

AGENDA MANAGEMENT SHEET

Decision making session **Portfolio Holder (Customers, Workforce and Partnerships) Decision Making Session**

Date of Decision **5 February 2010**

Report Title **Consultation Duty to Respond to Petitions**

Summary This report proposes a response to the Government consultation on draft statutory guidance on the duty to respond to petitions. The deadline for responses is 24 February 2010.

For further information please contact: Jane Pollard
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Would the recommended decision be contrary to the Budget and Policy Framework? no

Background papers Listening to communities: Consultation on draft statutory guidance on the duty to respond to petitions.

CONSULTATION ALREADY UNDERTAKEN:- Details to be specified

- Other Committees
- Local Member(s)
- Other Elected Members For information: Spokespersons: Cllr Appleton, Cllr Davis, Cllr Gittus, Cllr Moss
- Cabinet Member Cllr Heather Timms (Decision Maker)
- Chief Executive
- Legal Sarah Duxbury
- Finance
- Other Chief Officers
- District Councils
- Health Authority

Police

Other Bodies/Individuals

FINAL DECISION

SUGGESTED NEXT STEPS:

Details to be specified

Further consideration by
this Committee

To Council

To Cabinet

To an O & S Committee

To an Area Committee

Further Consultation

Portfolio Holder (Customers, Workforce and Partnerships) Decision Making Session

Date 5 February 2010

Consultation – Duty to Respond to Petitions

Report of Strategic Director of Customers Workforce and Governance

Recommendation

That the draft response to the consultation paper in Appendix 1 is approved for submission to the Department of Communities and Local Government.

1. Background

- 1.1. The government published draft statutory guidance on the duty to respond to petitions on 2 December 2009. The consultation period runs until 24 February 2010. Appendix 1 contains a draft response to the consultation questions.
- 1.2 The primary legislation governing petitions is contained in sections 10 to 22 Local Democracy, Economic Development and Construction Act 2009. This requires the Council to meet certain minimum standards in dealing with petitions and to have a scheme which incorporates the following:
 - a) anyone who lives, works or studies in the local authority area, including under 18's, can sign or organise a petition and trigger a response
 - b) a facility for making electronic petitions is provided by the local authority
 - c) petitions must be acknowledged within a time period specified by the local authority
 - d) among the many possible steps that the local authority may choose to take in response to a petition, the following options must be included in the scheme:
 - taking the action requested in the petition
 - considering the petition at a meeting of the authority
 - holding an inquiry
 - holding a public meeting
 - commissioning research
 - a written response to the petition organiser setting out the authority's views on the request in the petition
 - referring the petition to an overview and scrutiny committee

- e) petitions with a significant level of support trigger a debate of the full council. Councils will determine this threshold locally but it must be no higher than 5 percent of the local population (for Warwickshire 5 percent would be @ 26,500 signatures)
- f) petitions with a requisite level of support, set by the local authority, trigger a senior local government officer to give evidence at a meeting of the authority's overview and scrutiny committee
- g) petition organisers can prompt a review of the local authority's response if the response is felt to be inadequate.

1.3 Petitions can relate to any function of the local authority including a matter which relates to an improvement in the economic, social or environmental wellbeing of the area to which any of its partner authorities could contribute.

2. The Consultation Paper

2.1 The consultation paper puts some flesh around the minimum requirements by way of statutory guidance, puts forward a model scheme based on an authority with a population of 1,500,000 (reproduced as Appendix 2 for information) and also suggests certain matters should be excluded from the right to petition i.e.

- (a) any matter relating to a planning decision;
- (b) any matter relating to a licensing decision;
- (c) any other matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;

These provisions are the same as the excluded matters for councillor calls for action except the latter also includes the following

- (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

3. Appendix 1 sets out a draft response to the consultation paper.

DAVID CARTER
Strategic Director of Customers Workforce and Governance
Shire Hall

Warwick
January 2010

Your ref:
My ref: DGC/HJP/
Your letter received:

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Dear Sir,

**CONSULTATION: DRAFT STATUTORY GUIDANCE DUTY TO RESPOND TO
PETITIONS**

I write on behalf of Warwickshire County Council in response to the above consultation paper. The views of the Council are set out below.

Main guidance

Question 1:

Does the guidance clearly set out the key principles and requirements of the petitions duty?

Paragraphs 10 to 16 of Chapter 1 adequately summarise the legal requirements. In paragraph 22 the bullet point 'is made under another enactment but does not qualify under that enactment (see paragraph 33)' would it not just be better to say 'does not qualify under another enactment'. An additional bullet point 'relates to a relevant matter' would seem to be a key issue that should be included here.

Question 2:

Are there any existing areas in the guidance which require further clarification?

Chapter 2 Paragraph 51 does not reflect the fact that the full council is no longer the ultimate decision maker for many decisions. The government has implemented a scheme of political management which means that most of the day to day powers of a local authority are now ultimately in the hands of the senior executive member. Whilst practical politics will undoubtedly play a part in any decisions taken statutory guidance should at the least reflect the statutory regime for decision-making.

Chapter 3 The last sentence of paragraph 64 seems to suggest that Overview and Scrutiny Committees must deal with petitions which are deemed to be vexatious, abusive or otherwise inappropriate. If a petition comes into one of those categories it should not even reach an Overview and Scrutiny Committee and should be rejected at an early stage as an invalid petition. It is a complete waste of public resources to allow such petitions to



INVESTOR IN PEOPLE



proceed. Generally there seems to be no bar on any petition organiser exercising the right to appeal to Overview and Scrutiny Committees if dissatisfied with the response. This is potentially going to be expensive for local authorities. Lots of petitions relating to highways are about people trying to leap ahead of others in the priority for works to be carried out etc.

Paragraph 66 refers to the petition organiser being sent a copy of the report and recommendations to the petition organiser. If a report has been considered in private session this is not appropriate – if a report is exempt then it should not be sent to the petition organiser –he/she is not bound by any duty of confidentiality as are councillors and officers. He/she should only be sent a public summary which the monitoring officer considers appropriately explains the position without disclosing ‘confidential or exempt’ information in accordance with the normal statutory requirements.

The model scheme should not form part of the formal statutory guidance which should stop at page 29 not 36 as stated. The model scheme should be an illustrative example only and much shorter. It should not be seen as setting an additional set of detailed standards based on a theoretical local authority.

Question 3:

Are there any additional areas which you feel this statutory guidance should cover? If so, please state what they are and why you feel they should be included.

The current guidance is focussed very much on local authorities and expectations of them. However the government is attempting through these proposals to open up enquiries into the wider public sector. It would therefore seem appropriate that the government should offer some very clear guidance to the other public sector partners about how important it is that they should constructively and proactively engage with local authority enquiries arising out of petitions. It is our experience, and the ‘Balance of Power’ report clearly demonstrated this, that not all government departments attach the same level of priority to ‘local democracy’ and ‘local accountability’. The omission of commentary aimed at partners is notable by its absence.

Question 4:

Are there any additional areas which, while not appropriate for statutory guidance, you would like to see covered by the expert practitioners in their sector-led guidance?

No

Question 5:

Are there any areas covered in this statutory guidance which you feel would be more appropriately covered by the expert practitioners in their sector-led guidance? If so, please state what they are and why you feel they should be addressed in this way.

No

Model scheme

Question 6:

Do you think the model scheme is clearly expressed and easy for people to use? Please explain your reasons.

This should be provided for illustration purposes only. Its presentation would need to be carefully considered on a website. The model scheme is quite lengthy and may be off-putting to people particularly if there is a lot of scrolling to do on a web page and/or lots of clicks on links to enable people to navigate it. We do not consider it would be easy for the

public to use and a much shorter and simpler version would be necessary. This is the problem of central government attempting to micro-manage local government.

Question 7:

Do you think the standards set out in the model scheme are achievable and appropriate to citizens' expectations?

The standards in the scheme may not be met and may raise unrealistic expectations. This appears to be an attempt to legislate on detailed matters through the back door.

- (a) The model scheme repeats the error in the main guidance that the full council is necessarily the final arbiter regarding decisions. This will significantly mislead the public in terms of the solutions that may emanate from a council debate even in relation to council functions let alone partnership functions.
- (b) Whilst 14 days is appropriate for an acknowledgement it is unrealistic to suggest that the acknowledgement might confirm the Council will take the action requested. Local authorities will need to decide whether the petition relates to relevant matters and may also choose to verify signatures.
- (c) Not all local authorities have council meetings on a monthly cycle.
- (d) Calling a referendum is included as one of the possible steps. We are not sure why this has been included in the model as it is most likely to be undertaken in cases of petitions made under other enactments and not those governed by the scheme. Referendums are expensive undertakings and we are operating in the context of significant cuts in public spending.
- (e) The examples of specific steps in relation to particular issues whilst interesting are not appropriate for a model scheme. Each local authority will need to consider the content of any particular petitions in the light of its own particular circumstances. Standard suggested responses like these are not compatible with local people finding local solutions. This appears to be central government imposing their own national priorities on something which is supposed to be about local democracy, the concerns of local people and local solutions.
- (f) Expecting an O&S Committee to consider a request for review of a petition response within 30 days is totally unrealistic. We have a cycle of Overview and Scrutiny Committee meetings based on a quarterly cycle – 3 months would be more a more appropriate timeframe. Reducing the number and incidence of such committee meetings is part of the steps taken by this authority to meet expected cuts in the public spending. It is also to help members find time to be out and about in their communities rather than sitting in committee meetings.

Question 8:

Do you think there is anything that should be added to the model scheme?

No –in fact we believe it should be shortened –see above.

Draft order

Question 9:

Do you agree with the categories we have excluded in the order? If you do not agree with the categories please explain why you do not think they should be excluded.

We agree with the categories listed in the draft order. They are consistent with the exclusions made in relating to councillor calls for action.

Question 10:

Do you think there should be additional categories excluded? If so, please state what they are and why you feel they should be excluded.

We believe that a further category should be added relating to vexatious, abusive or inappropriate petitions. Such provision was made in the excluded matters relating to councillor calls for action and it seems inconsistent not to include a similar provision in this order, particularly given the close nature of the 2 processes. It is a waste of limited public resources for these types of petitions to be included within any scheme.

Additional questions – Next steps

Question 11:

Following on from this consultation, what do you consider the most appropriate timescale for bringing the petitions duty into force? Please explain your reasons.

The impact assessment at the beginning of the consultation paper says that *'the proposals set out in this consultation will impose costs on local authorities and comments they may also deliver savings. In line with the Government's new burdens doctrine, any net additional cost will be fully and properly funded by the Department for Communities and Local Government so that no additional pressure is placed on council tax bills.'*

We would like further information about this additional money and how the net cost would be calculated. Certainly we agree that the proposals have the potential to increase expenditure. This is another bureaucratic system to service, and supporting the petition scheme, holding public inquiries, public meetings, extra committee meetings etc will all have a significant cost for authorities. Staff time and resources will need to be diverted to enable the schemes to be supported at a time when the government has indicated significant cuts in public spending. There is no indication of the level of extra funding which might be available from central government or how the government believes savings would be made or even quantified. These issues should be clarified before the duty is brought into force.

The petitions scheme extends to partner authorities activities. If a petitions scheme is to work well then consultation with those partners will be necessary. Local authorities should have at least a 6 months lead in time to develop and consult on any petition scheme.

Question 12:

Initial discussions with both the local government and technology sector indicate that it would be wise to stagger the implementation of the e-petition element of the duty, bringing the e-petition requirements into force 12 months after the other elements of the duty are commenced. Do you agree? Please explain your reasons.

Local authorities would certainly need time to evaluate the market, competitively tender, purchase and implement any e-petition facility –again another cost. There should be at the very least a further 12 month gap between the general duty and the requirement to provide an e-petition facility. In two –tier areas local authorities might wish to combine their purchasing powers and the need to liaise with others might mean a more realistic timescale would be 2 years. The purchase of the software will involve the local authority spending cash upfront as well as the need to divert time and resources to ensure any e-facility is integrated properly into other IT systems (possibly also partners systems) if the facility is to be effective.

Most local authorities are currently struggling with the proposed cuts in public spending and it seems inappropriate to impose these provisions at such a time without the government coming up with some hard cash to support the proposals.

Yours faithfully,

David Carter
Strategic Director of Customers, Workforce and Governance

Portfolio Holder (Customers, Workforce & Partnerships) Decision Making Session –5 February 2010

Item 2 –Appendix 2

Draft model scheme

Petitions

The council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. All petitions sent or presented to the council will receive an acknowledgement from the council within 14 days of receipt. This acknowledgement will set out what we plan to do with the petition.

Paper petitions can be sent to:

[insert address]

Or be created, signed and submitted online by following this link [link]

Petitions can also be presented to a meeting of the council. These meetings take place on a monthly basis, dates and times can be found here [link]. If you would like to present your petition to the council, or would like your councillor to present it on your behalf, please contact [insert name] on [insert phone number] at least 5 working days before the meeting and they will talk you through the process.

What are the guidelines for submitting a petition?

Petitions submitted to the council must include a clear and concise statement covering the subject of the petition.

- It should state what action the petitioners wish the council to take
- the name and address and signature of any person supporting the petition

How will the council respond to petitions?

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a council meeting
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the council's overview and scrutiny committee*
- calling a referendum
- writing to the petition organiser setting out our views about the request in the petition

*Overview and scrutiny committees are committees of councillors who are responsible for scrutinising the work of the council – in other words, the overview and scrutiny committee has the power to hold the council's decision makers to account.

In addition to these steps, the council will consider all the specific actions it can potentially take on the issues highlighted in a petition. The table below gives some examples.

Petition subject	Appropriate steps
Alcohol related crime and disorder	<p>If your petition is about crime or disorder linked to alcohol consumption, the council will, among other measures, consider the case for placing restrictions on public drinking in the area by establishing a designated public place order or, as a last resort, imposing an alcohol disorder zone. When an alcohol disorder zone is established the licensed premises in the area where alcohol related trouble is being caused are required to contribute to the costs of extra policing in that area. The council's response to your petition will set out the steps we intend to take and the reasons for taking this approach.</p>
Anti-social behaviour (ASB)	<p>As the elected representatives of your local area, as social landlord and licensing authority, the council plays a significant role to play in tackling anti-social behaviour. The council, in conjunction with our partners in the local crime and disorder partnership have set out minimum service standards for responding to issues of anti-social behaviour, you can find more details about these standards here [insert link].</p> <p>When responding to petitions on ASB, we will consider in consultation with our local partners, all the options available to us including the wide range of powers and mechanisms we have to intervene as part of our role as social landlord and licensing authority. For example, we will work with the neighbourhood policing team in the affected area to identify what action might be taken, consider identifying a dedicated contact within the council to liaise with the community and neighbourhood partners on issues of ASB in the area in question and, where appropriate, we will alert the crime and disorder reduction partnership and crime and disorder overview and scrutiny committee to the issues highlighted in the petition.</p>

Petition subject	Appropriate steps
Under-performing schools	We will consider, in consultation with local partners, all the options available to us when working with schools to secure their improvement. For example, on our behalf, the school improvement partner (SIP) will play a pivotal role, challenging and brokering support for poorly performing schools. Where a school is under performing we will consider whether it is appropriate in the circumstances to issue a warning notice outlining expectations and a timeframe for the school to improve its performance standards. Other measures available to us, where schools fail to comply with a warning notice or are in an Ofsted category of notice to improve (requiring significant improvement) or special measures including; appointing additional governors, establishing an interim executive board, removal of the school's delegated budgets, requiring the school to enter into a formal contract or partnership or, only if the school is in special measures, closure.
Under-performing health services	We will work with local health partners to consider the matter raised in the petition including, where appropriate, exploring what role the Local Involvement Network (LINK) might have in reviewing and feeding back on the issue (the LINK is run by local individuals and community groups and independently supported – their role to find out what people want in terms of local health services, monitor those services and to use their powers to hold them to account). The health overview and scrutiny committee will also be alerted to the petition and where the matter is sufficiently or potentially serious, the issue will be referred to them to consider for review.

If your petition is about something over which the council has no direct control (for example the local railway or hospital) we will aim to make representations on behalf of the community to the relevant body. The council works with a large number of local partners [link to list of LAA partners] and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with council policy), then we will set out the reasons for this to you. You can find more information on the services for which the council is responsible here [link].

If your petition is about something that a different council is responsible for we will give consideration to what the best method is for responding to it. It might consist of simply forwarding the petition to the other council, but could involve other steps. In any event we will always notify you of the action we have taken.

Full council debates

If a petition contains more than 1,500 signatures it will be debated by the full council unless it is a petition asking for a senior council officer to give evidence at a public meeting.

This means that the issue raised in the petition will be discussed at a meeting which all councillors can attend. The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by councillors for a maximum of 15 minutes. The council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

Officer evidence

Your petition may ask for a senior council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision.

If your petition contains at least 750 signatures, the relevant senior officer will give evidence at a public meeting of the council's overview and scrutiny committee. A list of the senior staff that can be called to give evidence can be found here [insert link].

You should be aware that the overview and scrutiny committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs. Committee members will ask the questions at this meeting, but you will be able to suggest questions to the chair of the committee by contacting [insert details] up to three working days before the meeting.

E-petitions

The council welcomes e-petitions which are created and submitted through our website [link]. E-petitions must follow the same guidelines as paper petitions [link to guidelines].

The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

When you create an e-petition, it may take five working days before it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature. If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within 14 days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

When an e-petition has closed for signature, it will automatically be submitted to [insert details]. In the same way as a paper petition, you will receive an acknowledgement within 14 days. If you would like to present your e-petition to a meeting of the council, please contact [insert details] (details above) within five days of the petition closing.

A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgment and response will also be published on this website.

How do I 'sign' an e-petition?

You can see all the e-petitions currently available for signature here [insert link].

When you sign an e-petition you will be asked to provide your name, your postcode and a valid email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete your 'signature' will be added to the petition. People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

What can I do if I feel my petition has not been dealt with properly?

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the council's overview and scrutiny committee review the steps that the council has taken in response to your petition.

The committee will consider your request within 30 days of receiving it. Should the committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the council executive and arranging for the matter to be considered at a meeting of the full council.

Once the appeal has been considered the petition organiser will be informed of the results within seven days. The results of the review will also be published on our website.