

LOCAL GOVERNMENT REFORM

Bridging the Divide



Contents

3	Introduction
4	Policy Context
6	Case study 1: Buckinghamshire
8	Legal Process
10	Case study 2: Northamptonshire
12	Transitional Considerations
14	Case study 3: Dorset
16	Governance
18	Appendices
19	Contact us

“Whilst a new authority brings lots of opportunities and excitement, there are inevitably matters that will arise from the abolished councils which the new authority will have to deal with. My advice would be to ensure that there are robust processes for understanding any high risk matters with those councils and senior officers should be accountable for resolving as many issues as possible to give the new authority the best start.”

Adele Wylie, Director of Legal & Democratic (Monitoring Officer) –
North Northamptonshire Council

Follow us and join our online discussion
using #LGReform

 – Trowers & Hamlins

 – @trowers

 – @trowers_law

Introduction

Local government reform has been impacted by financial and political factors over a number of years.

Operating in an environment of intense financial and administrative pressure, which has seen a number of councils issue warning or s114 notices, an increasing number of local authorities are looking to explore the possibility that a unitary system may offer a more efficient and viable model to help ease such strains.

The Labour party's Autumn Budget on the 30 October 2024 confirmed that devolution legislation will involve working with councils to move towards simpler structures "with efficiency savings from council reorganisation helping meet the needs of local people". This forms part of a broader aspiration to reform public services in order to improve outcomes whilst keeping public spending at sustainable levels. So it would appear that reform and reorganisation will feature extensively in the future of councils in England.

In this guide we take look at recent snapshot examples of local government re-organisation and provide general guidance for other authorities who are considering transitioning to a unitary model or are already on that journey.

We have also included links to interviews with colleagues in the sector who have undertaken re-organisations in order to provide detailed first-hand accounts on the issues that arose.

We are especially grateful to all those local government colleagues that contributed to this guide during its formulation.



Amardeep Gill
Partner
agill@trowers.com
0121 214 8838



Scott Dorling
Partner
sdorling@trowers.com
020 7423 8391



Policy Context

A brief history of legislation

Section 14 of the Local Government Act 1992 allowed the Local Government Commission to recommend a unitary system in any non-metropolitan area. Following this, the Local Government and Public Involvement in Health Act 2007 (LGPIHA 2007) enabled the Secretary of State to invite any local authority to propose a unitary model. Finally, the Cities and Local Government Devolution Act 2016 (CLGDA 2016) created a legal framework for reform and streamlined the process for making necessary changes to existing combined authorities in order to create unitary authorities.

Current approach

The local government structure in England contains different governance models in each area of the country. There is a generally a two-tier system consisting of county and district local authorities and the responsibility of council services are split between these two tiers. London and other Metropolitan areas operate under a single tier structure. As covered in the case studies set out in this guide, recent re-organisations have seen counties move towards one level of local government and responsibilities for local services in the form of a unitary local authority. Therefore, there is currently a mix of unitary, county and district authorities (as well as London and Metropolitan Councils) which are either led by a cabinet or committee system.





Case study 1: Buckinghamshire

Buckinghamshire County Council and the district councils of Aylesbury Vale, Chiltern, South Bucks and Wycombe were merged and replaced by a single unitary authority in the form of Buckinghamshire Council on 1 April 2020.

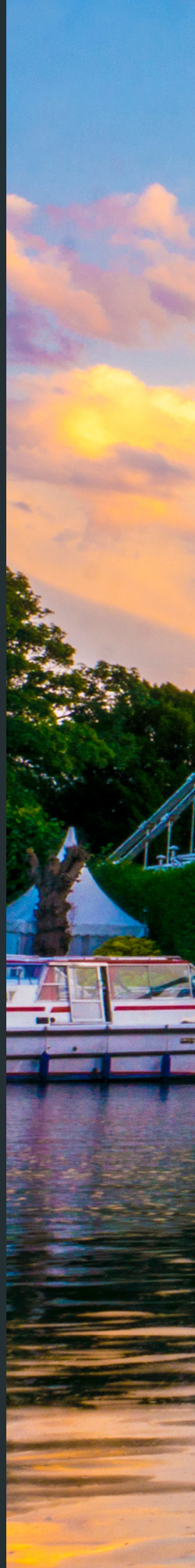
This was proposed by the leader of Buckinghamshire County Council, Martin Tett, and the then Communities Secretary James Brokenshire. The scheme was opposed by the four district councils who put forward a plan for two unitary councils based on the two different economic geographies in Buckinghamshire.

It seems that the impetus in this example was financial. When the plan was approved, Buckinghamshire County Council envisaged that the scheme would save around £18 million a year, with £1 million being saved due to a significant reduction in the number of councillors (236 down to 98).

The Secretary of State was persuaded by Buckinghamshire County Council's argument that the single unitary authority will be more efficient by reducing duplication and subsequently reducing costs for taxpayers. The one council is now the single point of contact and responsible for all services.

“Maintaining good staff engagement is key. At Buckinghamshire the staff surveys show very high levels of staff engagement which is due to a commitment by the Chief Executive and senior management team to properly engage and listen to staff as well as give them honest feedback about the challenges, all of which has generated a sense of pride in the new organisation.”

Nick Graham, Director for Legal & Democratic Services – Buckinghamshire Council





Legal Process

This section will look at the legal process that local authorities must follow to implement a reorganisation. The process for Local Government Reorganisation is very procedural and the Secretary of State (SoS) plays a pivotal role. If the proposal is successful, the SoS is required to make regulations to effect the reorganisation. There are 2 routes for reorganisation:

Route 1

The SoS may, pursuant to the LGPIHA 2007, invite a number of entities to submit a reorganisation proposal as Type A, Type B, Type C or combined proposal. This is becoming more common place and in November 2020 the SoS invited the areas of Cumbria, North Yorkshire and Somerset to make proposals in relation to creating a single unitary authority. The SoS's previous powers to "direct" a proposal to be made were removed.

The "types" of reorganisations relate to different combinations of districts, counties and adjoining areas which effectively give the SoS few limitations as to which or how many authorities can be reorganised into a single tier of local government. Different types listed in the legislation include:

- a single county unitary – eg. Buckinghamshire, Cornwall, Wiltshire, Shropshire, County Durham, Northumberland,
- a combination of one or more districts within a single county, or
- any other combination which results in a single layer of local government – in Northamptonshire the process involved the creation of two new authorities and our interview with Adele Wylie, Director of Legal & Democratic at North Northamptonshire Council discusses the added challenge of splitting the county council.

The SoS's invitation gives guidance to the authorities as to what the proposal should seek to achieve as well as timescales for the proposals, usual examples being:

- improved service delivery,
- value for money/savings,
- providing stronger and strategic leadership.

The relevant authorities can work together or individually in making the proposal, although joint working seems most appropriate.

Route 2

Following reforms in the CLGDA 2016 the SoS is empowered to make certain changes by regulations in relation to governance arrangements, constitution, membership, structure and boundary. The effect of these powers is that local authorities may work together to voluntarily submit to the SoS a reorganisation proposal which, via the CLGDA 2016 powers may be enacted by the SoS.

Under Route 2 in order for the SoS to take the proposal forward into regulations, those regulations must be laid before both houses of parliament and approved by a resolution of each house. The SoS must also provide a report setting out the proposal and why the SoS considers it appropriate to make the regulations.

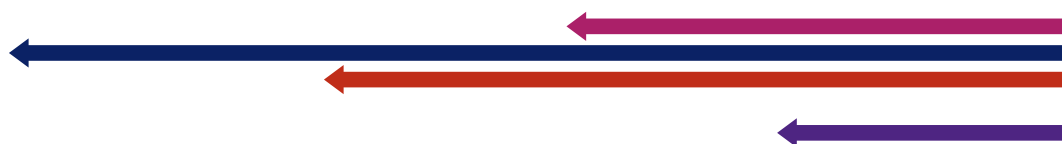
Formulating proposals and Consultation

Often multiple proposals will be formulated which may well be competing for the SoS's approval. The SoS will review and consult on proposals in order to decide which (if any) to progress to implementation. As with any important democratic and public reform, consultation plays a role in reorganisation and is explored below.

The consultation requirements of the LGPIHA 2007 and CLGDA 2016 are light touch, however as reorganisation has the potential to have significant impacts on the communities within the reorganised local authorities (and beyond), prudent consultation by authorities should be planned to include a wide range of stakeholders considering:

- the demographics of the various geographic areas – are they similar or different? Are there certain communities less easy to reach?
- how accessible are services provided by the local authorities, how will the reorganisation affect that, eg. potentially relocating them?
- what is the political makeup of the affected authorities?
- what are residents' views on their local government and will the reorganisation address the most pressing concerns of residents?

As our interview with Anna Earnshaw (Chief Executive of West Northamptonshire Council) discusses it is important to create ownership of the process through engagement with customers, stakeholders and staff.



The legal requirements for consultation as part of the reorganisation process are as follows:

Route 1 reorganisation consultation requirements

There is no formal obligation on authorities to consult any stakeholders (including residents) in forming proposals under Route 1. However, consultation is likely to form part of the SoS's evaluation of proposals which will be notified to authorities in the SoS's invitation to make a proposal.

Route 2 reorganisation consultation requirements

- SoS – must consult the local authorities affected by the reorganisation
- SoS – must detail consultation undertaken in their report which accompanies the draft order implementing the reorganisation which is laid before Parliament

Proposal Evaluation

Key elements which the SoS will take into account broadly are financial; democracy and accountability; and geography and service delivery.

Financial

- What are the short, medium and long term costs/savings of the reorganisation?
- Are there sufficient financial resources within the relevant authority/authorities to implement the reorganisation? If not, where will it come from?

Democracy and accountability

- How will the new governance, electoral and corporate structure enhance accountability to relevant stakeholders (residents, SoS, businesses and service providers)
- How will the new authority ensure democratic and organisational oversight of the reorganisation in the short, medium and long term?
- Will there be a centralising or devolutionary effect of decision making? How will residents have a voice in the new structure?
- Have the authority/authorities consulted stakeholders in relation to the proposal?

Geography and service delivery

- Are the proposals geographically rational? Do any economic factors warrant geographic anomalies?
- Are there any particular geographical / economic characteristics of the relevant areas that require a bespoke approach to service delivery which warrants special treatment?
- How could services be delivered more effectively and efficiently under the proposals?

Implementing Regulations

Once the SoS is satisfied and has approved a proposal they will implement it through regulations. There are a number of issues that tend to be dealt with including transitional measures that will be in place between the date of the regulations and the date the reorganisation comes into force. These often cover practical issues such as:

- “Shadow authorities” – In some cases where the regulations are passed before the establishment of the formal new unitary authority, the relevant authorities are treated as being organised as a “shadow authority”. The regulations will determine how the shadow authority will operate in the context of the existing authorities (e.g. committee structure, number of members from each legacy authority, etc).
- Elections – the Regulations will specify details of how any intervening and subsequent elections of the new authority will be held. That will be an important task going forwards in order to ensure the elections run smoothly as a single unit. Read our interview about how this challenge arose for Nick Graham of Buckinghamshire Council who became the returning officer for the unitary authority following reorganisation.
- Implementation Plan – the Regulations will likely require the shadow authority to prepare, keep under review and revise as necessary an implementation plan which will include the relevant plan and timescales and budgets to implement the reorganisation.



Case study 2: Northamptonshire

Two unitary councils were established in Northamptonshire on 1 April 2021 made up of (1) North Northamptonshire (covering Corby, East Northamptonshire, Kettering and Wellingborough) and (2) West Northamptonshire (covering Daventry, Northampton and South Northamptonshire). Northamptonshire's previous county council and seven district and borough councils have now ceased to exist.

The impetus regarding the Northamptonshire reform was also financial.

In January 2018 Max Caller was appointed by the Secretary of State to carry out a 'Best Value Inspection' for Northamptonshire County Council. The outcome of the inspection outlined that the financial, cultural and governance issues would not be able to be rectified in isolation. The recommendation was for the two unitary councils to replace the previous eight council authorities. The re-organisation's aims were to:

- Improve local government and service delivery;
- Give greater value for money;
- Generate savings;
- Provide stronger strategic and local leadership; and
- Provide more sustainable structures.

All services of the county council, boroughs and districts were transferred to the two unitary councils. The proposed outcome from the reform was for the financial challenges of Northamptonshire to be resolved by delivering savings and future success. The new unitaries will also aim to deliver a better quality of services across Northamptonshire. The increased savings from the formation of the two unitaries will be held in reserve and then it will be considered as to how those funds will be used across the county.

“One of the most significant challenges was disaggregating the budgets. Although some aspects were more straightforward than others, there were significant complications and difficulties in sorting a lot of matters including council loans.”

Barry Scarr, Executive Director of Finance and Deputy Chief Executive – Northamptonshire County Council (retired 31 March 2021)

“You need to engage your customers, stakeholders and staff and have clarity of purpose from the top that ensures everyone owns the future not just the programme team that implement the change.”

Anna Earnshaw, Chief Executive, West Northamptonshire Council





Transitional Considerations

This section focusses on common practical issues which can arise during transition through, and implementation of, local government re-organisation.

Transitional arrangements are largely dealt with in the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008/2867, which are of general application in relation to the exercise of functions by local authorities during the transitional period and following an order made under section 7 of the LGPIHA 2007.

Key provisions to note relate to responsibility for, and discharge of, functions in the period before a re-organisation date. Regulation 6 applies to shadow councils and any functions exercised by a shadow council, by virtue of Transition Regulations will be the responsibility of its shadow executive.

Regulations 11 and 12 outline requirements in respect of the preparation of plans and schemes under varying legislation and also specify the stage(s) at which these should be agreed or completed in relation to the re-organisation timeline.

Transfer of Functions and Assets

The process for any transfer of functions and assets will largely depend on whether there is to be a single unitary authority or multiple authorities, post re-organisation.

In any case, the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008/2176 should be considered the starting point as these govern the transfer of functions, property, rights and liabilities between local authorities as a result of orders made under section 7 of the 2007 Act.

Regulations 4 and 7 make provision for the transfer of functions, property, rights and liabilities where a predecessor council is to be succeeded by only one successor council and they confirm that, upon dissolution the functions of the predecessor authority shall on the re-organisation date become those of the unitary authority. Similarly, all property, rights and liabilities of the predecessor council shall on the reorganisation date vest in, and transfer to, the successor council.

Regulation 5 confirms that where there is more than one successor council for a predecessor council's area, the predecessor council's functions transfer on the reorganisation date to the new unitary authorities except where a particular function of a predecessor

council relates to a particular part of its area, the function will transfer to the successor council whose area consists of or includes that part.

Also in cases where there shall be multiple authorities, post re-organisation, Regulations 8 to 11 make provision for the transfer of property held by the predecessor council and, specifically, property held for charitable purposes, financial reserves and other property generally including intellectual property rights and commercial contracts. That said, it is advisable for local authorities to undertake a comprehensive assessment of all contracts held, in any event, to understand where there are potential overlaps or if some are surplus to requirements. It is important to conduct contract reviews to understand the extent of termination provisions available and also to assess whether services should be re-procured post re-organisation.

It is worth noting that the 2008 Regulations will only deal with councils' transfers of property, rights and liabilities where agreements as to the same have not already been reached between councils pursuant to section 16 of the LGPIHA 2007; further, it is made clear in the 2008 Regulations explanatory note that it is expected that transfers will take place in accordance with agreements made under this section.

In terms of property, local authorities and their shadow authorities should consider at an early stage where property is to be transferred to upon re-organisation i.e. to which unitary authority. This will necessarily involve an exercise in examination and understanding of property portfolios and establishing the nature of an authority's interest in all land and buildings.

For governance purposes, authorities should identify the area(s) in which they require a physical presence i.e. by way of a head office, and then establish which properties may be surplus to requirements and the optimal route for disposing of those properties, for example by way of:

- Straight sale(s) to purchaser (with or without option for buy-back);
- Granting long leasehold interests;
- Procuring for a Development Agreement;
- Joint ventures.

The above considerations would of course also require local authorities to bear in mind Section 123 of the Local Government Act 1972 and the need for surplus property to be sold at 'best consideration'. This is so authorities may demonstrate that they have maximised the benefits and returns from their assets.

From a practical perspective, authorities should also consider the timing of any sale of property, to ensure that they are operating in favourable market conditions, negotiating from a position of strength and that sale(s) are achievable (if occurring prior to re-organisation). More detailed considerations will also need to be taken where leasehold property is concerned and specialist advice should ideally be sought.

Employee Transfers

Communication and forward-planning are crucial to ensuring a smooth and successful re-organisation, and this is no less the case when considering employee transfers. It is important that staff are kept apprised of developments through consistent and accurate messaging in order to allay any concerns and minimise disruption. Local authorities should consider, from the outset, how various issues will be approached and resolved such as:

- Staff positions following re-organisation and whether this will necessitate the creation of new roles or identifying where there is duplication;
- The need for consultations with employees;
- Employee liabilities which will be ongoing at the time of re-organisation.

As regards legislation, Regulation 3 of the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (Employment Regulations) confirms that a transfer of functions to a single-tier council shall be treated as a relevant transfer within the meaning of the TUPE Regulations.

The Employment Regulations also serve to highlight certain key staffing situations which will specifically apply to local government transfers, including:

- Appointment of Heads of Paid Service – under section 4 of the Local Government & Housing Act 1989, it is the duty of every local authority to designate one of their officers as its head of paid service. The Employment Regulations set out that in respect of appointing a head of paid service to a new single-tier council, this must be done through open, national competition in line with the Local Authorities (Standing Orders) Regulations 1993.

- Former Heads of Paid Service – Regulation 5 provides that a Head of Paid Service whose employment would have continued, but for the appointment of another person to the post of head of paid service of the single-tier council, in accordance with the 1993 Regulations (as modified by regulation 4(1)), is to be treated as dismissed by reason of redundancy for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI 2006/2914).
- Local Government Pension Scheme – Regulation 6 confirms that staff employed by a shadow council shall be eligible for membership of the Local Government Pension Scheme during the transitional period.

It is worth noting that the Government guidance published following the LGPIHA 2007 – Local Government Restructuring: Guidance on Staffing Issues – continues to be a useful resource for local authorities as regards staffing considerations.

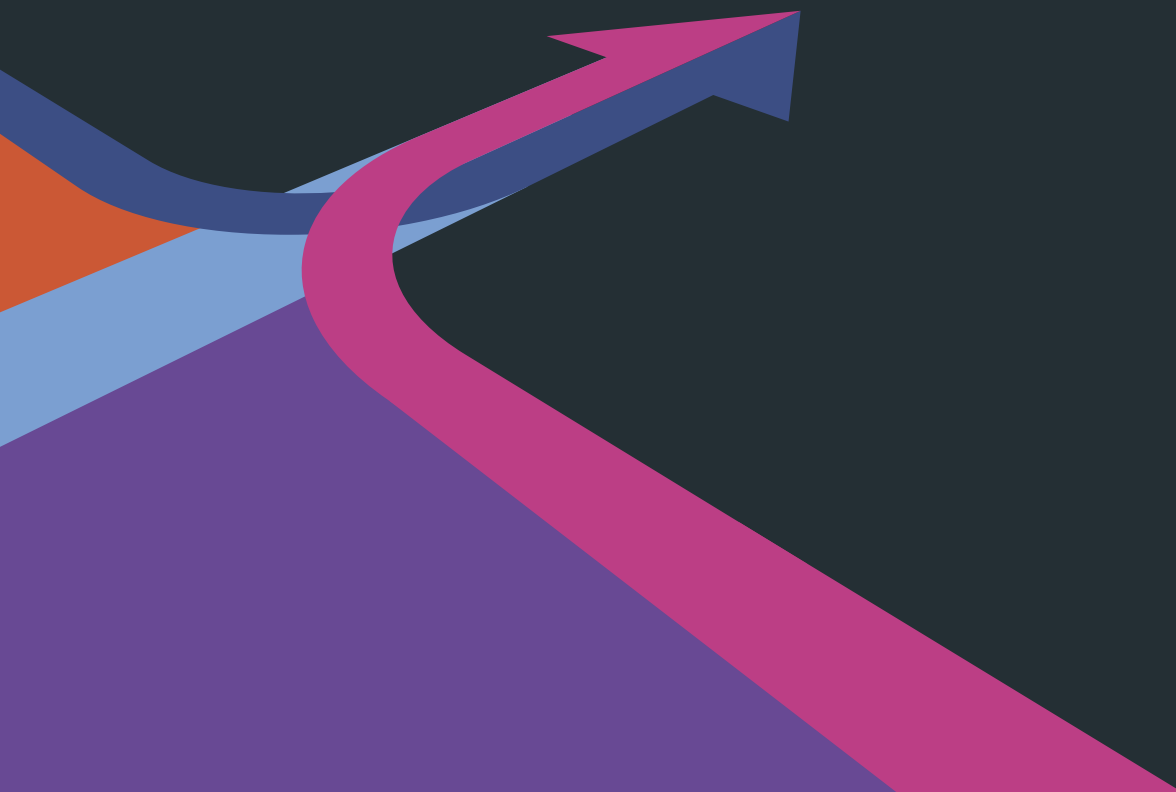
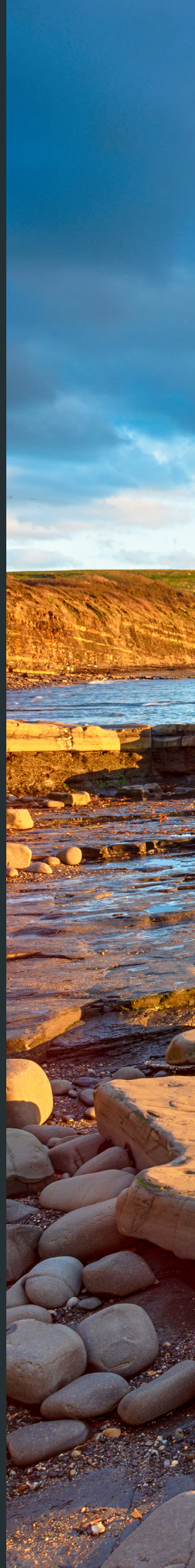


Case study 3: Dorset

On April 1 2019 the county of Dorset changed to two unitary authorities of:

- BCP Council – made up of Bournemouth, Christchurch and Poole councils; and
- Dorset Council – made up of the five other non-metropolitan districts of East Dorset, North Dorset, Purbeck, West Dorset, Weymouth and Portland.

The impetus for this decision was financial. In 2015/16 Dorset's nine councils previously spent around £920 million a year delivering services. Recent government funding given to Dorset's councils was £142 million less than the amount received in 2010. It was considered that the structure of local government was not sustainable and change was needed to minimise potential cuts to services in the future. The creation of BCP Council and Dorset Council when set up was expected to save approximately £108 million over a 6-year period, with 450 jobs being cut.





Governance

This section looks at how a new unitary council will govern itself following reorganisation and the issues it needs to think about so that it is ready to operate once created.

General

- Firstly, the Council will need to agree a constitution. The new unitary will need a constitution to be prepared and approved at the first meeting.
- The constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure efficiency, transparency and accountability to local people.
- Each of the pre-existing councils will have had their own constitution and ways of doing things. Bringing these together into a single new constitution is a significant piece of work that will need to be properly resourced during the transition period. Read our interview with Barry Scarr (former Director of Finance and Deputy Chief Executive at Northamptonshire County Council) which discusses encouraging the different organisations to work together.

How the Council makes decisions

- The Council will need to decide which system it wants to adopt for decision-making.
- A Cabinet system is the most common form of governance, where a leader is elected for a term or on a four year basis. Either decisions are made by the whole cabinet or members of the cabinet have decision making powers themselves. As an example, West Northamptonshire Council has a Cabinet system which is responsible for most of the day to day decisions of the Council.
- In a Committee system a leader is also elected along with councillors. However, power is exercised by a number of committees which the Council is divided into that make the decisions.
- Depending on the geographic and demographic scope of the new unitary, an executive system led by an elected mayor might be an option.
- The Council will need to consider how many councillors make up the Council. The roles and responsibilities of the councillors will need to be set out.
- A new unitary Council will be made up of a number of former councils which may have operated under several of the above systems. They will each have different procedures for making decisions and the transition to the new system needs to be carefully considered and mapped out.

Elections

- The change to a single unitary council will impact the format of elections. The election for members of the unitary council may take place during the transitional period or after this period.
- The new council will appoint members that will make decisions until elections for the new Council can be held. This will be done under an interim arrangement.



The roles and responsibilities of unitary councillors

- There are similarities in the role of a unitary councillor and that of a county/district councillor. It is likely however that there would be a reduction in the number of locally elected councillors in the region.
- Any councillors who had held office in the pre-existing councils may not be familiar with the functions that are now the responsibility of the new unitary. Training on the functions of the new council will be required.
- As in the pre-existing authorities, the role of a unitary councillor will include the following:
 - ensuring the Council's strategic vision is understood;
 - having the ability to effect change across a range of local authority activity;
 - contributing to good governance and the decision-making process while maintaining a high standard of conduct and ethics; and
 - performing a community leadership role (includes developing community cohesion and providing a voice for those who struggle to represent themselves).

Financial Considerations and Council Tax

- Formal decisions of the Council are required to give effect to the budget and key policies set out by the Council.
- Every Council sets council tax, and each of the pre-existing councils which form a unitary council will have carried out this process differently over a number of years based on their political priorities. The alignment or setting of new council tax needs to be determined and agreed.
- There will be differences regarding the amounts of council tax payable under the different authority areas of the pre-existing Councils. Therefore, the council tax within each area that constitutes the new unitary authority will need to be 'equalised'. The unitary authority will undertake a process of equalising the different council tax levels across the predecessor areas.
- When setting council tax, each council will need to consider its net budget and spending needs – a process that may be difficult for an organisation that has no operating history.
- In equalising council tax, the new unitary will need to keep in mind the limitations placed on the amount that Council Tax can increase. For example, councils with social care duties can raise council tax every year by up to 4.99%, without triggering a referendum of its local electors whereas others can increase it by up to 2.99%.
- Unitary councils are also the billing authorities who collect Council Tax for emergency services and any parish councils within the area. The administration for this process – which may have been previously performed by now dissolved district councils – will need to be set up.

Appendices

Statutory instruments to date:

- Bedfordshire – became single unitary – 2008
- Cornwall – became single unitary – 2008
- County Durham – became single unitary – 2008
- Northumberland – single tier of local government – 2008
- Shropshire – single tier of government – 2008
- Wiltshire – single tier of local government – 2008
- Exeter & Devon – single tier of local government for city of Exeter – rather than be part of Devon County – 2010
- Norwich and Norfolk – removing Norwich City Council from Norfolk County – 2010
- Bournemouth, Dorset (Christchurch) and Poole – became single unitary – 2018
- Buckinghamshire – became single unitary – 2019
- North Northamptonshire – single tier of local government - 2021
- West Northamptonshire – single tier of local government - 2021
- Cumberland – single tier of local government - 2023
- North Yorkshire – single tier of local government - 2023
- Somerset – single tier of local government - 2023
- Westmorland and Furness – single tier of local government in Cumbria - 2023

Interview series - bridging the divide

- [Anna Earnshaw, Chief Executive of West Northamptonshire Council](#)
- [Nick Graham, Director for Legal & Democratic Services at Buckinghamshire Council.](#)
- [Barry Scarr, former Director of Finance and Deputy Chief Executive of Northamptonshire County Council](#)
- [Adele Wylie, Director of Legal & Democratic \(Monitoring Officer\) - North Northamptonshire Council.](#)



Contact us

If you would like to discuss any issues in relation to Local Government reorganisation please contact:



Amardeep Gill
Partner
agill@towers.com
0121 214 8838



Scott Dorling
Partner
sdorling@towers.com
020 7423 8391



Chris Plumley
Partner
cplumley@towers.com
0121 214 8817



Paul McDermott
Partner
pmcdermott@towers.com
020 7423 8043



Louis Sebastian
Partner
lsebastian@towers.com
0121 214 8836



Suzanne Benson
Partner
sbenson@towers.com
0161 838 2034





trowers & hamlins

— trowers.com

All rights reserved to Trowers & Hamlins LLP. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.

Trowers & Hamlins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamlins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamlins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamlins LLP's affiliated undertakings. A list of the members of Trowers & Hamlins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamlins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamlins LLP recommends that no action be taken on matters covered in this document without taking full legal advice. © Trowers & Hamlins 2024