

<i>COMMITTEE</i>	FINANCE AND PERFORMANCE MANAGEMENT OVERVIEW AND SCRUTINY COMMITTEE
<i>DATE</i>	1 SEPTEMBER 2004
<i>TITLE OF REPORT</i>	CITY STATUS
<i>RESPONSIBLE OFFICER</i>	Mark Bowen, assistant director, legal and contract services

1. PURPOSE OF THE REPORT

- 1.1 To consider the petitions submitted to Council on 7 April by the then Mayor, Councillor Nicholas Bowler dealing with the restoration of city status for Rochester and the grant of city status for Medway and to update members on progress on City status issues.

2. RECOMMENDATIONS

- 2.1 Members are recommended to consider the options set out in the report.

3. BACKGROUND AND HISTORICAL CONTEXT

- 3.1 At the meeting on 7 April, the outgoing Mayor Councillor Nicholas Bowler presented a petition with 993 signatures requesting that city status be restored for Rochester and a petition containing 239 signatures supporting the grant of city status for Medway.
- 3.2 From early times, local communities petitioned the Crown for Charters of Incorporation granting rights and privileges and certain freedoms. Rochester acquired city status in the early part of the 13th century.
- 3.3 Legislation in the 19th century reviewed and established a new framework for local government much of which still applies in the 21st century. The key aspect of this was the creation of boroughs and county boroughs, many of which were also cities. There was no practical difference in legal status. Cities were effectively boroughs or county boroughs which had a diocesan bishop or which by letters patent or royal prerogative had been created a city, or had acquired city status by prescription.
- 3.4 Key changes to local government organisation were brought in during the 1970s. The City of Rochester was merged with the Borough of Chatham and part of the rural district of Strood to form a new authority. The pre-1974 City Council successfully petitioned the Queen for Special Letters Patent permitting the historic city to continue to style itself as the City of Rochester. The Queen was again petitioned for Rochester's city status to be extended to

the whole borough and Special Letters Patent granted in 1982 gave city status to Rochester upon Medway which superseded the 1974 grant.

- 3.5 Rochester upon Medway City Council ceased to exist as an area of local government on 1 April 1998. It was then that the present situation concerning the loss of city status arose.
- 3.6 The Local Government Act 1972 abolished cities as units of local government. However, that act as amended by the Charter Trustees Act 1985 made provision for the retention of some of the privileges and dignities of former city local authorities. The Special Letters Patent granted to Rochester in 1974 were extremely unusual as they allowed for the retention of city status for a part of a local government area without the appointment of Charter Trustees. Under the statute then depending on the specific circumstances of the re-organised authority this could happen in three ways:
 - A whole newly constituted area could take on the name of a former constituent authority which had city status
 - Where the city of the status applied to a town or parish council, then city status could continue to be conferred on that authority in that capacity
 - In other cases the identity of a former city was retained through the appointment of charter trustees.
- 3.7 The third option was the only statutory option available to Rochester at re-organisation. The then Department of the Environment, Transport and Regions advised in 1997 prior to Medway's formal establishment that Rochester's city status and its ceremonial rights and privileges as such would cease unless charter trustees were appointed for the relevant area. Charter trustees are a body consisting of district councillors representing the former city. Where the number of councillors falls to less than 3 a new authority can make up the difference by appointing local government electors for the area of the former city. The charter trustees are able to elect one of themselves as mayor and make a precept for legitimate expenses relating to the carrying out of ceremonial functions as part of city status.
- 3.8 Minute 1197 of Rochester upon Medway City Council's Policy and Resources committee points to a conscious decision being made by that Council not to make the appointment of charter trustees.
- 3.9 The Monarch has made invitations to local authority areas to apply for city status to mark certain events of significance both in a national context and in the context of the monarchy. Medway has twice applied unsuccessfully for city status both at the millennium and the Golden Jubilee.
- 3.10 Modern city status is not and never has been a right, which can be claimed by an area fulfilling certain conditions. Similarly, whilst the grant of city status is purely honorific conferring no additional powers or functions, it is considered to be a rare mark of distinction granted by the Sovereign and conferred by

letters patent. It is granted by personal command of the Queen on the advice of her ministers.

- 3.11 The matter was last before members in 2003. Subsequently there has been extensive correspondence between the Assistant Director, Legal and Contract Services and the Department of Constitutional Affairs and the Office of the Deputy Prime Minister. Assistance has also been sought from lawyers who gave advice to the then City Council prior to re-organisation.

4. **SUMMARY OF CORRESPONDENCE WITH THE DEPARTMENT OF CONSTITUTIONAL AFFAIRS AND THE OFFICE OF THE DEPUTY PRIME MINISTER**

- 4.1 The initial views of the Lord Chancellor's Department refer to a letter from the then Chief Executive of Rochester upon Medway City Council which stated:

“Further to your letter of 10 November 1997 and subsequent telephone conversations with Mrs. Edwards, I can advise that the City Council's Policy and Resources Committee at its meeting on 13 January 1998 agreed not to pursue the establishment of charter trustees. This is subject to confirmation by Council on 27 January but I do not expect any amendment to be made.”

The Policy and Resources minutes from the former City Council are available. However, despite a extensive search, the minutes of the Council meeting referred to in the letter cannot be located.

- 4.2 On the basis of the letter, the Lord Chancellor's Department has stated:

“We have been advised that is not now possible for charter trustees to be appointed in respect of an entity – Rochester upon Medway – which no longer exists as a distinct local authority area.

You will know that Medway Council applied for city status to mark the Millennium and the Queen's Golden Jubilee. It remains possible that a future application from Medway as a whole will be successful. At present, Her Majesty has given no indication of when she will next wish to make the grant of city status. We are considering whether there is any other method by which city status could be restored to Rochester and will write to you again when our preliminary consideration is complete. We can offer no assurances about this, however only the Queen can grant city status, on ministerial advice under the royal prerogative.”

- 4.3 Clarification was sought from the lawyers who provided advice to the then Rochester upon Medway City Council who advised that there might be the possibility of legal argument that city status had not been extinguished based on an interpretation of the regulations which implied that city status may be preserved for reorganised authorities.
- 4.4 These views were put to the Office of the Deputy Prime Minister and the Lord Chancellor's Department. The key part of their response is as follows:

“If we understand the view ... they appear to be arguing that there is a distinction between historic city status acquired by virtue of ancient prescriptive rights and city status acquired by virtue of a royal charter granting city status to a district area, for example, under Section 245 of the Local Government Act 1972.

We have looked at this before and I am afraid that our advice remains unchanged. I can understand why at a first blush Regulation 7(a) of the Local Government Changes for England Regulations 1994 might be construed as preserving city status, but this does have to be read together with Regulation 1(2). This provides the Structural Changes Orders made under Section 17 of the Local Government Act 1992 “... have effect subject to any provision of the Order itself ...”

In our view Regulation 1(2) operates so that the provisions in the Structural Changes Order prevail over anything in the 1994 Regulations. The intention behind Regulation 7(a) is to put beyond doubt the fact that city status is unaffected in those district areas, which although subject to structural change, have not been abolished under a Section 17 Order.

It is therefore clear that the City of Rochester no longer exists as a local government area. The question remains whether “city status” is something that can continue to exist in its right in the absence of an associated area. In our view it cannot for the reasons given above. Furthermore, the implication that there is such a thing as “historic city status”, which is in some way uniquely different from city status and is capable of preservation by virtue of Regulation 7(a) is in our view also untenable.

We understand that in recognition of Rochester’s ancient historic status, it took Letters Patent for the city to be explicitly preserved following re-organisation in 1974 and again in 1982. The fact that these steps were not taken again 1998 rather supports the conclusion that the city’s “historic status” is I am afraid, truly extinguished.”

- 4.5 Rochester’s former legal advisors now accept the ODPM’s arguments on the loss of city status.
- 4.6 Whilst, no specific guidance has been given in writing, officials at both government departments have indicated that should the former historic city be able to gain parish status then, there is a possibility but by no means any certainty that city status could be conferred upon that new entity at some future point through the monarch exercising her discretion.

5. **OPTIONS AVAILABLE TO RESTORE CITY STATUS**

- 5.1 A retrospective application cannot be made by Medway Council on behalf of the former City Council to appoint charter trustees even if that is the wish of this council. The 1972 Act makes it clear that this is a decision that would have needed to have been made by Medway’s predecessor authorities.

- 5.2 The Office of the Deputy Prime Minister and the Lord Chancellor's Department are adamant that the failure by the City Council to appoint charter trustees for whatever reason has extinguished Rochester's official city status.
- 5.3 Notwithstanding the above there is also advice on record from the then Home Office Constitutional Unit sent to the City of Rochester Society which states that they "see no objection to references to [Rochester's] historic status as a city including the name of your society. On this basis there is no objection in practical terms to the continued reference to Rochester as a city in promotional or tourist material.
- 5.4 A legal challenge of the views given to date by the Office of the Deputy Prime Minister and the Department of Constitutional Affairs is not considered viable as City status is conferred at the discretion of the Monarch. Any advice around this point would prove expensive, would not be able to deliver any viable options and legal proceedings would be likely to leave this authority with a bill in the region of £50,000-£100,000 without any realistic prospect of success.
- 5.5 Whilst the relevant Civil Servants cannot fetter the Monarch's discretion, they have given an indication that if a legal entity e.g. a parish or town council were created; there is a possibility that City status could be conferred on that new entity.
- 5.6 The impetus for creating a new parish council can come forward in 3 ways.
- Medway could conduct a review of its area to decide whether or not to make recommendations to the Secretary of State in respect of the amalgamation, separation, abolition or alteration of new Parishes.
 - If Medway received a petition by the highest of 250 electors or 10% of local government electors for the area seeking Parish status.
 - The Secretary of State can direct a review of parish arrangements by the Local Government Commission.
- 5.7 It is unlikely that the third scenario will take place. Medway has no plans at present to review parish arrangements under the Local Government and Rating Act 1997. There are very strong arguments that it would be an inappropriate use of the powers to carry out a review with the prime purpose of creating a Parish council as a tool in securing City Status rather than addressing a particular local government need. If a review were carried out for Rochester, it is probable that other parts of Medway's area would also wish to be considered. Whilst a petition has been received requesting the restoration of city status, that does not qualify as a petition requesting the creation of a parish under the 1997 Act. The number of signatories across Medway also fell some way short of the numbers needed to trigger the option set out in the second bullet point of 5.6.
- 5.8 There are other issues to consider. Firstly it is unlikely that a Parish area would effectively cover the boundaries of the former historic city. An option based on the wards of Rochester East and West may be the nearest match.

Secondly a Parish would have the right to be a precepting authority and if city status were conferred this would carry the right to appoint a mayor. Whilst as the petition shows there is support for the restoration of City Status for Rochester, the petition doesn't indicate whether such support would be forthcoming if a financial contribution had to be made. Approximately 1500 signatures from electors in the proposed Parish area would be required to initiate a review. In addition Members would need to consider whether it would be to the advantage of Medway to have both a Mayor of Medway and a Mayor of Rochester.

- 5.9 Given the firmness of the view from the Office of the Deputy Prime Minister and the Department of Constitutional Affairs that city status has lapsed and cannot be re-conferred then there appears no obvious advantage in seeking to petition the Monarch for Special Letters Patent for the former local authority area. However this does not rule out an approach being made directly to the Monarch by senior members of Medway to see if a special case can be made. The Leader and present Mayor will be writing to Her Majesty the Queen to make a personal plea for the restoration of City Status.

6. CITY STATUS FOR MEDWAY

- 6.1 As is set out above invitations to apply for city status are usually issued on behalf of the monarch to commemorate an event of national significance. There is presently no indication when the next general invitation will be issued. Whilst a pro-active application can't be made, the general correspondence with the ODPM indicates that an application from Medway at a future date would be welcomed.

7. LEGAL AND FINANCIAL IMPLICATIONS

- 7.1 The legal implications are contained in the body of the report.
- 7.2 The cost of seeking external legal support to challenge the views of the Lord Chancellor and the Office of the Deputy Prime Minister could not be covered from this year's allocation for the legal services budget and additional provision would need to be made. Neither is there any budgetary provision for a review of the local government status of the former historic city's area.

8. BACKGROUND PAPERS

- 8.1 None

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