Duty to Cooperate events – FAQs

What activities are subject to the Duty to Cooperate?

- To what extent does the duty to co-operate apply to local authority activities beyond actual plan making?
- What does the duty to cooperate mean for Part 2 LPs/site allocations DPDs Local Plans?
- When a plan does not address strategic matters (for example, development management policies) what level of cooperation is required with those covered by the duty?

Section 110 of the Localism Act sets out who and what is subject to the Duty. This makes it clear that the Duty applies to the strategic matters addressed in development plan documents, other local development documents and marine plans, as well as any activities that can reasonably be considered to prepare the way or support the preparation of these documents. In practice this means that the Duty is engaged on all strategic planning matters (i.e. issues that impact on more than one planning area) that are being addressed in a local plan and the evidence base being developed to support this. Where a plan is being prepared in two (or more) stages, cooperation to support the Core Strategy should adequately address all strategic matters that will subsequently be implemented through, for example, a Sites Allocation DPD. Additional cooperation to satisfy the Duty as part of a DPD/Part 2 document should therefore only be needed where new strategic issues (e.g. new strategic sites) are being considered or the CS has become out of date, as in the recent case of Doncaster - see Inspector's conclusions on the Doncaster DPD (Nov 2014).

- In regard to CIL, are there any best practice examples of how to approach the duty to cooperate (and producing a statement of compliance) particularly in relation to CIL where a local authority’s Core Strategy is based on now revoked RSS figures?
- How should local authorities be dealing with the duty to cooperate when producing a charging schedule?

Although RS figures are still providing a benchmark for Inspectors in some cases, Core Strategies based on old RS figures are very likely to be out of date and need to be reviewed with CIL developed alongside the new plan. There is no specific Duty to Cooperate as far as the CIL legislation is required but obviously CIL should be based on the plan and therefore the delivery would be based on the plan (Regulation 123 list & s106 balance should be discussed but there is no requirement) so co-operation between authorities and between Districts and County Councils is recommended. For example, it
may be the case that the infrastructure needed to ‘open up’ a site will be in the neighbouring authority and that is where the CIL money is best invested.

- Does an LPA need to be able to demonstrate that it has got agreement with potential strategic partners that an issue is not sufficiently strategic to warrant further engagement under DtC?

It is important to set out in your Duty to Cooperate evidence how you have dealt with all strategic issues including where you have agreed, as part of the scoping process, that joint work is not necessary to address the issue. Recognise that different issues will need a different response and that the response should be ‘proportionate’ to the significance of the strategic issue for the LP strategy.

- To what extent does the Duty to Cooperate apply in relation to a plan which was substantially prepared before the Localism Act came into force, but which is the subject of examination afterwards?

Only plans that were formally submitted for Examination before the Duty came into effect in November 2011 are exempt, even if most of the plan preparation was undertaken prior to this date.

The role of councillors/governance arrangements in strategic planning

- What is the best way to engage/co-operate with Members on Duty activities, both within and outside your own council?
- Can the Duty succeed without a formal joint working arrangement in place between local planning authorities across a sub-regional area?
- Is there a recommended governance structure for dealing with cross border decisions in plan preparation?
- How can officers ensure political ‘buy in’ for the Duty?
- Elected members are often unwilling to share sovereignty and unable to take difficult decisions for the greater good - how can this be overcome without support from senior management?
- When do Members need to be involved and at what level?
• How should we decide on the appropriate form and level of engagement – eg when a meeting is needed rather than just a written exchange?

Councillors are the decision-makers and should be involved throughout the plan preparation process. This will be particularly important when seeking support for joint working. The more formal the governance arrangements to address strategic issues on a shared basis, the more likely the LPAs are able to demonstrate an ongoing commitment to cooperation (especially at Examination). Any joint governance arrangements should have clear, agreed terms of reference which need to be reviewed on regular basis (e.g. annually). MoUs are an important tool to ensure that all partners agree what the strategic issues are and what the shared response will be. However MoUs need to be ‘outcome focused’ and be signed by all relevant parties at Member level - preferably at corporate leadership level. Some authorities are working together on a statutory basis to deliver joint plans but increasingly, authorities are coming together to address strategic issues through formal voluntary governance arrangements. In all cases, leadership at both corporate, senior officer and Member level has proved essential - see PAS Case Studies for Coastal West Sussex & Greater Brighton and Consensus Building for Growth in Cambridge and the PAS and 'Doing your Duty' practice update, for further information. All strategic responses should be proportionate to how significant the issue is to the local plan; some will require joint evidence and an ongoing commitment to address the issue (e.g. housing provision) and others may just require an exchange of information.

Cooperation with strategic partners

• How can LPAs engage/ co-operate with utility and infrastructure providers on strategic activities especially if key staff from these organisations are not based locally?
• What sort of engagement is ‘good practice’?
• How should LPAs engage with LNPs and LEPs on plan preparation?
• What happens if these bodies do not respond positively?

The statutory bodies subject to the Duty are set out in the Local Planning Regulations (2012). The type and amount of cooperation with these bodies will be dictated through your early stage scoping process. Where close cooperation with one of these bodies is needed to deliver a strategic matter in the local plan, the LPA should consider setting out and agreeing at the start of the process what type and level of cooperation is likely to be required through a shared protocol or MoU. However, given the limited resources of many of these bodies, LPAs should manage this, if possible, with other LPAs within the strategic area. This should address the mutual benefits of working together so as to ensure support from all parties. Where one party refuses to sign, the LPA should set the reasons for this out in the Duty Statement and what alternative options have been considered/taken to address the issues.
LEPs are playing an increasingly important role in strategic planning, particularly in relation to strategic infrastructure delivery. Some LEPs are also supporting the development of a common evidence base and are providing access to key stakeholders, such as utility providers. Early engagement with the LEP is strongly advised to ensure that your plan’s strategic priorities and economic growth ambitions are being reflected in the LEPs’ strategic economic plans.

- What happens if a strategic partner organisation doesn’t sign up to your protocol?
- How can authorities best deal with any issues it is unable to resolve?
- How do you resolve a situation where neighbouring authorities refuse to co-operate?

If an authority has failed to secure support from neighbouring authorities e.g. to meet housing needs, they will have to provide comprehensive and robust evidence of how they sort to engage and to demonstrate that they have explored all options for meeting their needs. Inspectors will consider this alongside issues such as the extent of unmet needs and the willingness of neighbours and other partners to work towards a solution. However, even if the Inspector concludes that the submitting authority has done everything within its powers to cooperate with strategic partners, they will still have to demonstrate that its proposed strategy is sound. It may be helpful to set out areas that are agreed in a Statement of Common Ground so that the focus can be on areas of disagreement and how to resolve these.

- How do you determine the level and breadth of DtC engagement, as depending on the issue, this can extend beyond simply neighbouring authority boundaries?
- Other than neighbouring authorities, how should a council determine what other authorities it should work with to comply with the duty to cooperate?
- How far should officers go in pursuing adjoining authorities and statutory consultees if no strategic issues have been flagged up?

PPG advises a ‘proportionate’ response to strategic matters and the extent of cooperation engaged will differ depending on the circumstances and how important the strategic issues are to the plan. If an authority is key to the delivery of your strategy, regardless of whether they are neighbours or not, then the Duty should be engaged. If an immediate neighbour has only a limited ability to support delivery of your strategy, e.g. due to significant constraints, the extent to which you cooperate with them should reflect this.

- To what geographic extent is it advisable to undertake the duty?
The Examiner needs to be satisfied that, within reason, all the various bodies have been given an adequate opportunity to influence the plan and not just been consulted on it. What is considered to represent 'adequate opportunity'?

Your cooperation story should be clearly and concisely set out in your Duty to Cooperate statement, explaining what strategic issues have been identified and how these have been addressed. Examination experience clearly demonstrates that 'cooperation' must be meaningful and have a clear outcome and is more than consultation - see Inspector’s letters on Runnymede and Aylesbury Vale local for example of cooperation as opposed to consultation. See also the Inspector’s report on Northampton Minerals & Waste LP for example of how the Inspector has considered 'adequate opportunity' to cooperate. Your statement should be shared at the scoping stage and as your plan develops with all relevant strategic partners (neighbouring authorities, county councils in two-tier areas, statutory consultees etc) to ensure that there is a common understanding of the strategic issues and support for how you have been addressing these. It may be to your advantage to formally publish your emerging Duty to Cooperate statement at key stages of the plan’s preparation, in the same way that the SA is made available. Where cooperation has been initiated with a strategic partner and there has not been a response, the LPA should persevere and not stop at the first hurdle (see Inspector’s response to Runnymede LP); silence does not necessarily mean contentment!

What is the role of County Council’s in the Duty to Co-operate where two tier authority structures exist

County councils are subject to the Duty as minerals and waste planning authorities but also as key players in the delivery of infrastructure (transport, education etc) and should therefore be engaged throughout the plan preparation process.

Meeting objectively assessed needs

- There may be instances where Councils are unable to meet their objectively assessed needs for development, and have been unable to find a nearby authority to ‘take’ that unmet need. How much/what type of evidence is required to demonstrate that the Council has tried to meet their unmet need in cooperation with others?
- How far should the search for another authority to meet unmet need extend in geographical terms?
• If individual authorities within a sub-region are planning to meet OAN within their individual LA boundaries and this approach is deliverable – is this a valid approach?
• Is producing a SHLAA at housing market area level (rather than at local authority level) more appropriate in terms of meeting the requirements of the duty?
• Does LPA need to have a specific number to give to the other LPAs by submission/examination?
• How should LPAs reconcile objectively assessed housing need across different overlapping HMAs?

PPG advises that housing needs should be assessed on a housing market area, which, in most cases, will cover more than one local planning area. Even if your neighbours within your SHMA are unable or unwilling to work jointly on developing the evidence base, your housing needs should still be based on the strategic geography. It may be that all authorities within an HMA agree that they can meet their own needs but this approach is best confirmed through a MoU or similar tool to make sure all authorities are agreeing the same thing. PAS has developed some practical advice on developing your objectively assessed housing needs.

• If a neighbouring council allocates a major urban extension directly adjacent to one of your settlements and this restricts your ability to allocate land in that settlement due to the pressure that it has put on existing services, would it be appropriate to ask for a proportion of the development to count towards your land supply?

The Duty to Cooperate applies to strategic sites as well as strategic policies, as demonstrated by the Inspector's response to the Bolsover Local Plan (May 2014). Any strategic issues relating to strategic site allocations should, where possible be addressed through the relevant local plan process. Even if a neighbours CS has been found sound, if issues arise that mean further cooperation is needed on, for example, a strategic site, this will need to be addressed through the Site Allocations DPD - see Inspector's conclusions on Doncaster Site Allocations DPD (Oct 2014).

• Most discussions around the Duty refer to accommodating housing growth, but where will an authority stand if they cannot accommodate their Gypsy & Traveller need and their neighbouring authorities are unable to help?

As with all other development needs, the submitting authority will have to set out what its needs are for Gypsy & Travellers as defined by the evidence and how it intends to meet these needs. If the identified needs can't be met, the authority will have to provide a robust case as to why it can't be met within the
local planning area, and how it has proactively cooperated with neighbours to consider all available and deliverable options for meeting the needs. As with housing, an assessment of Gypsy & Travellers' needs should reflect the strategic area and should rarely be done on an individual LPA basis.

Managing strategic evidence

- How should the Duty be engaged when preparing evidence that has not been jointly commissioned?
- Should relevant stakeholders be consulted throughout the process from devising methodology to draft reports? Or do they just have a chance to comment on it as a supporting document when consulting formally on the Local Plan?
- What happens if an LPA can't work on joint evidence because of budget / timetabling / practical reasons?
- Is it OK to later conclude that it may not be appropriate to work on a joint evidence base, if there are good reasons?
- What are the expectations where representations are made that two authorities should work together on preparing policies or making provisions for neighbouring areas but there is an obvious mismatch in plan timescales? E.g. one authority is still in early stages and another authority has an adopted plan.
- Where one authority is preparing a Core Strategy and then intends to subsequently prepare an Allocations DPD, whilst the adjoining authority is preparing a single Local Plan how can the duty to co-operate ensure that both authorities are fulfilling their requirements and that plans can work in conjunction?

The evidence base to support strategic policies should reflect the strategic geography and, where possible, should be managed on a joint basis with other relevant LPAs. However, joint evidence is sometimes not possible for practical issues, such as different local pan timetables. In circumstances like this, LPAs should consider alternative options which still provide a robust evidence base for their plan. For example, where a LPA can't secure a joint approach to a SHMA, Green Belt review or employment needs assessment, they should still develop the evidence on the same strategic geography and involve the relevant authorities at key stages, including the initial scoping stage. Benchmarking of individual LPA evidence on common issues across a strategic area may also provide a practical solution to the issue of timing.

The Duty to Cooperate in London

- There is a distinction in London with the Duty applying to individual LPAs and the Mayor’s ‘duty to inform’ with the London Plan. What further cooperation is needed given that the majority of strategic issues would be addressed through the London Plan?
• How should the Mayor (and the GLA) respond to requests for engagement and discussions from individual out-of-London local planning authorities?
• How should these local planning authorities go about ensuring that they fulfil the Duty to Cooperate with this body?
• The London Plan / FALP places a requirement on London Boroughs to seek to exceed their London Plan targets in order to reduce the shortfall in London-wide housing supply. One of the stipulated means of doing this is through DTC obligations with neighbouring authorities within and outside London. How will this mechanism work in practice, given all the LBs are working to the same policies (i.e. densities, internal space standards, centres hierarchy etc) and evidence base (i.e. we have identified housing capacity through the same SHLAA process)?

PPG advises that in London the “degree of cooperation needed between boroughs will depend on the extent to which strategic issues have already been addressed in the London Plan. Cooperation between the Mayor, boroughs and LPAs bordering London will be vital to ensure that important strategic issues, such as housing delivery and economic growth are planned effectively.” Examples of strategic issues that are therefore still likely to be subject to the Duty include waste (as demonstrated through the failure of the North London Waste Plan) and planning for Travellers. Further guidance on this issue, particularly in relation to housing, is expected to be included in the GLA’s Further Alterations to the London Plan (FALP) following the Examination particularly in relation to meeting OANs within boroughs on the edge of London.

Examinations

What about third party representations which think the Duty is not being complied with but individual bodies do think it is?

Third parties that are invited along to the Examination are entitled to challenge the LPA’s evidence, even if all relevant bodies/neighbours are content with the LPA’s approach. The submitting authority should therefore use every opportunity throughout the plan preparation process to demonstrate how it is managing strategic issues, for example, by publishing its Duty to Cooperate Statement alongside the plan at each consultation stage.

• How do you define an “outcome” that will satisfy the test of soundness at Examination?
• What issues have been raised at recent Local Plan examinations regards compliance with the Duty to Cooperate? What have been the
main reasons that inspectors have found fault with LPA’s handling of the duty? Is it largely to do with housing?

There is no 'one size fits all' approach to the Duty with each case being assessed on the basis of the individual circumstances, the evidence presented by the submitting authorities and the responses of others through the consultation and Examination processes. Key to this will be the 'outcome' from cooperation which in most cases should be an effective policy outcome. However, Inspectors are taking a more consistent approach to the issues considered when assessing compliance with the Duty which is based on recent Examinations and case law. A note of the issues being considered at Examination has been prepared by PAS (Demonstrating the Duty). Some examples of Inspector's conclusions on recent Examinations are also on the PAS website for more detailed examples of how Inspectors are addressing the Duty at Examination.

Recording Duty to Cooperate evidence/DtC Statement

- What templates/recording/evidence is considered best practice?
- How should we best demonstrate that co-operation has been successful and agreement reached – eg a simple written exchange; or a joint statement; or a formal MoU.
- How far back do we have go to demonstrate the satisfying the duty?
- How much detail is needed to demonstrate compliance with the duty - all meetings and correspondence, or just those that resulted in an action or outcome? Is the same approach & level of detail required for all strategic priorities?
- Assuming there are no major cross boundary issues, what evidence should authorities submit to satisfy an Inspector at examination that duty to co-operate duties have been met?
- Compliance with the Duty has become so important, that arguably too much time is being devoted to providing suitable evidence and an audit trail. Just how short can a Statement of Compliance be?

LPAs should set out a clear and concise story of how they have addressed strategic issues in their local plan as evidence to demonstrate compliance with the Duty. This should address each of the relevant strategic issues, the strategic evidence used, involvement of strategic partners and how these issues have been dealt with to date and will be managed on an ongoing basis. PAS has developed a Duty to Cooperate Statement template which can be used and adapted to individual LPA circumstances. Evidence submitted as part of the statement should be focused on the strategic matters being addressed and should clearly demonstrate the outcome of cooperation (i.e. the policy implications). All relevant documentation should be included (using weblinks where possible) with the key information clearly highlighted e.g. if a
note of a meeting is included as evidence, the relevant paragraphs should be highlighted. This applies to emails, notes of phone calls etc. It should also be clear from this where cooperation has stopped e.g. as a result of an agreement to address the issue separately by individual LPAs or where there has not been a resolution to the strategic issue on a joint basis.

Project Management, skills and resources

- Given that the Duty to Cooperate is strategic planning in the context of localism, how can local planning authorities adequately resource the duty?
- In a time where local authority resources are limited and reducing could the duty co-operate lead to better coordination and reduced costs through joint working?
- To comply with the requirements of the Duty to Cooperate requires a significant investment in both time and resources, yet these are in short supply, how can smaller local authorities, and many of the prescribed bodies manage this?

Developing a robust strategic planning policy framework is an integral part of the local plan preparation process and should be part of the day job. Although joint working and maintaining a record of strategic activities can be onerous, doing it properly should save time and money at the end of the process. To help support a culture of joint working, local authorities should be clear what strategic issues are a priority and focus on these; explore all opportunities for developing a common evidence base; share expertise and skills (even on an informal basis). Working within a defined strategic partnership will help as will making sure that the local plan is seen by your authority as a corporate priority. Some successful strategic partnerships eg Cambridgeshire & Peterborough have employed a dedicated, shared staff resource to supplement strategic working, provide impartial advice and keep momentum going with the work. All LAs should employ good project management in developing the local plans - further support is available through the PAS ‘Good Plan-making Guide’.

How should DTC activities be monitored and set out in the Authority's Monitoring Report?

It is up to individual authorities how they monitor their Duty to Cooperate activities but the summary table in the PAS template may be useful for annual monitoring purposes. If strategic activities are being managed through a formal governance structure, the activities of this body should be assessed through its strategic monitoring framework which can then be used on a more consistent basis as the AMR content for all relevant authorities.