation of their “winning” legacy.
- 2.5 We would therefore strongly urge that early elections take place in 2008 to a shadow authority are essential and see this as the most practical and beneficial solution. Whilst we note CLG’s reasoning for a transitional authority, the practicalities are such that the transitional authority would in fact operate as a quasi-shadow authority for the period from May 2008 onwards, with a clear political mandate to establish the new authority.

3. Representation (Para 27-48)

- 3.1 We wish to see arrangements that ensure a speedy and seamless transition within localities, minimise disruption to services, staff and the public and allow for innovation in service delivery.
- 3.2 Within County Durham the District Leaders are keen to work as part of an effective Joint Committee and support the Government’s recommendation of political balance.
- 3.3 We ask that you clarify the decision making powers of such a body and are concerned that para 37 states that the body would have limited powers. From the paragraph it appears that decision making powers will lie with the successful bidding authority. This would effectively mean that the Joint Committee would act as an advisory body only,

which would be highly regrettable and clearly undermines the development of team spirit and co-operation, which is essential to the development of an innovative and modern new council. A Joint Committee which acts as an advisory body to a continuing successful bidding council enshrines the concept of winners and losers and promotes the notion of a “takeover”. Such an arrangement would not be supported by District Councils, would be extremely counter-productive and lead to obvious conflict and uncertainty, particularly amongst District Council staff going into the re-organisation. We welcome the clarification which was given to the County Durham Leaders and Chief Executives recently in discussions with CLG officials that the Joint Committee would effectively be the ‘Executive of the Transitional Authority’. We would like to see this clear statement of the ultimate decision-making powers of the Joint Committee articulated in the implementation document and, subsequently, the Implementation Order.

- 3.4 In terms of overview and scrutiny arrangements, we strongly support the view that there should be Joint Overview and Scrutiny Committee arrangements during the transition. We ask that they have robust terms of reference, cross party / independent representation and possibly a proportion of opposition leadership. We also ask that you clarify how CLG and the Audit Commission will hold the successful bidder to account regarding the proposals key deliverables, for example affordability etc.
- 3.5 Clarification is also requested as to what is meant by “all Councils in the affected area”. County Durham is substantially, though not wholly, parished. We are assuming that the Government mean all principal councils that are being reorganised in the affected areas.
- 3.6 We strongly support CLG’s preference for a 2008 election to a new council. However there is no reason to rigidly hold elections in the month of May and this could usefully be left to local determination.
- 3.7 We agree with CLGs reasoning of elections in 2008 giving democratic legitimacy to the new council. However we also take the view that an early election paves the way for the introduction of a truly new and innovative council. Conversely, delaying elections will cause a delay in innovation as existing authorities design their successor body, potentially as a reflection of themselves.
- 3.8 We would also point out further operational benefits of an elected body over an indirectly elected body during the implementation period include:
 - More robust decisions because Members will have a long term commitment to the new authority.
 - Far greater accountability for the decisions taken during implementation.

- A significant opportunity for development work with Members prior to vesting day.
- A robust relationship between the new council and the new senior management team that it has appointed itself.
- Smoother transition – reduced need for the new council to review the decisions made by the Joint Committee.
- Securing efficiencies and improvements earlier – reduced need for long and protracted series of service and organisational reviews following election of new council in 2009.
- No break in decision making immediately after vesting day, which would be the case if elections held in May 2009.
- More rapid pace of change achievable during 2008/09.
- Less likely to lose excellent staff and reduced uncertainty over political leadership.
- Earlier engagement of stakeholders and development of partnership arrangements in the work and planning with a new Council.
- Early negotiation of commercial contracts / SLAs with existing and potential delivery partners.

3.8 A new council, once established in 2008 would be able to put in place the clear new vision and strategy for the new council, plan for the future, putting in place the innovations in organisational and structural design, member development programmes, ICT integration and leadership needed for the 21st century. As a first step it would recruit a new senior management team by autumn 2008 that is clearly accountable to the new Authority.

3.9 We would recommend that subsequent elections are then held in 2013. We note that CLG favour parish council elections being held at the same time as the new Unitaries. We agree with this proposal but consider that, as parish councils have just been through elections in May 2007, we should not hold elections alongside the new council in May 2008. We therefore recommend an initial five-year term for the new unitary council, comprising a year of transition and a four-year term of operation with a six-year term for existing parish councils.

3.10 We understand that this timetable does not allow for a review of ward boundaries before a 2008 election. However we do not consider a rushed review desirable or necessary. We would like a full and inclusive review of ward boundaries that involves all stakeholders, in particular those operating at a community level and not just the Boundary Commission. This would be a positive investment for the long-term future of the County. The need to review ward boundaries should not delay the early election.

3.11 We understand that the Boundary Commission are keen to undertake an early review of ward boundaries, however our view is that the ward structure is only one (albeit an important) element of local government

reorganisation. The implementation timetable for reorganisation must be the driver for a ward boundary review and not the other way around.

- 3.12 It should be added that the existing boundaries of Durham County Council divisions, which form the basis for the 63 wards outlined in the bidding document, came into operation for the first time as recently as 2005. Having been reviewed prior to the last set of elections (when 48 of the then 61 divisions were changed¹), they provide for a good level of electoral equality throughout the county; indeed at the time of the review, only one of the sixty-three proposed divisions varied from the county average by more than 20 per cent². This strongly suggests that there is no pressing reason for an election to be delayed by a further review of boundaries.
- 3.13 Additionally, many unitary authorities created in England during the 1990s review were not subject to boundary reviews upon or immediately prior to their creation. By way of comparison, the new (neighbouring) unitary council in Stockton-on-Tees took its new form utilising existing ward boundaries in 1996, only undergoing a comprehensive boundary review prior to elections in 2005. On this basis there seems to be every reason why elections to provide the desired fresh electoral mandate should be held on the basis of existing county council divisions in 2008 and reviewed in time for the subsequent set of elections in 2013.

4. Co-operation and Continuity (Para 49-102)

- 4.1 We agree that no authority should, in the interim period up until the establishment of the new council, be undertaking actions or decisions that place excessive liabilities or burdens upon the incoming Council in April 2009. However, of equal importance is that councils must be able to deliver services to the public without additional bureaucracy and delay and must be able to deliver on promises made to the community with regards to facilities, investments and regeneration. This can be a difficult balance however we offer the following suggestions.
- 4.2 We ask that you amend para 51. Existing councils must be able to set their annual budget for 2008/9 and to take into account the prudent use of reserves and balances if required to balance the budget, as is the case in any financial year.
- 4.3 Where an existing authority (the bidding authority) is to become a transitional authority, the statements in para 54 with regard to the need to seek written consent of the authority to which functions are being transferred - in respect of disposals, investments and contracts - is somewhat inflammatory and clearly amounts to a takeover by the bidding authority.

¹ Local Government Commission for England, *Final recommendations on the future electoral arrangements for Durham County Council*, p.45

² Ibid, p. vii

- 4.4 If elections were delayed until 2009, the uncertainty around financial and service decisions would be exacerbated. We suggest that the Joint Implementation Team (JIT), reporting to a Joint Committee in the first instance and a new transitional council in 2008 would be a better method of consultation for significant levels of and material investment and activity. This would allow the JIT to establish clear protocols and address issues of materiality to ensure the smooth running of all the existing authorities up to vesting day without placing undue burdens on the new authority from 2009/10 onwards.
- 4.5 Existing councils must be able to use their reserves in a prudent and responsible way to set their final year budgets. This issue is particularly pertinent when considering the fact that the 2008/09 budgets will need to be set in the context of an (expected) extremely challenging grant settlement from CSR 2007, together with the significant pressures posed by job evaluation, equal pay claims, concessionary travel etc. The use of earmarked reserves and balances is already planned by many authorities (within existing Medium Term Financial Planning forecasts) to smooth out the impact of these and other one off non-recurring commitments on the Council Taxpayer. If this is denied, then Council Tax will have to rise significantly, potentially well in advance of the 5% capping limit that has existed in recent years and / or services cut. Both scenarios would be difficult to justify and explain to local residents and would be a direct consequence of not allowing such reserves and balances to be used. We suggest that the JIT are informally consulted on 2008/09 budget proposals in advance of the individual Councils setting their Council Tax and Budget Requirements etc.
- 4.6 We ask that you clarify the intended use of clause 27 "... if a direction is issued, contracts let after 31 December 2006 will count against the limits..." is required. If this means that there will be an aggregate limit then there will be significant difficulties in practice. Contracts entered into already will most likely have breached the limits already and effectively further progress will be halted in the authorities affected. CLG will need to issue clear and robust framework for decision-making whatever the intention and implementation arrangements. VFM and efficiency implications must be a key factor over the next 18 months and not just the liabilities that may or may not impact on the new authority.
- 4.7 We agree with the role of the JIT however recommend that its membership should be determined locally. In County Durham we conclude that the JIT be made up of the Corporate Management Team of the transitional authority and the Chief Executives of the District Councils working collectively, as a single team.
- 4.8 We agree that HR is of primary importance, particularly in the early stages and conclude that an HR group be set up immediately to report

common policies to the JIT. We also conclude that the Trade Unions need to be fully involved as key stakeholders in this process.

4.9 We have no great issue with the suggested milestones and suggest that these form a framework for a light touch monitoring of progress by CLG.

4.10 We welcome the flexibility offered by CLG with regard an early start date however it is too early to say whether this will be needed within County Durham.

5. Staffing (Para 103-130)

5.1 The staffing issues are critical to a smooth transition process and it is important therefore that they are recognised as a “senior workstream”. Associated issues should be considered at the highest level and must be subject to appropriate trade union consultations. Moreover, the underlying principles of equality and fairness must underpin all staffing issues and decisions.

5.2 Early and regular communication on all aspects of LGR will help to allay fears and concerns. Such communication must explain the issues and constraints as well as decisions taken and reasons for taking them.

5.3 Clarity and consistency for employees are important through the consistent application of key principles and protocols. We strongly recommend that the Government learns from the very best practice of past reorganisations and are disappointed that Government appears to have ruled out the introduction of an independent Staff Commission. We consider that the introduction of a National Protocol with clear national guidelines essential to ensure fair and consistent treatment of all those affected by this change.

5.4 The local negotiation of transfer details to underpin national principles and protocols may be time consuming and (given the interdependencies with other tasks) may somewhat delay reorganisation plans. This is a potential risk and so levels of local determination should (where possible) be kept to a minimum.

5.5 The application of TUPE-like terms is welcomed. However we ask for clarification regarding the statement “terms no less favourable”. We consider this should apply not just to salary protection, but to the wider protection of all terms and conditions until a full pay and grading review has been completed. Equal Pay implications also apply here and so does “terms no less favourable” confirm that the best terms and conditions of constituent authorities will be enjoyed by all like groups (for instance Refuse Collectors and Benefits Assessors)?

5.6 The principles associated with the direct transfer of frontline employees and their immediate managers/support staff are supported. However, the “community” definition given in paragraph 112 and the list of

example jobs is out of date, potentially divisive and not wholly representative of local authority services. Posts should be grouped into three locally determined/negotiated categories of managerial, support and operational thus negating the need for a list of example posts. Prior consideration arrangements could also be informed by and determined/negotiated in accordance with these categories.

- 5.7 The proposed application-based approach to “back office” employees is not necessary for every level of post and would be bureaucratic, labour intensive and time consuming. Moreover, it would add only limited value/legitimacy to the process and may cause significant concern amongst lower graded employees. It is proposed that a cut-off grade/threshold could be locally agreed, with affected employees being transferred to (and slotted into the structure of) the new Council without the need to apply for jobs. This would facilitate a smooth transition and could be followed-up with structure refinements after the creation of the new authority.
- 5.8 It is recognised that open competition to the most senior posts is wholly appropriate in terms of the legitimacy to “Head” the new Council at the officer level.
- 5.9 It is noted that a final view has not been taken on appointments to other senior posts other than the Chief Executive. We recommend that in addition to the Chief Executive, all Chief Officers and statutory officers, i.e. the corporate management team of the new council; are recruited through open competition to ensure that the council looks and feels new.
- 5.10 Appointments to posts below Chief Officer level should be ring-fenced to eligible employees within existing Councils using a competency based assessment framework. This will allay concerns amongst employees whose knowledge and experience will be vital to the new council (particularly in the early establishment/implementation phase) and will minimise the burden on the public purse in terms of redundancy/severance.
- 5.11 Such arrangements minimise staff concerns, retain vital experience, keep costs to a minimum and are seen as being fair and equitable. Wider testing of the market in open competition below chief officer level will deliver only marginal benefits given the scope for adequate internal competition and will lead to unnecessary recruitment costs and may also result in increased redundancy/severance costs.
- 5.12 The importance of “transfer lists” being agreed at the highest level cannot be overstated and as such adequate HR representation is critical. In practice this will require the lead on the HR Workstream to be a member of the JIT. It is proposed that in County Durham this role is fulfilled by a nominated Chief Executive from one of the affected councils. This will avoid a perception that any one council’s Head of HR

is leading the process. This will also enable each existing Head of HR to lead detailed local consultations with Trade Unions and employee groups.

- 5.13 It is considered important to ensure equality and fairness in redundancy compensation arrangements and so it is essential that all employees who are made redundant through the creation of a new Council are treated in the same way across the country. Given the large numbers of potential redundancies, our view is that an independent staff commission is as valid in this reorganisation as in the past.
- 5.14 As an absolute minimum a new policy will need to be applied consistently by the transition authority based upon a national protocol. Realistic provision needs to be made for the potential costs of redundancy and early access to pensions. Severance schemes should not be constrained by the very different financial cases put forward by different bidders. Should CLG opt for local negotiation on this matter then this should be done with reference to national guidance or be based on the best terms and conditions available locally.
- 5.15 Sensitive handling of HR is crucial to a smooth transition and the building of a new Council. We therefore recommend that HR policies be affordable within the five year payback period stipulated by CLG in its invitation to bid guidance rather than the constraints of individual bidders' financial cases.
- 5.16 Equal pay is already a challenging issue for existing authorities and is subject to emerging case law. This situation will naturally become more challenging following reorganisation, as different pay and grading structures will increase the potential number and value of equal pay claims. Therefore, the ambiguous statement "a major activity (requiring) significant resource in the year of transition and beyond" fails to recognise/quantify the difficulty associated with this task. The need for an early risk assessment is recognised and supported but clarification is required on the term "an early pay and grading review". It may be appropriate for the Government to legislate in this area to limit claims and then to set a realistic timescale for all affected authorities to introduce new pay and grading structures.

6. Finance Issues Para 131-158)

- 6.1 The majority of comments that we wish to make concerning finance are contained in the paragraphs relating to cooperation and continuation. However, we agree that the exercise of combining budgets is potentially simpler in the circumstance where the new authority comprises a former county council and the constituent district councils, particularly if there is open co-operation and joint working during the transitional period. This process, aligned to early work on medium term financial planning, would be strengthened if the JIC were to be comprised of members elected by mid 2008.

6.2 Not re-opening the three-year settlement in County Durham is both practical and sensible and is welcomed. Once published, the three-year settlement data will provide a degree of certainty and provide for early planning. However clarification is required as to the Governments intentions re specified grants for Housing Benefit Administration, Homelessness etc. Early inter-departmental discussions between CLG and DWP would be helpful to provide clarity for the new council.

7. Ceremonial Arrangements (Para 159-167)

7.1 We see very positive benefits to Government's suggestions with regards the preservations of ceremonial arrangements, particularly given the historical significance of Durham City. Individual responses will be submitted to Government by City of Durham and Sedgfield Borough Council with respect to this issue.