

Public Document Pack



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13 March 2017

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE** on Monday 13 March 2017 at 6.00 pm, the following reports that were not available when the agenda was printed.

11 **BUSINESS CASE - SINGLE EAST KENT COUNCIL** (Pages 2 - 14)

To consider the attached report of the Chief Executive.

Yours sincerely

A handwritten signature in black ink, appearing to be "Nicky", written in a cursive style. The signature is positioned above the text "Chief Executive".

Chief Executive



Options for Local Government Reorganisation in East Kent

Towards a Consultation Programme

March 2017

Abstract

Following their review of options for local government in East Kent, the four district councils are collaborating to consider two main options – either to retain the status quo (with some service reductions) or to merge the current four district councils into a single new district council for East Kent.

We understand that the four councils intend to take a final decision on whether to proceed to consultation on these options on 22nd March, with a possible consultation period from 24th March until 19th May 2017.

This document outlines a possible programme of conscientious public and stakeholder consultation following an introduction to ORS; and it also includes an appendix on whether it would be appropriate to hold four district-based ‘referendums’ (properly called ‘local polls’) on the options.

ORS – a social research practice

Opinion Research Services (ORS) is a spin-out company from Swansea University with a UK-wide reputation for social research and major statutory consultations, including *recently or currently*:

- The creation of two new unitary councils for the whole of Dorset

- The creation of a single new unitary council in Oxfordshire

- The successful merger of Dorset and Wiltshire’s Fire and Rescue Service

- Major service reorganisation in the Hampshire Fire and Rescue Service

and earlier important consultations on local government reorganisation in:

- Gloucestershire

- Suffolk

- Wales.

In addition, ORS has recently reviewed Family Support and Library Services in Hampshire and Southampton; the introduction of private sector landlord licensing in Liverpool, Cardiff and a number of London Boroughs (including Newham); reconfiguration projects for Healthier Together Greater Manchester, NHS Wales South Wales Programme, and Imperial College NHS Trust; as well as other major consultations for local authorities and the emergency services.

ORS was appointed jointly by East Kent’s councils to provide advice and to design (and if approved), implement and report a conscientious programme of consultation on the two main options.

Nature of Consultation

Consultation is not a ‘vote’ or simply a ‘popularity’ or ‘unpopularity contest’ in which the loudest voices or the greatest numbers automatically determine the outcome. Consultations should promote accountability as public bodies give an account of their plans and take account of responses in order to:

- Be informed of any issues, viewpoints, implications, groups or options that might have been overlooked

- Re-evaluate matters already known

- Review priorities and principles.

In order to achieve those aims, conscientious consultation should explore the public's:

Awareness of the general debate

Understanding of the evidence, options or proposals, and points of view or arguments

Priorities (for example, in relation to local government issues such as costs, savings, service levels, access and local accountability)

Reservations and concerns about the options or proposals (including those that they might support)

Contrary arguments, evidence and issues

Reasons for supporting or opposing change

Levels of support or opposition to change.

Of course, no one method of consultation can achieve all these insights, so a range of both deliberative and quantitative approaches are typically used, including the following main methods:

Quantitative

Open consultation questionnaire – as an accessible and inclusive route for any resident or stakeholder to contribute to the debate

Residents' survey – using a random sample to achieve results that are representative of the general population

Petitions – as a means for popular campaigns easily to express themselves

Deliberative

Lengthy and in-depth forums or focus group discussion – with representative groups of randomly selected residents (or other stakeholders) convened to examine the issues and arguments in depth

Written submissions – which can often be detailed, argumentative and evidence-based

Road shows and drop-in sessions to allow for informed debate in a thoughtful context.

Open Consultation Questionnaire and Residents' Survey

For the East Kent study, the findings of the open consultation questionnaire (online and paper) and the residents' telephone survey will be reported in detail side-by-side.

The residents' survey is a statistically robust guide to overall public opinion across East Kent, with some area and sub-group analyses possible. The open consultation questionnaire provides considerable information about the views of particular groups and individuals at very local levels; but it is less appropriate as a guide to overall opinion because it is less representative insofar as the respondents' profile normally does not match the overall population in terms of age, gender, area, employment status and etc. Nonetheless, the open questionnaire may be used to explore how people's and organisations' views differ by location, gender, age and other characteristics. In this context, ORS will show both the similarities and

differences between the open questionnaire findings and the residents' survey by reporting them both fully. Of course, it is for East Kent's councils (not ORS) to determine the emphasis to be given to the Open Questionnaire in comparison with the Household Survey and responses gained via other consultation activities, while bearing in mind that consultation is not just a 'numbers' game. In other words, the question is not *Which findings should determine our decision?*, but *What evidence or considerations have emerged that should influence the debate and decision making process about the possible reorganisation?*

Petitions and standardised submissions

Petitions and standardised submissions (such as multiple duplicated letters) are important expressions of opinion and will be given due consideration both by ORS and the East Kent Councils. In interpreting and reporting them, ORS will take account of the 'petition statements', the numbers of people signing, and the ways in which they were compiled.

Deliberative forums and focus groups

The discussion of issues, evidence and arguments in deliberative forums and focus groups with residents and/or other stakeholders is a particularly valuable form of consultation in terms of exploring ideas, priorities, concerns and reasons. For the public, these meetings involve randomly selected residents (who form a broad cross-section of the population) in detailed and thoughtful meetings – which allow for:

- Clear presentation of the proposals and evidence

- Consideration of data, illustrations and graphics

- Questions and clarification of any ambiguous or difficult points

- Opportunities for participants to clear their mind of existing misconceptions through questions and answers

- Deliberation in which participants think through their responses while having an opportunity to listen to the evidence and the views of others

- Open-style real-time reporting in which ORS records the main views during the meetings – so respondents can sign-off their views, which can be reported to the councils immediately if necessary.

Focus groups typically involve eight to ten participants and last for up to two hours, while forums include 15 to 25 and last for three or more hours. As standard good practice, participants are recompensed for their time and expenses in attending – in order to achieve a broadly representative cross section of people.

Often such recruitment for such events is done face-to-face on the street or in shopping centres, but the danger of such methods is that working people and those in rural areas are excluded. Therefore, we propose that the recruitment process should be done by telephone from ORS's Social Research Call Centre, using randomly generated telephone numbers across the area. This approach yields a more dispersed and representative sample by enabling wider recruitment; and it hugely reduces the chances of participants knowing each other prior to attending.

Written submissions

To contribute to the deliberations, all written consultation submissions received by ORS or any of the partner organisations during the consultation period will be recorded and included in the analysis. ORS will read them all and review them in a dedicated section of our report; none will be disregarded even if they are not expressed in a “formal” way.

Most submissions will be reviewed in a tabular format in order to identify the range of views and issues as well as common themes. A variety of written submissions will be summarised in detail to make these sometimes lengthy documents accessible to the public generally and to highlight their main arguments and any alternative proposals (whilst of course ensuring that anonymity is preserved where necessary). The detailed written summaries of submissions will cover the following (non-exhaustive) range of individuals, groups and organisations (in no particular order): local authorities and other local or national statutory bodies; special interest, voluntary and local groups; residents; town and parish councils; local businesses; council staff; and MPs.

Submissions will initially be classified based on the type of individual or organisation submitting the response. They will then be read in their entirety and the key themes and issues raised will be carefully classified and recorded using a standardised code frame. Any submissions that present new evidence or further analysis or challenge the assumptions used to devise the proposed changes to local government across East Kent, or raise equalities issues, will be identified during this process. East Kent’s councils will also have copies of all consultation submissions, and they will independently review any submissions that present technical arguments or require more detailed consideration.

The themes raised by every submission will be summarised and reported. Where multiple submissions present the same or very similar arguments, or refer to the same evidence or assumptions, they will normally be summarised collectively in the report of consultation findings. Whilst the report will identify the range of organisations and individuals that share these views, the issues themselves will be reported without undue repetition. This will ensure that the decision-makers are able to consider important issues identified.

Submissions that present unique or distinctive arguments, or that refer to different evidence, will typically be summarised individually in the report of consultation responses. Whilst such views may be advanced in only a single submission, it is important that the East Kent Councils are able to consider such perspectives in their decision-making process.

Interpreting findings

ORS will prepare an independent analysis and report so that all of the responses may be taken into account. Some responses will be highlighted as significant in terms of at least one of the following criteria:

- Relevant to and/or having particular implications for the options

- Well-evidenced – for example, submissions from professional bodies, staff and concerned people or local groups that point to evidence to support their perspective

- Deliberative – based on thoughtful discussion in forums or other group settings

- Representative of the general population or specific localities

- Focused on the views from under-represented people or equality groups

‘Novel’ – in the sense of raising ‘different’ issues to those being repeated by a number of respondents or arising from a different perspective.

In reporting the consultation programme, ORS will identify where strength of feeling is particularly intense while recognising that interpreting consultation is not simply a matter of ‘counting heads’; above all, we shall seek to highlight the issues, insights, considerations and arguments presented so that the councils can consider their cogency.

It should be noted, though, that the different consultation methods cannot just be combined to yield a single reconfiguration scenario that reconciles everyone’s differences and is acceptable to all the East Kent councils’ populations – for two main reasons. First, the various consultation methods differ in their nature and so their outcomes cannot be just aggregated into a single result. Second, the populations in different areas, and competing interest groups, will have different perspectives on the reconfiguration options and in our experience there is no formula to reconcile everyone’s differences in a single way forward. In this sense, there can be no single ‘right’ interpretation of all the consultation elements; and ORS is clear that its role is to analyse and explain the opinions of those who have responded to the consultation, but not to recommend any single option or variant.

Role of East Kent’s councils

It is for East Kent’s councils to take high-level policy decisions based on their understanding of the quality and sustainability of their proposals and other relevant considerations. In their deliberations, the councils will review the evidence and considerations that emerge from consultation while also taking account of all the other relevant factors. Ultimately, the final decision will require East Kent’s councils to assess the merits of the options as the basis for public policy.

Appendix 1

Considering a ‘Referendum’ [Local Poll]

Introduction

We understand that it has been suggested that the four East Kent district councils should each consult on the future of local government by holding a ‘referendum’ (more properly called a ‘local poll’), as they have the power to do under S116 of the Local Government Act, 2003. ORS has been invited to comment on this prospect: for a range of reasons, we advise against holding referendums (or local polls) on local government reorganisation.

Controversial choices

If the four councils opted for a referendum/local poll, each would have to decide whether to run it by post or by voting in polling stations (or a combination of both); and it would be desirable for the four districts to use the same method. Other decisions would be required, too: how long to allow for postal returns? How many polling stations are required, and with what hours of opening? What would be the eligibility criteria for voting? Should students and second home owners (both of whom are likely to be registered elsewhere) be included? Should business owners be eligible if they do not live in the district? All of these issues would need careful discussion and could prove to be controversial in practice.

Constitutional issue

Properly understood, consultation should be advisory to those taking decisions; it is not itself a form of decision-making. Rather, it is a way of reviewing not only levels of support and opposition for options/proposals, but also a crucial means of scrutinising the issues, evidence and considerations in order to inform elected councillors’ judgements and decisions. Above all, consultation should guide but not dictate elected members’ assessments of the evidence for or against policies – it is not a ‘numbers game’ (in which the majority always wins), but a means through which councillors can consider the cogency of the cases put forward.

Confusion

The point is important because, before applying to the government to reorganise local government, each district council must decide for itself what form of reorganisation, if any, it wishes to pursue. Such decisions are properly taken separately by the elected members of the four participating councils – on the basis of their public consultation and all the other available evidence about feasibility, sustainability, transitional costs, savings to be achieved, services and council tax implications (and so on).

In this context, it would be seriously misleading to hold a referendum or local poll, since there would be public confusion about whether the voting was only advisory or actually decision-making. There are sharp divisions of opinion on the extent to which the Brexit EU referendum was decisive or should be ‘moderated’ by parliament – and the same could happen in a referendum/local poll on local government reorganisation. Most people would assume it was decisive whereas, constitutionally, the respective councils should make the final decision based upon their assessments of all the relevant evidence. However finely balanced the poll outcome was, it would be difficult and controversial for a council not to be bound by the outcome.

Consider, too, how difficult it might be if there were different outcomes from four district council referendums, but one or more of the councils nonetheless felt they could properly ‘compromise’ in order to find a constructive way forward. It would be controversial to pursue such a course following an apparently ‘decisive’ referendum. Rather than risk popular misunderstandings of the role of referendums, it is better to maintain the clear constitutional position that councils themselves take decisions based upon their consultations and all the relevant considerations.

After all, the Brexit referendum was held primarily in order to resolve a crisis of legitimacy (that had emerged and intensified over four decades) regarding the UK’s EU membership, but the legitimacy of East Kent’s local government is not in question – so there is no need to depart from normal governance principles.

Compromising precedent

Holding a referendum/local poll on LGR in East Kent would be an undesirable precedent for the councils to be challenged to hold further referendums on controversial matters. Of course, referendums are possible about council tax; but that is exceptional and they will always be rare because it is so difficult to win approval for larger increases in council tax.

Currently, at both the national and local levels, statutory and other consultations are currently conducted without referendums, on the basis of conscientious consultation. If East Kent opted for a referendum on LGR it would be breaking with established national good practice. After all, as far as ORS is aware, not one current or previous LGR has involved using a referendum – partly because of the problems summarised above, and partly because the established methods of public consultation do not lack legitimacy.

Costs

Referendums or local polls are costly, a factor that the four district councils will rightly consider. Legally speaking, while they might be co-ordinated, separate referendums would be required in each of the four district council areas – and so the organisational and electoral costs would be considerable. Moreover, there would also be significant communications costs, for it would also be difficult for councils to make their cases informatively in the face of persuasive contrary campaigns in the argumentative forums of public debate.

Other considerations

Compared with properly designed public and stakeholder consultations, there are other important problems with referendums or local polls: for example:

Participation (voting) rates are likely to be low – the Brexit and Scottish referendums had high levels of participation because they were seen to be important and were the culminations of decades of discussion and debate; but neither of those factors apply in relation to LGR in Kent

If voter turnout is low, the referendum results are likely to be subject to one-sided local campaigns and might also lack legitimacy because those participating are deemed to be ‘unrepresentative’ of the general population

Referendums offer voters only very simplified binary choices (Yes-No) and are very poor vehicles for exploring support across a wider range of options

Simplified Yes-No votes also reveal nothing at all about people’s understanding of the issues and their reasons for voting or holding their opinions – that is, they provide no information about residents motivations (about their experiences, expectations and concerns, for example).

Appendix 2

Summary of Proposed Consultation Elements

The table on the following page the proposed consultation elements.

Activity	Objectives
Engagement design, setup, on-going project management and advice	Supporting the councils on the consultation programme including an amount to support responding to questions and challenges that arise during and after the consultation
Workshop with Leaders and CEOs including expenses and preparation	Introduction to ORS and consultation planning
Four Elected Member events over two days (inc travel and accommodation)	To explain the consultation programme and its interpretation
Methodology papers	To publish to explain how different consultation responses will be analysed and interpreted
Questionnaire design (4xA4), setup and detailed analysis of up to 2,000 completed engagement questionnaires	The main mechanism for all interested residents and other stakeholders to provide feedback
Residents Survey - 1,000 x 12 min telephone interviews (250 per district)	A residents survey designed to achieve a representative sample in each of the four districts to understand the views of the general residents in each area, as well as overall.
One Stakeholder forum (same dates as residents forums but in the daytime)	To invite all affected stakeholder organisations to find out more about the proposals and seek their feedback. Invitations will be sent to town and parish councils, voluntary sector groups, equalities groups, local businesses etc
Managing, facilitating and reporting four forums with residents (including associated recruitment of £25 for up to 20 participants)	Deliberative discussion groups with residents in each of the districts, to understand initial and final levels of support, and what concerns exist, in order to refine the final proposals to mitigate any issues.
Incentives payments for up to 80 participants attending the resident workshops (£40 per participant for a 3 hour evening event)	An incentive payment to cover the time and any expenses that participants at the residents forums will incur, and is essential to ensure that a broad range of general residents attend, many of whom will come with no particular pre-conceived views about the proposals
Analysing and summarising up to 20 key responses which raise important issues (up to 5 of which are longer and more detailed and 15 of which are shorter single page)	written responses received separately to the consultation questionnaire which will be analysed and reported in an accessible manner
Interpretative written report of the above activities (including interim summary)	Detailed chapters reporting the findings from each strand of the consultation programme
Executive Summary of findings	A short accessible Executive Summary covering the key findings identified during consultation by theme
Presentation prepared and delivered by ORS Senior Executives to Leaders and CX	A detailed but accessible summary presentation involving relevant ORS members of staff that have been involved in the consultation covering the key findings identified during consultation by theme

BUSINESS CASE - SINGLE EAST KENT COUNCIL

Scrutiny (Policy and Performance) – 13 March 2017

Cabinet – 20 March 2017

Council – 22 March 2017

Cabinet – 23 March 2017

NEXT STEPS

If the decision is to proceed with the creation of a single East Kent district, an indicative timetable for progressing has been set out below (subject to further confirmation from the Department of Communities and Local Government):

Activity	Indicative Timings
Engagement with DCLG on draft business case	Early 2017
Each council to agree to proceed with business case subject to any engagement required / agreed	22 March 2017
Public consultation and engagement period	24 March – 19 May 2017
Executive decision by cabinet of each council whether to proceed with project for a new East Kent Council ^[1]	July 2017

From the July decision, these dates are subject to change through discussions with DCLG and the Boundary Commission. However, they give an indication of the process based on conversations to date with DCLG and the Boundary Commission:

Activity	Indicative Timings
<i>Proposals to create a new council submitted to DCLG (demonstrating clear political commitment from Districts involved)</i>	<i>July 2017</i>
<i>DCLG works with East Kent councils to formulate the Order</i>	<i>July to Autumn 2017</i>
<i>Secretary of State agrees order for formal approval by the four council's Cabinet/Council</i>	<i>Autumn 2017</i>
<i>Final Decisions by Secretary of State</i>	<i>Autumn 2017</i>
<i>DCLG to prepare necessary statutory instruments modifying existing legislation where required (in order to establish new organisation, wind up the old ones and make transitional arrangements)</i>	<i>Autumn 2017</i>
<i>Each council invited to give formal consent to creation of the new entity</i>	<i>Autumn 2017</i>

^[1] Cabinet will take views of Council before taking this decision.

<i>Activity</i>	<i>Indicative Timings</i>
<i>New entity considered by Houses of Parliament</i>	<i>Autumn 2017</i>
<i>Secretary of State decision</i>	<i>Autumn 2017</i>
<i>Boundary Commission undertake electoral review (NB this is optional but preferred approach of DCLG – alternative is an Order that creates a new council, using temporary wards as basis for the first election, and subsequent election boundaries considered by Boundary Commission).</i>	<i>Autumn 2017 to Autumn 2018</i>
<i>Establish Implementation Executive or similar body (which will be the decision making body until members of the new authority are elected)</i>	<i>Nov / Dec 2017</i>
<i>Agree initial structure for the new council</i>	<i>Dec 2017</i>
<i>Likely TUPE consultation period commences (to be confirmed on the basis of legal advice)</i>	<i>Dec 2017 / Jan 2018</i>
<i>Implementation Executive commences recruitment of senior posts (externally advertised)</i>	<i>Early 2018</i>
<i>Implementation Executive agrees Council tax harmonisation discretionary order with DCLG</i>	<i>2018</i>
<i>Implementation Executive sets first year budget for the new authority and council tax rate</i>	<i>Late 2018/ early 2019</i>
<i>First year budget for the new authority and council tax rate confirmed by all Councillors</i>	<i>Late 2018/ early 2019</i>
<i>New council legally takes effect (Vesting Day)</i>	<i>April 2019</i>
<i>Elections to new council</i>	<i>May 2019</i>

Negotiations with DCLG

Discussions have been held through this process with DCLG and the four East Kent district Leaders will be recommending the following (if agreed to proceed post July):

1. As part of the Order, to propose to DCLG that a new East Kent Council should be based on a committee system and include local area working for planning and licensing, as a minimum.
2. That DCLG be asked to support this project through a contribution towards the transition costs for the project to reduce the impact on the Council tax setting for a new council.