IMPROVING HIGHWAYS AGENCY ARRANGEMENTS BETWEEN COUNTIES AND DISTRICTS

The Audit Commission for Local Authorities in England and Wales
Improving Highways Agency Arrangements between Counties and Districts

An Interim Report

September 1987
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Summary

The current arrangements for managing local authority roads in England and Wales are a mess. In many parts of the country tax and ratepayers funds are not put to best use because of lack of communication, or even open hostility, between county and district councils. This is not solely, or even primarily, a political problem. Relationships between the staffs of the different councils are often very poor. The legislative framework, far from resolving disputes, appears positively to encourage them. Change is urgently needed if potential value improvements of over £100 million in highways management are to be achieved.

* * *

County councils, metropolitan districts and London boroughs are the highways authorities for all roads in England and Wales other than trunk roads and motorways, which are the responsibility of the Department of Transport (DTp) or the Welsh Office.

County councils in England and Wales spend about £700 million a year on maintenance and £390 million on capital works on their own roads. In addition counties look after other highways activities such as traffic management and strategic transport planning. They can choose to discharge their responsibilities themselves, or they can appoint district councils as their agents under Section 101 of the Local Government Act 1972. But if a county does not voluntarily appoint a particular district as its agent that district can — under Section 42 of the Highways Act 1980 — claim the right to maintain certain urban unclassified roads; the county remains the highways authority and is required to fund necessary work carried out by the district.

Following the reorganisation of local government in 1974, central government encouraged counties to make agency arrangements; about two-thirds of districts are now agents for at least some highways functions on some roads in their area. But these agency arrangements have frequently given rise to disputes and there is a widespread acceptance that the position is unsatisfactory. There is no unanimity, however, about the most appropriate alternative to the present system. The Association of District Councils (ADC) and the Association of County Councils (ACC) therefore asked the Commission, as part of its general study of highways maintenance, to review the efficiency of agency arrangements from a management standpoint. This interim report fulfils that remit and proposes changes which, in the Commission’s view, would bring about managerial improvements. In doing so the Commission has taken the existing structure of local government, and the principal legislation which underpins it, as given. The aim has been to help make the present system work, rather than draw up alternative blueprints with implications stretching far beyond the highways field.

The study has shown that agency arrangements on the current model often severely hamper the efficient management of highways:
significant time is wasted in fractious disputes between county
and district, which are sometimes fuelled less by a desire to
provide efficient services than by the concern of officers and
members to maintain their own prestige. In many cases, the two
tiers are rivals striving to perform the same functions and deliver
the same services;
agency arrangements constrain budget allocations within a
historically based framework rather than according to a proper
assessment of need. Furthermore they often prevent such an
assessment being made on a county-wide basis. In consequence,
money is not allocated to areas of greatest need;
there is little incentive for either county or district to improve its
efficiency. The existence of agents has diverted counties' attention
from their own deficiencies, while many budget allocation
processes give districts little incentive to improve their own
efficiency.

It might seem, therefore, that the logical course would be to scrap all
agencies and for all counties to manage their roads directly. But this would
not necessarily produce the best outcome. Where both sides have the will
to make them work agency arrangements can be effective. There are
benefits from giving the districts a direct input into highways decision-
making, notably on traffic management and development control.
Districts can be as efficient as, or more efficient than, counties at some
highways maintenance activities. District councils are, for example, very
often best equipped to undertake sweeping and grass cutting. The larger
the district the wider the range of functions it can handle satisfactorily. In
current circumstances ending all agencies would not therefore be the right
approach from a value for money perspective.

What is needed above all is greater effort at the local level to make
agency arrangements work, and greater clarity about the nature of the
relationship. Highways agency is, fundamentally, a contractual arrange-
ment. But many districts do not see it as such. They act as if the district
were itself the highways authority; members feel themselves to be
responsible for policy issues which they do not control. Counties — the
other side of the coin — tend to hide behind agency arrangements. And the
terms of the agency, unlike other contracts into which the authority may
enter, are often not defined accurately or in a manner which allows
performance to be properly monitored.

The Commission believes, nonetheless, that agency can be made an
effective form of delegation, particularly in large counties not dominated
by a single district, and where the districts recognise the county's strategic
role. But changes are needed to make this happen. The most important
are:

(i) *Section 42 of the Highways Act 1980 should be repealed.* It inhibits
a free choice by the county as highways authority by permitting
districts to claim the right to maintain urban unclassified roads in
their area. This makes it difficult for the county to take action
against inefficient agents and thus reduces the highways authority's
ability to manage the service for which it is responsible, leading to
ineffectiveness and inefficiency.

(ii) Instead there should be a statutory duty on counties to consult
their districts on highways policy matters and on any proposed
change to existing local agency arrangements. However, wherever
there is any doubt, it needs to be made clear to ratepayers that the
county council is responsible for highways.
(iii) In the light of these changes counties should review existing agency arrangements, or lack of them, in consultation with their districts. The principal criterion for terminating an agency or awarding a new one should be efficiency of service delivery. This report provides some evidence on relative efficiencies. It is likely that a district with a population of over 100,000 will be well placed to carry out some functions more efficiently than its county, but there is more analytical work to do before more precise recommendations can be made at local level. Auditors will be carrying out this work over the next year.

(iv) Highways maintenance agency should be a contractual arrangement. The highways authority, in consultation with all its districts, should specify policy, unit costs and standards or frequency. Budgets for structural maintenance should be based on an assessment of needs, itself based on a road condition survey. The highways authority should have the right of financial and technical audit of the agent.

(v) District council members should not get involved in the day to day management of current year service provision. Highways maintenance agency should be mainly an officer-officer arrangement with the involvement of district council members limited to policy matters and those areas where the agency agreement explicitly allows the agent to exercise discretion. Traffic management and development control decisions should however involve district members.

(vi) Where a district which is currently an agent or S42 claimant proves unable to negotiate what it considers a satisfactory arrangement it should have a right of appeal for a specified period to the Secretary of State. He should recommend in favour of the arrangement which seems most likely to encourage economy, efficiency and effectiveness in the use of resources.

The Commission hopes that authorities in dispute can put past problems aside and establish new, durable and efficient arrangements. If not, there must be an increasing likelihood that central government will elect to manage more highways functions centrally, bypassing local authorities. It is vital for the future of local government that counties and districts put their house in order and demonstrate that they can work together in the interests of the community.

* * *

Over the next year the Commission's auditors will be examining highways management at individual authorities throughout the country. They and their authorities will also need to take account of the contracting-out provisions of the Local Government Bill now before Parliament — though it looks unlikely materially to affect the nature of agency arrangements. The preliminary conclusions set out in this report will be analysed in the light of auditors' conclusions on efficiency and effectiveness. In addition, the Commission would welcome comments on the recommendations outlined above and detailed in Chapter 3. In the light of further internally and externally generated evidence the Commission may comment further on agency arrangements in its full report on highways maintenance next year or subsequently.
1. There are 300,000 kilometres of public road in England and Wales. The development and management of the road network are crucial to the economic and social life of the country. Responsibility for this management is divided between central and local government. The Department of Transport (DTp) and Welsh Office act as highways authorities for 2,600 km of motorway and 9,500 km of trunk road, spending £200 million a year on general maintenance and £120 million p.a. on capital work, via local highways authorities acting as their agents. Counties, London boroughs and metropolitan districts are highways authorities for all the public roads in their areas other than motorways and trunk roads, spending about £1,150 million a year on maintenance and about half that amount on capital improvements. Counties are responsible for the bulk, by length, of local authority roads (240,000 km) and for the majority of local authority expenditure (£700 million or 61% of maintenance, and £390 million or about two thirds of capital, spend). Exhibit 1 shows a comparison of road lengths and expenditure.

Exhibit 1

ROAD LENGTHS AND EXPENDITURES IN ENGLAND AND WALES IN 1986/7

<table>
<thead>
<tr>
<th></th>
<th>KM</th>
<th>Maintenance</th>
<th>Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTp/Welsh Office</td>
<td>Motorways</td>
<td>£200m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trunk roads</td>
<td>£450m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Principal roads</td>
<td>£120m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other county roads</td>
<td>£390m</td>
<td></td>
</tr>
<tr>
<td>County Councils</td>
<td>Roads maintained</td>
<td>£700m</td>
<td>£190m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£110m</td>
<td></td>
</tr>
<tr>
<td>London Boroughs and Metropolitan Districts</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Department of Transport Statistics Bulletin (87) 32 CIPFA

2. Despite these spending levels, an opinion poll by MORI in May 1986 sponsored by the Commission suggested that highways maintenance and
street cleansing are the local authority services with which the public is least satisfied. The recent report by the National Consumer Council ‘What’s Wrong with Walking?’ has also revealed major public concern about a particular aspect of maintenance — footway condition.

3. The exercise of highways responsibility is complex. The Department of Transport and the Welsh Office usually employ local authorities as their agents, delegating to them powers and responsibilities within policy guidelines. Virtually all maintenance expenditure on trunk roads and motorways passes through local authorities although the DTp is now also making use of private sector consultants to manage roads in the former metropolitan county areas. This is one of several changes central government has made to its agencies following a reappraisal in the early 1980s; others include moves to needs based allocation of budgets and to monitor agent performance more closely. The DTp and Welsh Office only award agency to local authorities which are highways authorities in their own right. Shire districts do not therefore normally work on motorways and trunk roads, although a few do act as, in effect, sub-contractors to the DTp/Welsh Office agent, carrying out simple cyclical maintenance work — grass cutting, sweeping and gully emptying. Central government will not allow shire districts to carry out other maintenance on its roads and specifically authorises each instance where a district performs cyclical work. This report does not examine in detail the agency arrangements with the DTp and Welsh Office.

4. The position within counties is complicated. The county council may be acting as an agent for the DTp or Welsh Office and is the highways authority for other public highways. District councils may also have a major involvement with county roads, and about two-thirds do so. It is this relationship between county and district which is examined in this report. Districts may:

—act as agents for county councils under S101 of the Local Government Act 1972 for some or all highways authority functions on some or all county roads;
—carry out work for the county on a rechargeable, contractual, basis under the Local Authorities (Goods and Services) Act 1970. Goods and Services Act arrangements are widely used for sweeping and grass cutting but for few other functions;
—claim maintenance of urban unclassified roads, defined as any unclassified road with a speed limit of 40 mph or less (S42 Highways Act 1980, replacing S187 LGA 1972). This is not an agency; the law provides districts with a power they can exercise if they see fit and which cannot be vetoed by the county council. The latter remains the highways authority, but is indemnified by the district against claims for damages arising from inadequate or poor maintenance. The Secretary of State for Transport ruled at the end of 1986 that a county can modify budgets submitted by S42 claimants in the light of its priorities and available funds; before this some authorities believed the county had to provide whatever budget the claimant requested. Only 12 districts are currently claiming S42 rights, but the threat of doing so has been used in many cases as a lever to encourage the county to award an agency under Section 101. Many S101 agencies are, in fact, shotgun marriages held in place by S42.

5. Districts possess powers and responsibilities in their own right which overlap with the highways authority’s responsibilities. For example:

—the Control of Pollution Act 1974 requires the highways authority to cleanse highways regularly enough to ensure safety of traffic
and to maintain them. The Act also requires districts to cleanse highways in the interests of public safety or the amenities of the area; districts are, usually, the major funding source for street cleansing;

—highways authorities need to cut grass, prune trees etc. within the highway boundary for safety reasons. District councils have separate powers and responsibilities and again, in practice, fund the majority of such work for amenity purposes;

—street lighting is legally divided into two categories — 'road lighting' and 'footway lighting'. These reflect differences in column spacing and height rather than whether the lights illuminate carriageways or footways. Highways authorities are responsible for maintaining road lighting but can decline to adopt footway lights, leaving district (or parish) councils to fund and arrange the work;

—district councils have powers and responsibilities on the highways, for example for street name plates, bus shelters and other street furniture;

—county and district councils are both involved in providing off-street car parking (though on-street responsibilities rest with the highways authority);

—district councils are local planning authorities required to consult the county council on planning and development matters affecting the highways. County councils, acting as highways rather than planning authorities, have the power to direct that an application be refused on highways grounds or that it be granted if the district, as local planning authority, requires the developer to make a planning agreement under Section 52 of the Town and Country Planning Act 1971 and so contribute to improvements in the road network. The county council thus currently has more ability to influence a district’s decisions on individual planning applications when acting as highways authority than in its role as strategic planning authority (where it has no power to overrule a district). The White Paper 'Lifting the Burden' discusses the removal of the power of direction. Districts, as local planning authorities would then be free to grant planning permission without needing to act in accordance with highways authority views;

—district councils can also contribute towards any expenses incurred by the highways authority if, in the opinion of the council, the expenditure is or will be of benefit to the council’s area (S274 Highways Act 1980). They can fund and carry out maintenance or improvements such as pedestrianisation, environmental improvements to the footway etc., if the highways authority agrees. District councils thus contribute to highways maintenance and are currently spending about £30 million p.a. on such work.


7. In the light of this wide range of overlapping and potentially conflicting responsibilities the attractions of agency arrangements are clear. They seem to offer a way of integrating district and county responsibilities and enhancing the effectiveness of highways management as well as planning and environmental services.

8. Until recently successive governments have sought to promote district involvement in highways matters via agency (see Note 1). Partly as a result
221 districts (66% of the total) are agents for some functions on some roads though some of these agencies are very restricted geographically or functionally; only three counties have no agents or S42 claimants. (Exhibit 2 summarises the overall position). Nationally, the position is that both counties and districts have a large involvement in highways matters, but the detailed arrangements vary markedly from county to county and from district to district within a county. In general the simpler engineering tasks are more likely to be dealt with by agents than the more complex ones. Some specialisms such as bridge maintenance and design are almost invariably excluded from agency. Predominantly urban districts are more likely to possess agency, or to possess comprehensive agency, than rural areas. This partly reflects the greater road lengths which would be covered by an S42 claim in an urban area. S42 also explains why many agencies are 'urban core' or 'island' arrangements which cover only the major town or towns in a district. The overall effect is often to create a 'patchwork quilt' separation into directly controlled and agency areas — see Exhibit 3.

9. In financial terms about 45% of the £700 million p.a. county councils spend on highways maintenance is via agency. Maintenance accounts for
the great majority of revenue expenditure under agency. The rest is for activities such as traffic management, development control and duties related to public utility works. The total cost of professional and technical services under agency, including supervision of maintenance work, analysis and design aspects of traffic management and capital works, is only 15% of net county council expenditure on such services (£25 million out of £165 million a year). Capital spending via agency is low, typically well under 10% of the county total.

10. Agencies have not proved easy to operate. There have been problems ever since the 1974 reorganisation of local government. The Local Authority Associations, in consultation with the Department of Transport, issued a Code of Practice in 1980 which included an arbitration process; the ACC later withdrew its support for the Code after the first occasion on which the procedure was used. Problems with agency continued; the ACC and ADC therefore asked the Audit Commission to include agency in its special study into the management of highways maintenance. The Commission accepted this proposal, deciding that the special study would include an examination of the status, effectiveness and value of S101 agency and provide indicators of conditions under which these arrangements are appropriate. The agency study has been undertaken in conjunction with the main study of highways maintenance, but has looked at all aspects of highways agency, including traffic management, development control and capital works, not just maintenance. This interim report on agency is being published in advance of the main report on highways maintenance, which will appear in Spring 1988.

AGENCY AND DIRECTLY CONTROLLED AREAS IN ONE COUNTY

11. The project team was under the overall direction of Stephen Evans and was led by John Gaughan with two other Commission staff and three consultants who were previously local government officers from both counties and districts — Stuart Mustow, Ted Kenyon and David Barber.
The team has met at regular intervals with a Consultative Group consisting of representatives of the ACC, ADC and AMA.

12. The work undertaken specifically for the agency study included in-depth fieldwork in six counties and fifteen of their districts (listed in Note 2), and shorter visits to many other authorities and national organisations, including the Water Authorities Association, regional water authorities, the Department of Transport headquarters and regional offices, the Royal Town Planning Institute, the ACC and ADC and contact with professional associations such as the County Surveyors' Society, the Association of Chief Technical Officers and the Association of Municipal Engineers. The team has also visited metropolitan districts which became highways authorities in their own right following the abolition of metropolitan counties, and in addition two districts and two regional councils in Scotland where different arrangements for highways management apply. The Commission has also received written submissions on agency from thirteen county surveyors and thirty-three district chief technical officers/engineers. The Commission thanks the local authority associations and the individual authorities which agreed to take part in the study, for the considerable time and effort in responding to questions and offering opinions and advice.

13. In addition, the report draws on work undertaken for the main special study of highways maintenance, including:

—fieldwork on routine maintenance and surface dressing carried out by the project team with three county councils and six district councils acting as agents for those counties;
—other fieldwork on routine maintenance and surface dressing with a London borough and another district council;
—a detailed questionnaire on highways maintenance completed by county councils in England and Wales and the majority of metropolitan districts and London boroughs;
—field trials of the routine maintenance and surface dressing audit guide carried out by external auditors at four counties and their agents;
—analysis of 'highways models' completed by over 30 authorities. The models specify fourteen different commonly occurring highways jobs. Authorities cost them, giving the price they would expect to pay either to an external contractor or to their direct labour organisation (dlo) (choosing whichever would normally carry out the work). The models thus provide a consistent base for comparison of different authorities' costs.

14. Despite the comprehensive database of evidence this is an interim report. Other factors may emerge from the individual audits of authorities to be carried out by the Commission over the next year.

15. The rest of this report details the Commission's main findings to date:

(i) Chapter 1 focuses on the extent to which agency arrangements have tended to hamper the management of highways. Significant time is wasted in some counties in fractious county-district disputes, with the two tiers of local government often behaving as rivals rather than collaborators. This has led to a disturbing lack of systematic monitoring and control by many counties and poor allocation of resources.

(ii) Chapter 2 examines the extent to which value for money is or is not being delivered in the highways field and which types of councils appear to be performing better at the various types of activity.
(iii) Chapter 3 proposes a way forward which recognises that agency can work effectively provided both sides have the will to make it work, and provided the roles of county and districts are clarified. The changes in legislation needed to help clarify the roles of counties and districts and help make agency work are also discussed as is the need to reduce overlaps in counties' and districts' responsibilities.

* * *

16. More detailed, or technical, discussions on particular points are given in appendices. These cover:
— the current extent of agency (Appendix A);
— ADC and ACC views on agency (Appendix B);
— comparisons of county and district efficiencies (Appendix C);
— the history of sewerage agency and how the government proposes that this should operate in future (Appendix D);
— detailed proposals for managing maintenance agency (Appendix E);
— detailed proposals for managing traffic management agency (Appendix F).
1. The effects of agency on highways management

17. Agency arrangements typically hamper the management of highways, though they can be operated effectively to the benefit of both counties and districts, giving districts a direct input into highways decision-making to the benefit of traffic management and planning functions in particular. This chapter looks at the disbenefits and benefits of agency arrangements.

18. There are two major problems associated with the existence of two management centres under agency:
   —accountability and responsibilities are blurred; time is wasted in fractious disputes, which are sometimes fuelled by narrow self interest; districts often ignore county policy and prevent the county from monitoring their work; some exploit the agency to subsidise their other activities;
   —there are therefore management weaknesses which lead to a failure to provide value for money. There can be little incentive for either counties or districts to improve their efficiency; agency disputes divert attention from problems in counties' own organisations; agency arrangements also insulate the county from public concerns; budget setting mechanisms are frequently poor and performance monitoring badly developed with a resultant, potentially ineffective, use of resources. S42 lies at the heart of many of these problems because of the way it blurs the highways authority's responsibilities.

19. District councillors often feel that they should be directly accountable to the public for their actions under agency rather than to the county council which granted the agency. District officers similarly feel that they should be accountable to district members rather than to the county council. As a result only about one third of the agency arrangements we have reviewed are harmonious. In the rest, disputes are frequent. These have a direct impact on management by wasting officers' and members' time. Attendance at fractious member-member meetings and lengthy discussions on agency at authorities' own committees prevent members from constructively devoting their time to other issues.

20. Chief executives' and other senior officers' time is also wasted in support of these frivolous or fractious member discussions and in other 'parish pump' disputes. One district whose grass cutting allocation had been reduced by £200 requested a member-level meeting. Professionals attempt to second guess each other and prove each other wrong to make a point; arguments about whether to use painted or raised mini-roundabouts are often little more than muscle flexing.

21. Some liaison will be required between counties and districts whether agency is used or not, and inevitably some of this time will be spent on disputes. The important point is that the time spent in unproductive disputes should be minimised.

22. Some counties' distrust of agents has led them to set up cumbersome and inefficient financial approval systems. More seriously, the manage-
ment problems associated with agency have meant that authorities have not been able to deal properly with waste and inefficiency. Our work on highways maintenance has, so far, identified savings and improvements worth over £100 million p.a. These will not be realised where counties are highways authorities until the managerial problems described in this report have been overcome. That is the true cost of agency as now operated. In addition many man years are being wasted in disputes.

23. The problem underlying most agency disputes is simple — the district council wishes to exercise more independence, and so be less accountable to the highways authority than is acceptable to the county. In some cases the difficulties reflect the different political control of agent and principal and the problems that authorities of different political hues have in working together. Agency difficulties exist, however, even when agent and principal are under the same political control. It is clear that some districts, particularly some former county boroughs, are choosing not to co-operate with the county; the district council gives the impression that it has failed to come to terms with the changes which occurred in 1974 and is seeking to act in complete isolation from the county, as though the latter were not the highways authority. In some cases the situation has been exacerbated by the county's heavy-handed dealing with the district, trying to place on it more stringent requirements than the county imposes on its own divisional surveyors.

24. As a result some districts:
—do not agree with or accept county policies;
—set and apply policies without reference to the county council and in defiance of the formal terms of agency agreements;
—refuse to co-operate in performance reviews;
—do not provide the county with the management information needed to monitor performance.

25. This independent action usually results in unauthorised virement of budgets from the services — such as maintenance of principal roads and of carriageways — which are of most concern to the county council — to the environmental services — sweeping, grass cutting, maintenance of urban unclassified roads and footways — which are top of the districts' agenda. In some cases independent action by districts on traffic management has led to major disagreements with the county. This is partly because the unauthorised introduction of, say, a pedestrian crossing is difficult to disguise and partly because county members as well as district members are very interested in the topic and anxious to claim the electoral credit for responding to public concern. Usually, however, counties feel unable to take any action when districts ignore policy and agency agreements because of the availability of, and previous uncertainty about powers under, S42.

26. In addition, information on performance and expenditure which counties do receive from districts is not always accurate. In most cases this simply reflects deficiencies in the district's financial and other information systems; similar errors and inaccuracies can be found in data the county has collected itself. A few districts have, however, either deliberately withheld data from counties or supplied inaccurate information. To illustrate:
— a county council attempted to carry out a value for money comparison between agents and its directly controlled operations. Its major agent — an authority with a highways agency income of £5 million p.a. — declined to co-operate;
—another former county borough submitted an end of year claim for £1.6 million under its maintenance agency. £100,000 of this had not been spent and did not even represent committed expenditure.

27. Counties' dislike of agency often stems from these problems and from the belief that the highways authority cannot discharge its responsibilities when agency arrangements are in place. This is why many counties have sought to restrict agency, why others have served notice that agreements will not be renewed (usually as a first step towards negotiating a more accountable arrangement which also transfers some functions to the county). It also helps explain why financial limits have not been adjusted in line with inflation. For example, many agencies awarded in 1974 allowed the district to carry out minor structural repairs to the highways up to a specified job cost (typically £2–4,000) without having to submit each proposed piece of work to the county for prior approval. In many cases these limits have not been changed since 1974; increasing numbers of small repairs need to be separately identified and authorised in advance by the county council. This increases administrative costs.

Disputes

28. The central issue as to which authority actually exercises power is exacerbated by a number of other factors, including:
—rivalry between officers;
—a desire to protect jobs;
—rivalries within the engineering profession;
—disputes over planning;
—competition for funds as expenditure on highways maintenance declines in real terms;
—the sizes and histories of the different authorities involved in agency.

There are also disputes over administration fees. We examine these in Chapter 2.

29. Rivalry between officers. Officer rivalries, particularly rivalries between chief officers, contribute significantly to problems with agency. County and district chief officers tend to have very strong views about agency, favouring the stance taken by their respective associations. County surveyors expect agent districts to respond immediately to requests for information and advice as if they were their own staff. District chief officers resent an attitude which they see as failing to acknowledge their position within an authority separate from the county council.

30. Protecting jobs. The desire to protect or increase the number of professional staff employed by an authority and to maintain the viability of the authority's direct labour influences members' and officers' attitudes to agency/S42. Authorities' policies on local employment are often cited in support of such attitudes but are not in fact relevant. Work still needs to be carried out, irrespective of whether agency or S42 claims exist and most formal agency agreements contain staff protection clauses under which professional staff are to be transferred to the principal if the agency is terminated.

31. Nevertheless there is often a very unimaginative attitude towards co-operation in the use of staff and labour. Peaks and troughs in workload within an agency, or in the principal's operations, can be dealt with by Goods and Services Act arrangements whereby staff from one authority carry out work on behalf of another. Direct labour can be used in a similar way (competing for tenders, where necessary, to comply with the Local Government Planning and Land Act 1980). Many authorities visited have failed to recognise the possibility of using this flexibility to maximise
LETTER FROM THE CHIEF EXECUTIVE OF ONE DISTRICT WHICH HAS ABANDONED AGENCY/S42

This Chief Executive believes that officer attitudes were a major cause of problems in the relationship with the county council.

I must confess to having a very strong viewpoint on the subject of agencies within Local Government, and probably elsewhere, which in a few words is simply that I think they are wrong. They achieve nothing and they cost considerable sums of money.

Having made my bias clear, if I could now explain the position within ______. Until 3 to 4 years ago we had a full agency with the ______ Water Authority for sewerage services and a claimed service on highways. I should explain that the District Council had tried unsuccessfully to get an agency service and was only able to claim the right to maintain roads within the urban area of the District, this on a fully reimbursable basis. Thus, we had a situation where some of the works were being done by the County and some by the District.

Within the Council we had Officers who were engineers who, because of their reluctance to accept the transfer of services from the Districts to the Counties, were always critical of the County Council in all their efforts. Our Committees were often fully occupied with criticism of the County Council and its policies, our residents were confused, and it was altogether totally unsatisfactory. Furthermore, we had to prepare accounts at intervals which were then subject to often protracted discussion after the year end dealing with matters which the County Council said they would not accept and items of expenditure which we had incurred and for which we had no budget provision. One of the first assignments I had with this Council was to resolve about 4 years of final accounts problems at one time because no progress was being made. In the end the Council decided to give up the agencies and I must say that both sewerage and highway services have improved beyond measure. We have agreed that the County Council will do all highway maintenance, including footpaths, and we will cut grass verges and do all sweeping and cleaning, etc., etc. There is therefore a clear division of responsibility and out of that has developed a close relationship with our County colleagues.

The Area Engineer, who is a County employee, comes along to our meetings, as does a representative from the Water Authority, and they deal directly with criticisms made by elected Members who in turn are encouraged to contact the ______ Water District Office and County Council Highways District Office as appropriate. It would be difficult to quantify the savings in cash terms and I hope that that has been converted into improved services.

We have no complaints and hope that we do not need to have agency arrangements in the future.

Finally I would however point out that I do not believe that the County Council is the best authority to provide local highway services. This is a responsibility much better dealt with by the Districts. Similarly the provision of maintenance of schools, libraries, etc., etc., but agencies in my view are unworkable unless one accepts the high price that we have to pay for them.
resource utilisation and iron out the effects of year to year fluctuations in structural maintenance budgets and in capital programmes.

32. **Rivalries within the engineering profession.** Rivalries between different types of engineer also contribute to tension between county and district officers (as Exhibit 4 indicates). County councils employ specialist highways engineers who concentrate on particular aspects of highways work — bridge maintenance, traffic management, traffic signal design, highways maintenance etc. County councils also deal directly with the bulk of capital work. District councils have smaller, less specialised engineering organisations typically covering building maintenance and design, highways agency, sewerage agency, district funded work on new estates, coastal defences, harbour work etc. Districts take the view that a competent chartered engineer can deal quite adequately with these different activities.

33. Engineers employed by the county often believe that their own professionalism and expertise cannot be matched by the generalists working in districts. Engineers employed by districts are aware of, and resent this judgement. These tensions are most apparent on capital works where lower tier county officers often denigrate district expertise. A county's refusal to grant capital agency will often be contrasted with sewerage agency which places no limits on the value of works carried out by a district. The problems are exacerbated by salary differences between district and county employees.

34. In Scotland the engineering responsibilities are held almost entirely by the regional authorities and it is apparent that the absence of the rivalry found in the engineering profession in England and Wales makes for generally less embittered inter-authority relationships.

35. **Disputes over planning.** Counties can be anxious to obtain the, often large, contributions which districts can require developers to make to the improvement of the highways network as a condition of planning permission (under S52 Town and Country Planning Act 1971). They may therefore direct that the district, as local planning authority, refuse an application on highways grounds unless the developer agrees to make a contribution. The developer may, however, abandon a scheme rather than meet the county's requirements. The district then loses the development and its associated jobs and rate income.

36. Counties can also use highways authority powers to block a development. Their highways authority powers give them more control over individual planning applications than they have as strategic planning authorities. It is alleged that counties have used these highways powers to veto developments when their opposition is founded on other considerations. The planning disputes that have arisen are not directly connected to agency but have helped sour highways agency relationships. In its White Paper 'Lifting the Burden' (Cmd 9571) the Government has said it is considering changes to the highways authority’s powers in this area.

37. **Competition for funds.** Recent years have seen reductions in real terms in expenditure on highways functions. Maintenance expenditure per kilometre of local authority roads in England fell by about 10.5% in real terms in the period 1978–9 to 1985–6 (from £4,341 per km a year to £3,910 per km, at 1985–6 prices — see Exhibit 5 overleaf). Highways authorities have been striving to maintain service levels despite this reduction by improving efficiency; most have also reduced the level of service they provide, especially on the routine maintenance activities — see Exhibit 6 overleaf. These form much of the work done by agents and the drop in expenditure has been resented by agents. Highways services are also competing for scarce resources with other services provided by county
Exhibit 5

MAINTENANCE EXPENDITURE PER KM OF ROAD IN ENGLAND 1978/9-1985/6

Maintenance expenditure per km of local authority road has fallen in real terms since 1978/9

Exhibit 6

TRENDS IN THE PROPORTION OF ONE COUNTY'S DIRECTLY CONTROLLED BUDGET ALLOCATED TO DIFFERENT MAINTENANCE FUNCTIONS

One typical county has decreased the relative importance of routine maintenance in directly controlled areas.
councils, particularly education and social services. County councils in England have recently been spending about 8% to 10% below GRE allocation on highways maintenance while district funded spending in England has been rising and is now running at about £30 million p.a. — see Table 1 overleaf and Exhibit 7. This district expenditure is unevenly spread; most districts spend little or nothing, a few spend as much as £1 million p.a. It is cited by districts as evidence of counties' failure to spend enough on highways maintenance.

**Exhibit 7**

**MAINTENANCE EXPENDITURE COMPARED TO GRE ALLOCATION FOR ENGLISH COUNTY COUNCILS**

Most counties are spending below their GRE allocation

Source: Audit Commission analysis of GRE and CIPFA outturn data for English counties, 1985/6

38. *Size and history.* Difficulties tend to be less marked the larger the county relative to its constituent districts. The more amicable relationships tend to be associated with large counties where most districts contain 10% or less of the total population and where even the very largest contain only around 20%. Relationships tend to be worst in small counties containing only a few districts, particularly if the county was newly created in 1974, and in counties containing a large district dominant in terms of population, rateable value and urban road length. Rivalry between county and district is most marked when the district is large enough to reproduce a reasonable range of county functions and/or the county is so small that the county council will lack a clear strategic role if the large district acts independently.

39. These problems arise partly because district and county councils both vary markedly in population, area and other parameters. There is some size overlap between the largest districts and the smallest counties. There is also overlap between the largest districts and other types of highways authority — the metropolitan districts, which recently received such powers, and the London boroughs which have had them for over twenty years. The position is summarised in Exhibit 8 overleaf. Differences in history also contribute. Agency disputes commonly occur with former county boroughs.
Exhibit 8

COMPARISON OF THE POPULATIONS OF DIFFERENT TYPES OF LOCAL AUTHORITY

The ranges of population of different types of authority overlap but counties’ average population is over seven times that of shire districts

Population (millions)

Source: Audit Commission analysis of CIPFA statistics
Table 1: GRE ALLOCATION FOR MAINTENANCE COMPARED WITH SPEND FOR DIFFERENT TYPES OF ENGLISH AUTHORITY

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<tr>
<td>London authorities</td>
<td>(£m)</td>
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<tr>
<td>Met. authorities</td>
<td>122.0</td>
<td>167.1</td>
<td>+45.1</td>
<td>+37</td>
<td>119.1</td>
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<td>Shire counties</td>
<td>203.3</td>
<td>195.1</td>
<td>–8.2</td>
<td>–4</td>
<td>218.8</td>
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<tr>
<td>Shire districts</td>
<td>576.6</td>
<td>528.1</td>
<td>–48.5</td>
<td>–8</td>
<td>612.6</td>
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<tr>
<td>All</td>
<td>901.9</td>
<td>906.8</td>
<td>+4.9</td>
<td>–0.5%</td>
<td>975.1</td>
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Notes
1. 1985–6 final outturn includes some grossed figures, and may be revised. Provision for 1984–5 means TSG accepted expenditure.
2. The data refers only to England. Note 3 shows the corresponding position for Wales.

Source: Audit Commission analysis of Department of Transport data.

MANAGEMENT WEAKNESSES

40. The two rival management centres and counties' impotence to deal with inefficient or wasteful districts create management weaknesses; value for money is not being maximised. Although some county councils need to improve and make savings, those which are more efficient than their agents and have sought improvements have found these difficult to achieve. Some districts are therefore wasting money by, for example:
   —protecting uneconomic direct labour organisations;
   —letting their own contracts rather than using the cheaper contracts negotiated by the county;
   —over-providing services.

In addition agency problems lead to irresponsibility and a lack of incentive for improvement, insulate highways authorities from public concerns and deflect some counties' attention from improvements they can make in their own organisations. Agency has also helped lock authorities into historical spending patterns preventing them from developing proper budget allocation mechanisms and thus contributed to a potentially ineffective use of resources.

Waste and inefficiency

41. Protecting dlos. Agency breaks county funded highways work into separate pieces, each of which is dealt with by a different local authority. These authorities can have their own views and policies on competition. In addition:
   —work dealt with by agents is treated as district, rather than county, expenditure under dlo legislation;
   —the agency concept predates the Local Government Planning and Land Act 1980 and comes from a time when the advantages of competitive tendering, of other comparisons with the marketplace and of asking direct labour to work to schedules of rates rather than daywork charges were not as well understood as they are now. Most agreements do not give the principal the explicit right to insist that work be put to tender nor insist that dlos be awarded work only on a schedule of rates basis.

42. District councils which are not interested in efficiency or wish to protect direct labour are therefore able to manipulate dlo regulations without reference to the principal's wishes. For example:
— some districts use a very elastic definition of emergency work to exploit the fact that this is excluded from competition regulations;
— some small districts have less than thirty men in their highways and sewerage dlo. The competition regulations then do not apply. All the highways agency work can then be awarded to direct labour without being tested against the market;
— one district visited had divided its urban core agency area into eight geographical units. It was offering all cyclical and routine maintenance plus district funded sweeping, footway lighting work, street name plates, etc. in each area as a single contract, to run for four months. Not surprisingly, there was little interest from the private sector and all the contracts were repeatedly ‘won’ by the authority’s dlo.

43. Failure to exploit competition and protection of direct labour is not confined to districts; many counties behave similarly. Some counties are, however, finding that agent dlos are receiving work on a basis which the county would not use if it were dealing directly with the work and using its own dlo. Thus one county which had reappraised its dlo operations and devised comprehensive schedules of rates found that only three out of ten agents had such schedules; the other seven were awarding work to dlos on a dayworks basis. The county is finding it difficult to persuade agents to change their approach.

44. Two factors contribute to some counties’ concern about the way in which agents award work to their dlos:
— highways agency can potentially be exploited to help other district activities by transferring profits out of the dlo;
— the Local Government, Planning and Land Act 1980 stipulates that authorities prepare separate dlo accounts under four headings, one of which combines general highways work with sewerage works. This means that district councils with sewerage as well as highways agency can cross-subsidise dlo activities while still meeting rate of return requirements.

While some counties’ fears in this area are exaggerated, fund transfers and cross-subsidisation do exist but are usually by-products of dlo protection rather than the conscious manipulation suspected by some county surveyors. Nevertheless the result is the same — more maintenance is carried out per £1 spent in some parts of a county’s highways network than in others. It is interesting to note that officials in some water authorities have similar fears believing that dlo profits on their agency are subsidising highways work.

45. Failure to use county contracts. The Commission’s work in this study has confirmed one of the findings of its earlier research on purchasing — even when private contractors are used, some districts let their own contracts rather than use cheaper tenders obtained by the county. One of the economies of scale available to counties is therefore not being fully exploited.

46. Over-provision. The research also shows that some district councils are staying within budget but are also providing higher levels of service than specified by the county and are not alerting the highways authority to this misapplication of resources. One district council visited was emptying gullies four times a year against a county specification of two. The district believed the roads in its area were in poor repair but did not approach the county to suggest that the gully emptying budget be halved and the saving transferred to other work in the district.
47. Current arrangements and attitudes allow both county councils and district councils to act irresponsibly. County councils can ignore problems in agency areas saying that they have provided the money and that difficulties must therefore be the agent's fault. District councils are not the highways authority and do not bear the final responsibility for highways matters; it is, for example, much easier to advocate expenditure on environmental rather than structural maintenance if someone else will eventually have to find the money to rebuild the road.

48. Some tension between county and district is unavoidable given the two tier separation of highways and land use and environmental responsibilities. Agency problems serve to heighten this tension, making it difficult for authorities to work together not only on agency but on other highways related matters. The relationships between counties and districts in England and Wales are therefore, in general, worse than those between regional and district councils in Scotland, where agency is not much used and there is no equivalent of S42. Officers in Scottish authorities visited, while accepting that there could be tensions between districts and regions on highways and land use issues, were convinced that agency, as now operated in England and Wales, was not the solution to those tensions.

49. Major decisions on highways matters are often deferred because of the tensions. This applies not only to issues which directly affect agency but other roads decisions.

50. Agency, as currently operated, also encourages 'management by member' whereby councillors try to carry out officers' day to day work (the disadvantages of which are graphically illustrated by the position described in the Commission's recent paper on London), and allows elected members to press their individual ideas and plans. The potential for member involvement is illustrated by the position in a county such as Cheshire which contains eight districts, each of which is an agent. Some 517 different elected representatives (71 county councillors and 446 district councillors) are in a position to influence highways policy should they choose. The highways maintenance budget is however only about £18.5 million (i.e. about £36,000 per councillor). In contrast the 71 county councillors alone deal with the education budget of £250 million (£3.5 million per councillor).

51. There is a lack of incentive to improve efficiency and effectiveness. County council officers think it is pointless to try to improve a relatively satisfactory directly controlled operation when the county council seems unable to manage agency operations. District council officers, on the other hand, think that they will be penalised for efficiency, that a county council which realises that the agent has low costs will simply reduce its allocation. This fear is a factor in some districts' reluctance to provide the county with management information.

52. District council officers and members emphasise that they are proud of their knowledge of the local area and aware of, and anxious to respond to, public concerns. Some claim that the county council and its officers are 'remote', 'isolated', 'blinkered' and 'unresponsive' to public opinion and do not understand the problems of urban areas in particular. Some district officers and members also believe that county councils fail to appreciate the level of public feeling about the condition of footways and urban unclassified roads.

53. The accusation that counties are remote is not necessarily fair. Though county councillors represent larger electorates than district councillors (there is on average one county councillor per 8,964 population and
one district councillor per 2,140 population in England and Wales) both represent relatively small numbers of people (far fewer, for example, than a Member of Parliament). County members also, of course, represent wards inside agency areas and can still be approached by members of the public about problems. The argument is, furthermore, circular. Once agency is granted, the county’s involvement drops and the county is bound to appear distant. This is particularly true if district members behave as though they are responsible for highways, which as agents they are not. The effect is to reduce the contact that county council members and, especially, officers have with public concerns in urban areas.

54. Complaints and views can be relayed at second hand by district councillors who may belong to a different political party to the controlling group on the county council or be rivals for the electoral credit of responding to public complaint; similarly, public views transmitted at officer level may be passed between professional rivals. This is not the best way for the highways authority to receive public input. It is bound to reduce impact and distort perceptions besides also being potentially confusing to the public who may not know whether to contact the district or the county. Complaints about highways, made to elected representatives, should be dealt with by county councillors. They serve on the highways authority; district councillors do not. This is in effect what happens in Scotland where a roads authority (i.e. regional council) deals with a larger population than the largest English or Welsh county but has, in the absence of agency, been able to publicise its role and involve regional councillors in local matters.

Counties' attention diverted from their own deficiencies

55. The Commission's fieldwork has revealed instances where counties have, correctly, drawn attention to agent weaknesses and deficiencies but have been quite oblivious to opportunities for improvement in areas they manage themselves. Many county officers are too concerned with agency problems to sort out their own. One county was attempting to terminate agencies held by four districts, one of which was indeed extremely inefficient. The principal was, however, also highly inefficient. It could have saved several hundred thousand pounds a year simply by dealing with problems in directly controlled work but did not do so, preferring to concentrate solely on agency.

No proper budgetary system

56. A major problem with agency is the frequent absence of satisfactory budgeting and performance monitoring systems. The Local Authority Associations' Code of Good Practice for highways maintenance published in 1983 sets out a framework for managing maintenance based upon:

- inventories;
- service level specifications for cyclic and routine maintenance;
- formally defined defect levels above which structural work should be carried out;
- use of condition assessment systems such as CHART or MARCH;
- needs budgeting based on these inputs plus appropriate cost data and performance assessment to check whether work is being carried out and policies succeeding.

The Department of Transport is already adopting such an approach for its roads.

57. The Commission supports the general philosophy set out in the LAA Code, while accepting that needs budgeting has to be in the context of authorities' available finance and that the standards in the Code (which
differ significantly from some of those the DTp/Welsh Office are applying to their roads) may not be appropriate in every case.

58. But these management tools can only be introduced, and employed successfully, if managerial responsibilities are clear. Progress in counties has therefore been patchy. Though virtually all have formal service level specifications for simple cyclic and routine work, the inventory data which underpins the entire approach is not available in many cases (Exhibit 9). Some county councils have no plans to remedy this; many existing inventories are incomplete in that they cover only those roads dealt with directly by the county. Some counties carrying out major data collection exercises have begun without deciding how, if at all, to cover agency areas. Thus 55% of the counties surveyed had no idea how many gullies were being dealt with by agents, 45% had no information on road channel lengths swept by agents and 20% had no count of the number of street lights dealt with by agents. The position on other items was even worse.

Exhibit 9

THE EXTENT OF HIGHWAY INVENTORIES HELD BY COUNTY COUNCILS

Around one third of counties do not possess inventories of even the basic items covering over 95% of routine maintenance expenditure

59. Fieldwork shows that the true position is even bleaker in that some data held by counties is estimated, out of date or otherwise inaccurate. These problems too are most acute for data relating to agency areas; counties often do not know whether agents are providing accurate inventories or estimates. For example:

— one county had over-estimated the number of street lights being maintained by a major agent by 11%;
— another believed that a major agent swept 687km of road, cut 46.24 hectares of grass and dealt with 14,570 lights. The agent actually swept 652km of road, dealt with 22.31 hectares of grass and maintained 15,633 lights;
— another had made two separate estimates of the number of gullies dealt with by each agent district, one derived from data collected when county engineers visited sites put forward for structural maintenance and another more subjective assessment by its own
drainage engineers. It then asked agents to submit inventory totals. In one instance the agent’s figure — 50,000 — was much higher than the county’s two estimates of 29,000 (visits to structural maintenance sites) and 35,600 (drainage engineers); — another county council had negotiated a county-wide energy agreement with the electricity board. Agents were, however, still actually paying for energy, submitting claims for reimbursement to the county. The latter had used its knowledge of the energy agreement, and inventory data supplied by the agents, to calculate their expected energy claims. There were several major discrepancies between actual claims and the theoretical calculation, the reasons for which were being investigated.

London boroughs, which have no agents, are generally better informed on inventory matters than county councils.

60. Needs-based budgeting for structural maintenance is even less developed. None of the county councils visited during the study had a fully operational needs-based system of allocating structural maintenance funds and few were carrying out comprehensive condition surveys.

61. Performance measures are also poorly developed. These problems exist at both county and district level. Information flow problems between principal and agent mean, however, that counties are, in general, even less informed about agent performance than they are about their own operations; this deficiency is sometimes caused by counties’ failure to specify needs or to provide administration fees which will cover the cost of providing the information they want. The position is summarised in Exhibit 10 which compares the number of counties which could provide unit cost data for their own and agent operations.

62. **Historical budgeting.** In the absence of needs assessment, maintenance budgets are often divided up on an historical basis, influenced by spend patterns which either existed before 1974 or came into being shortly afterwards. The longer that historically based spending patterns continue, the more difficult they become to alter but the further they are from a needs-based approach. Agents come to regard a particular allocation as theirs as of right, while agents’ and counties’ direct labour and professional organisations become geared to particular levels of expenditure. Changes in budget setting mechanisms are then opposed. These problems are less marked in directly controlled county operations where changes in budgets from division to division or area to area can more readily be accompanied by transfers of staff or plant.

63. **Potentially ineffective use of resources.** This, plus the common lack of performance information, means that county councils are spending £700 million a year on highways maintenance often with little idea of the needs they are trying to meet, the service levels they are providing or of what they are achieving. In the worst cases agency areas are little more than ‘black holes’; the highways authority receives and approves budgetary requests before the start of the financial year, meets requests for funds during the year and at year end but otherwise has virtually no idea of what is happening in the agency area, other than what officers and members see when they travel through it. Many counties are therefore in part failing in their strategic role and not using public money to best effect.

Managerial weaknesses in

**S42**

64. Section 42 and its predecessor S187, lie at the heart of agency problems. The ability to make an S42 claim if S101 agency is revoked and the county’s apparently weak position under S42 has transformed agency from a relation between a principal and a body acting on its behalf into a relationship between two, often argumentative, approximate equals.
COUNTIES' CURRENT KNOWLEDGE OF UNIT COSTS FOR 5 ACTIVITIES

Many counties do not know their agents' unit costs

Number of Counties (Sample of 41)

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65. The Section, and its predecessor, have caused other problems:
—authorities are uncertain about which maintenance activities are covered by the Section. The position on street lighting maintenance is particularly confused. Many English authorities know of the Secretary of State for Transport's ruling, in 1977, on tasks covered by S187 and assume that a similar listing applies to S42. They are not aware of the different listing given by the Secretary of State for Wales in 1982 when ruling on an S42 dispute (see Note 4). As a result Welsh authorities treat street lighting work as covered by S42; many English authorities believe that the Section does not apply to lighting;
—the Section, when applied, fragments responsibility for highways in the same area and virtually guarantees duplication of facilities. Thus trunk roads in a built-up area can be maintained by the county council as agents for the DTp/Welsh Office; classified roads can be maintained by the county acting as highways authority; other roads will be maintained by the district as S42 claimant;
—the Section can also lead to a ludicrous geographical fragmentation of responsibilities as it can be applied to roads in small hamlets and villages as well as towns and other urban cores (see Exhibit 11 overleaf);
—counties can be uncertain as to whether or not they will be dealing directly with the roads eligible for claim. Districts are required to serve formal notice of claim but the period is not specified in the
legislation. The latest date for budgetary submissions — December 17th — is however given. A district can therefore exercise its S42 rights as late as 3½ months before the start of the financial year in which the claim comes into effect. This creates difficulties for counties in planning staff utilisation. It also has the potential for confusion and difficulty if, for example, the county has already let contracts covering the S42 roads. This potential difficulty is likely to become worse if competition regulations are extended and, as the government has proposed, five year contracts become the norm for activities such as sweeping and gully emptying.

THE POTENTIAL BENEFITS OF AGENCY

66. This chapter has, so far, painted a bleak picture. And that, in many areas, is the reality. Yet it would be wrong to condemn the principle of agency arrangements out of hand. The idea was born out of an analysis
which suggested that there could, in the local government structure created
in 1974, be considerable practical benefits from an arrangement whereby
the highways authority worked through the district council structure.

67. Three major benefits are claimed for highways agencies:
   — they integrate highways and development policies;
   — they broaden the district’s engineering base, which improves the
     quality of other services;
   — they allow districts to top up county budgets, based on their
     perception of local needs.

Two are real benefits, the third is not.

68. Districts which hold the agency for traffic management with the
associated powers to adopt roads built by a developer and to act for the
highways authority when dealing with planning applications should be
more effective planning authorities. They can:
   — provide developers with ‘one stop shopping’, which they prefer;
   — integrate traffic management measures with development plans.

Traffic management agency can also allow a district to integrate traffic
measures with other activities such as the use of tourist and leisure
facilities. These traffic management and adoption advantages will remain
even if the government removes highways authorities’ powers to block a
development.

69. The Commission’s research has confirmed the importance of
highways agency to many districts’ engineering services; it broadens the
range of activities they cover and allows them to offer more attractive
career opportunities to engineers. But the advantages should not be
overstated. Scottish districts visited had little or no engineering expertise,
and saw no great disbenefit in this. They often use the regional council, on
a Goods and Services Act basis, to deal with highways related work such as
maintenance of footpath lights and garage forecourt resurfacing on district
owned housing estates. They also use regional council staff, or consultants,
on those occasions where they need professional engineering advice.

70. Agency also helps underpin districts’ other technical operations by
allowing them to:
   — achieve more flexible and effective use of plant such as gully
     emptyers which can also be used on sewerage and cesspools work;
   — increase their plant holdings and therefore maintain the viability
     of their vehicle maintenance workshops;
   — use dlo labour and professional staff more efficiently.

71. Agency also provides an easy mechanism whereby districts can ‘top
up’ county funding of highways maintenance. Districts commonly
augment maintenance budgets to provide a better quality service — they
may use coloured flagstones, for example, rather than the blacktop finish
specified and funded by the county for footways repairs. In aggregate they
are now spending about £30 million p.a. on ‘topping up’ maintenance
funds. But agency arrangements are not essential for this to occur — S274
of the Highways Act 1980 allows districts to contribute to a highways
authority’s expenses if this will benefit their area. They can in effect ask
counties to provide a higher level of service and meet the extra cost.
Districts without agency do use this power in some counties.
2. The relative strengths of counties and districts

72. The previous chapter showed that the existence of two management centres under poorly operated agencies has hampered the management of highways. Chapter 2 looks at the particular strengths of counties and districts and at their relative efficiency and effectiveness and concludes that counties are better equipped than districts to be highways authorities, but that districts can undertake a number of functions satisfactorily. On balance, the evidence supports the existing legislation which makes counties the highways authority. But it also, perhaps surprisingly in view of the practical problems already described, supports the continuation of agency arrangements — if (and this is a big if) they are properly managed.

COUNTIES' STRENGTHS

73. For certain functions, workloads at district council level are too low, or too intermittent, to justify retention of staff by all but the very largest agents. These specialisms are best dealt with by counties. The main ones are: capital works, bridge maintenance and design, traffic signal design together with the electronic and electrical maintenance of signals, geo-technical support, computer support and development of highways management systems. The advantages of centralisation and specialisation are confirmed by the fact that in the former metropolitan counties, joint units, lead authorities and residuary body staff rather than districts usually deal with this work.

74. In general counties are also better placed, as the larger authorities, to deal with resource allocation and distribution in strategic highways policies/issues terms. They should be able to ensure:

— consistency of policy throughout the county on matters such as the surface condition or lighting and signing of major roads;
— a strategic approach to maintenance of major highways;
— resource distribution across district boundaries on a needs basis (particularly important in counties where districts have differing characteristics, some predominantly urban, some rural, some a mixture of the two).

75. It is fair to say that counties do not always realise these potential benefits. The inventory and condition data which would allow them to operate genuine needs-based budgeting is not yet available in most areas. But there is some evidence that counties are in practice effecting a shift of funds towards areas of greatest need. As Exhibit 12 overleaf illustrates there often is a movement of funds from urban to rural areas. And Exhibit 13 overleaf illustrates that at district level there are some deviations from what the GRE formula would imply which suggest that counties are redistributing resources.

76. This is not decisive proof of the advantages of counties as the highways authority. But, in principle at least, the county allocation procedure should be better than applying the GRE formula directly to districts. Counties are better placed to develop needs-based assessments — the critical requirement for efficient management. They can exploit economies of scale to invest in facilities such as computer support and to
Exhibit 12

MOVEMENT OF FUNDS FROM URBAN TO RURAL AREAS IN TWO COUNTIES

There is a general movement of funds from the more urban districts to the more rural districts.

Ratio of Maintenance Expenditure to Rateable Value

Source: Audit Commission analysis of fieldwork data from two counties, 1986
COMPARISON OF MAINTENANCE EXPENDITURE AND GRE ALLOCATION IN THE DISTRICTS IN ONE COUNTY

Counties typically redistribute resources among their districts

Maintenance Expenditure vs. GRE Allocation

Expenditure below GRE

Expenditure above GRE

Source: Audit Commission analysis of fieldwork data for 1985/6. The district GRE allocation has been calculated by applying the GRE formula to each district, assuming uniform traffic densities and weather conditions throughout the county. Street lighting expenditure excluded.
employ specialist units. Counties which have developed computer systems whether to help with budgeting or for other purposes can then allow agents access to them, as Cheshire is doing with its ice detection systems for winter maintenance. Systems of this sort were in fact well developed in some metropolitan counties and have been kept in being as joint units or via a lead authority following abolition.

DISTRICTS' STRENGTHS

77. Their smaller size does, of course, give district councils some advantages. Their members individually represent fewer electors than do county councillors. They, and their officers, identify strongly with the local area and usually have a good knowledge of the concerns and problems of their electors (though county councillors and county officers are also proud of their local knowledge and response to local concerns). They also have environmental and amenity responsibilities in their own right. They can thus be more familiar than county councils with local traffic and highways problems, particularly in urban areas. Districts claim that electors look to district councillors on issues such as:
— opposition to proposed strategic traffic management or roads construction and improvements;
— local traffic management problems (pavement parking, blocked accesses, rat-running etc.);
— concern about unswept streets and unkempt grassed areas;
— complaints about deteriorated, broken and poorly maintained footways (which, as confirmed by the NCC, is of major concern to the public);
— concern about carriageway condition in urban side streets.

78. They are, also, as the local planning authority, able to view highways and traffic management in the context of local development. District councils view the highway as an integral part of the local environment and infrastructure, rather than in isolation. They are, for example, very aware of the detrimental effect that poorly maintained highways can have on efforts to attract industry, commerce and tourism to an area.

79. Counties' decisions on maintenance, traffic management and other highways issues are sometimes made from a narrow highways-only viewpoint. Their effects on districts' development, employment and tourism policies and the interaction with other district activities and responsibilities are not always taken into account. There is little evidence that, in the absence of agency, county councils have sought to meet districts' legitimate need to make an input to the policy making process and to engage districts in policy discussion. Such opportunities as are given to district councils to comment on the Transport Policies and Programmes tend to be at short notice and too late to influence policy formulation.

THE RELATIVE EFFICIENCY AND EFFECTIVENESS OF COUNTIES AND DISTRICTS

80. These structural and theoretical considerations are of interest, and tend to dominate the debate. But the Audit Commission's prime concern must be to assess the way in which highways services can be most economically, efficiently and effectively provided. The study team has therefore focused on this principal issue, examining authorities' relative efficiency in dealing with highways maintenance, comparing maintenance administration costs and relative efficiency and effectiveness for other agency functions such as traffic management. The top-line results of our comparison of relative efficiency and effectiveness are summarised at Exhibit 14.
Overall, counties perform somewhat better than districts.

Relative efficiency in highways maintenance delivery

81. Many of the arguments about efficiency advanced by individual county and district councils are unsound. Authorities of both types rarely monitor performance and often lack accurate inventories. Authorities' calculations also tend to be selective. Counties' calculations about economies of scale in plant usage often fail to take account of districts' use of the same plant for highways agency and other work. Districts similarly ignore counties' sharing of plant and depot facilities between work on their own roads and on DTP/Welsh Office trunk roads. Many county calculations about economies of scale in plant utilisation also ignore the fact that they work in territorial units, similar in size to large districts. Plant is allocated to depots in those areas/divisions and is rarely used in a different territorial division. A radical change in counties' working practices would thus be needed before claimed savings could be achieved.

82. Many arguments about economies of scale and removal of duplication fail to distinguish between the 'client' role and the 'contractor' function i.e. between the need to identify, specify and monitor work and the separate job of actually carrying it out. Economies of scale are less relevant to the costs of authorities' central 'client' role and are therefore of only secondary importance in discussions about agency. Legislatively driven increases in the amount of work put to competition will moreover mean that some authorities will have little choice but to rationalise operations, quite separately from any changes in agency, if they wish to see direct labour operations survive.

83. When accurate comparisons of efficiency are possible, the results do not necessarily prove that work should be transferred from one type of authority to another. Both tiers can still exhibit major inefficiencies which the change would not solve. For example, authorities involved in one bitter dispute both had high unit costs, which were well above the Commission's good practice yardstick. The differences are illustrated in Table 2 overleaf:
Table 2: UNIT COSTS FOR ONE COUNTY AND DISTRICT IN DISPUTE

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>County</td>
</tr>
<tr>
<td>Gully emptying</td>
<td>3.87</td>
</tr>
<tr>
<td>- £/empty</td>
<td>7.63</td>
</tr>
<tr>
<td>Street lighting</td>
<td>25.13</td>
</tr>
<tr>
<td>- Physical maintenance £/unit</td>
<td>19.72</td>
</tr>
<tr>
<td>- Energy £/unit</td>
<td>19.72</td>
</tr>
</tbody>
</table>

Arguments about which authority is 'better' or more suited to carry out particular work are beside the point in such circumstances.

84. The Commission's own detailed examinations of unit costs and of highways model* prices reveal that there are few differences in efficiency between county councils and district councils on some highways maintenance activities. Appendix C includes examples of the results of model and other comparisons. Overall:
   —counties' and districts' costs both vary considerably;
   —the cost ranges are often similar for the two types of authority;
   —the best counties and the best districts have similar costs for certain functions;
   —many counties and many districts could make savings and improvements.

85. Systematic differences do exist for some activities. Some can however be explained by the differences between urban (i.e. predominantly agency) areas and rural (i.e. predominantly directly controlled) areas. Thus:
   —district councils have lower unit costs, on average, for mechanical street sweeping than do county councils. Districts can achieve higher plant utilisations than counties as they carry out work for amenity as well as highways purposes while county operations involve long periods of 'dead' travel on rural roads;
   —county councils have, on average, lower costs for laying highways surface water drainage;
   —district councils have, on average, lower prices for footways work. This is a predominantly urban task where expertise is largely held by districts.

86. There are certain activities where economies of scale apply. Here county councils tend to have lower costs than districts:
   —county councils can achieve economies of scale in many structural maintenance works and have, for example, lower costs for excavating and relaying bitmac;
   —county councils achieve lower unit costs than district councils for surface dressing. This is predominantly a scale effect — county councils can carry out as much as 3 million square metres of surface dressing a year; district councils typically carry out 100,000 square metres or less;
   —county councils which have moved to a single, centrally negotiated agreement have achieved savings in energy costs for street lighting, traffic signals and illuminated signs and bollards. These

* The Commission's highways models are a set of fourteen jobs which authorities are asked to price as though their dlo or a contractor had tendered for the work. They allow a consistent comparison to be made of the prices authorities pay for the same work.
are largest where the county rather than its agents makes all payments to the electricity board;
—there are economies of scale in the physical maintenance of street lighting. Counties which deal directly with a substantial part of their street lighting work maximise staff utilisation and obtain better contractual prices.

These, plus the specialisms such as bridge maintenance and traffic signal maintenance where counties also tend to have an edge, account for about 50% of counties' maintenance spend i.e. £350 million p.a. They are also the more complex operations in engineering terms. In contrast districts tend to be better at simpler engineering activities accounting for about 15% of maintenance expenditure; the activities where the two types of authorities have on average similar efficiencies account for about 35%.

These findings are summarised at Exhibit 15.

Exhibit 15

RELATIVE EFFICIENCY AND ASSOCIATED MAINTENANCE EXPENDITURE
In general, counties are as, or more, efficient than districts in maintenance activities accounting for 85% of expenditure

Source: Audit Commission analysis of fieldwork data and 'highways models' results

Administration costs and fees

87. Maintenance. Districts often claim that fees are inadequate and fail to cover costs, while counties:
—claim that they could perform the work themselves within the fee if agency were ended;
—argue that the district must therefore be inefficient;
or
—say that they have based their fees on those offered by the DTp/Welsh Office for motorways and trunk roads work (currently 8% of operational spend).

88. Straightforward comparisons of administration costs between districts or between counties and districts are difficult, because of the variety of functions which may or may not be included. Fees are moreover calculated in a wide variety of ways; the different approaches have not helped those councils which have wished to make inter-authority comparisons. Examples from the authorities reviewed in depth are given in Table 3 overleaf.
Table 3: HIGHWAYS MAINTENANCE ADMINISTRATION FEES PAID BY SEVEN COUNTIES

<table>
<thead>
<tr>
<th>County</th>
<th>% of operational expenditure used to calculate fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10% (excluding energy) 2 Agents</td>
</tr>
<tr>
<td>2</td>
<td>8% (excluding energy) 1 Agent</td>
</tr>
<tr>
<td>3</td>
<td>9% (including energy)</td>
</tr>
<tr>
<td>4</td>
<td>8% (including energy)</td>
</tr>
<tr>
<td>5</td>
<td>8% (work outside dlo legislation)</td>
</tr>
<tr>
<td></td>
<td>6% (energy)</td>
</tr>
<tr>
<td></td>
<td>4% (other work)</td>
</tr>
<tr>
<td></td>
<td>6% (except energy)</td>
</tr>
<tr>
<td>6</td>
<td>2% (energy)</td>
</tr>
<tr>
<td>7</td>
<td>No agents. S42 claimant expected to meet admin. costs out of overall budget provided.</td>
</tr>
</tbody>
</table>

Our in-depth reviews present administration costs on a consistent basis. The comparison is shown in Exhibit 16 and demonstrates that there is little systematic difference between counties' and districts' client side costs for maintenance work. Counties' and districts' administration costs both vary considerably. The ranges of costs, expressed as a percentage of operational spend, are somewhat higher for districts than for counties while the lowest county and lowest district percentages are similar as are their averages (close to 10%).

Exhibit 16

MAINTENANCE ADMINISTRATION COSTS FOR COUNTIES AND AGENT DISTRICTS

There is no systematic difference between counties' and agency districts' administration costs for maintenance work.

Source: Audit Commission analysis of fieldwork data. Administration costs include salaries, employer's on-costs, departmental overheads and central establishment charges.

89. County councils typically have 'client' side costs for highways maintenance in the range 8–12%. Most counties' administrative costs for maintenance work on their own roads are therefore more than the 8%
administration fee they receive for DTp/Welsh Office work. A few have lower percentages — 7 to 8% — though inventories, condition assessments, management information, performance monitoring and other management tools are usually poorly developed in these authorities. Their low overheads thus mean that they have little information on needs or on performance.

90. District councils' true client costs, and capacity for improvements, resemble those of county councils. The administration fees they receive often fail to meet these costs. Districts which do work within the county percentage usually lack performance monitoring and inventory systems and other management support tools.

91. Traffic management. There is widespread disagreement about whether counties are, or are not, adequately funding investigative and design work carried out by agents. Many districts with the agency show a loss. In one county visited the losses ranged from £4,000 p.a. to £50,000 p.a. Again the ways in which these fees are calculated vary markedly throughout the country. In one county visited, each agent receives a staffing allowance which may be modified from year to year and includes formal allowances for population, cost of works in previous years plus more subjective allowances for growth, safety problems etc. The county then pays up to the salary cost of this number of staff plus other reasonable costs. In another the county took 85% of the salary, superannuation and national insurance costs of employing an SO2 grade officer and multiplied this by the number of districts with traffic management agency. It then negotiated with the agent districts on how to distribute this sum between them. This method has recently been revised. In a third county three employees from one agent district work in the county's area engineer's office (though not necessarily only on agency work) and the county council meets their full employee related costs, whereas in another district the county provides the agent council with design services, the county charges the district and the district later recovers the money from the county as part of its agency claim.

92. Disagreements about the appropriate fee level often occur when traffic management investigative and design work carried out by the district is outside the formal terms of agency, or involves proposals which do not comply with county council guidelines. District council members may nevertheless have asked officers to examine problems and ideas with a view to constructing a case to be put to the county council. Some county councils take the view that this is one of the reasons why districts want agency and that it is quite legitimate to expect the agent authority to meet the cost of work generated in this way by its members.

93. Traffic management is an open ended topic; officers, members, the public and the police can identify an almost endless stream of problems, proposals and ideas. Some form of cash limiting, and prioritisation of demand, is essential. In addition district councils responsible for a developing community see a need for traffic survey information, to help with their planning responsibilities. Some districts which lack traffic management agency therefore still employ traffic engineers to ensure in-house expertise and advice; districts with agency may not always clearly distinguish between work performed for the county and work carried out to support the district's own responsibilities. This too contributes to disagreements about the right level of traffic management staffing under agency. The losses incurred by many districts reflect different perceptions of need rather than differences in efficiency between county and district.

94. Capital works. Arguments about efficiency in major capital works rarely occur. The agency is unlikely to have been awarded to a district
unless the county is satisfied about competence and efficiency. In addition, the county and agent sometimes come to a specific agreement about the individual scheme, which modifies and amends the formal terms of the agency. Fees for major capital works are rarely the subject of argument. Claims about relative efficiency and inefficiency are more common on minor capital works but they usually reflect conflicting engineering opinions on issues such as whether a painted or a raised mini roundabout is appropriate at a particular road junction and are often a function of the professional and officer rivalries discussed earlier. Capital works are therefore not discussed separately in any detail in this report.
3. The way forward

95. The previous two chapters have necessarily concentrated on problems and on areas where improvements need to be made rather than on those authorities in which highways functions are managed successfully. The position is not uniformly bleak. The study team has found places where agency arrangements are working amicably and efficiently. In a large county agency may well be the effective way of managing highways. Elsewhere the disbenefits are not so severe as to justify a recommendation to terminate all agency arrangements. Difficulties are nevertheless widespread and have persisted in many cases since 1974. With the benefit of hindsight, the approach followed in 1974 was mistaken and highways agency should not be automatically perpetuated in any future reorganisation of local government.

96. But it is not enough to say that if one wanted to devise ideal management arrangements for highways one would not start from here. The fact is that today county councils:

— are the highways authorities with the statutory responsibility for highways management;
— are generally better equipped than districts to carry out the full range of highways functions;
— deal directly with the major part of maintenance spend in their areas (55%, rising to over 63% if DTp/Welsh Office agency is included);
— carry out virtually all major capital works;
— have specialised operational, design and support units which cannot readily be dispersed;

and

— two thirds of districts have populations below 100,000, the size below which the Marshall Committee report of 1970 found that authorities were noticeably less competent on highways matters;
— 30% of district councils have no highways agency/S42 claim and no current in-house highways expertise;
— many districts with highways agency or S42 claim do not deal with the whole range of maintenance functions. Those requiring the greater engineering expertise tend to be retained by the county council;
— only about one third of districts deal with traffic management;
— only eleven districts have completely unrestricted capital works agency.

97. It is clear that county councils are, in general, better placed than the vast majority of districts to exercise the full range of highways authority responsibilities. But the evidence does not support a national recommendation to terminate agency agreements. There is no very clear average advantage in efficiency of service delivery on one side or the other on some functions. In addition there are considerable local variations in relative efficiencies; the county council is more efficient than its agents for virtually all highways services in some places and agents more efficient
than the county in others. An enforced movement in either direction would bring advantages in some places and disadvantages in others. The future of agency must therefore be a local decision, as with contracting out. It should be made by the county council in consultation with its districts and will depend on local circumstances, the division of experience and expertise and local relative strengths and weaknesses. (The evidence suggests, however, that there should be a predisposition to award maintenance agency to large districts, with populations of over 100,000, particularly in urban areas).

98. What is needed is a way forward which:
—accepts the county role as highways authority and clarifies the legal rights and responsibilities of districts;
—provides a framework for co-operation between counties and districts which allows the latter to influence policy and, where they can demonstrably provide services efficiently, to carry them out at local level.

CLARIFICATION OF THE RIGHTS AND RESPONSIBILITIES OF COUNTIES AND DISTRICTS

99. The legislative framework within which counties and districts now work is confused and has contributed significantly to the problems they face. If the county is the highways authority it must have the ability to withdraw agency from inefficient or incompetent agents. At the moment S42 of the Highways Act 1980 effectively deters counties from terminating any agencies. It must be repealed and replaced by a safeguard which simply prevents unfair termination. We do not however expect that the power to terminate would be widely used. Central government is able to end its trunk road and motorway agencies should it wish. In practice it has not done so; the existence of the power is sufficient to allow it to seek improvements in agent performance.

100. The Commission therefore recommends:
— the introduction of a statutory requirement that counties consult with districts on highways policies;
— the repeal of S42 of the Highways Act 1980;
— the associated provision of safeguards to prevent withdrawal of agency from efficient districts;
— the ending of overlaps of responsibility for sweeping, urban grass cutting and lighting maintenance.

Statutory duty to consult

101. County councils should be under a statutory obligation to consult districts on highways policies. This should involve consultation with all districts in a county, not just agents. Legislation should recognise the difference between consultation and decision making and make clear that the county council, as highways authority, is free to interpret or reject views offered by districts during consultations when making policy.

Repeal S42

102. The repeal of S42 is essential to help overcome current problems. This, and its predecessor S187, are confusing and poorly understood and lie at the heart of many problems with agency. While needs budgeting and performance monitoring can be applied to S42 arrangements, in a similar way to S101 agency, county councils lack any effective remedy if performance monitoring reveals that an agent is not working to county policy or is inefficient and ineffective. The only option open to the county is to reduce budgets or refuse to pay claims, which, while minimising waste from a county viewpoint, does nothing to ensure that road users and residents in the affected area receive a satisfactory service. The 1970 Marshall Committee report commented that "maximum efficiency can be achieved only if absolute control of maintenance work and determination
of the standards to be adopted rests with the authority which bears the financial responsibility”. It also found that "inefficiencies are often due to the right of a local authority to claim the maintenance of county roads in its area” and said "we feel strongly that the practice of claiming...should cease”. The Commission agrees.

103. There were similar difficulties in taking effective action against poor agents under S15 of the Water Act (where sewerage agency could only be abandoned if both parties agree). The amendment to the Section, made in the 1983 Water Act, allowed unilateral termination, and refusal to award agency, but with right of appeal to the Secretary of State. (Further details of the arrangements for sewerage agency and of the history of S15 agency appear in Appendix D).

104. Highways agency should not only be free of any S42 ‘threat’ but should be withdrawn if the agent is ineffective. Residual costs to the agent should not influence this decision. As with sewerage, most highways agencies protect staff engaged wholly or mainly in agency work, requiring that they be transferred to the principal if the arrangement is terminated. Many districts argue that residual costs to districts should be taken account of in decisions on the future of agency. Districts’ professional engineering staff are often however primarily concerned with highways and sewerage agency — other engineering services funded by the district account for a minor part of their expenditure; street cleansing and refuse collection are, in fact, self contained specialisms which can exist quite independently of other engineering services. Since districts’ engineering expertise can exist largely to serve agencies it is therefore right that a district should face the same problems as a private contractor if the principal withdraws from an arrangement which he finds unsatisfactory.

### Safeguards on repeal of S42

105. Some highways agencies and S42 claims have become highly embittered. There is a risk that arrangements might be terminated once S42 is repealed, even where it would be more expensive for the principal to provide the service directly. Legislation repealing S42 should therefore also require that existing S101 arrangements and S42 claims continue for at least three years from the date of enactment, unless both parties agree otherwise. This delay will provide authorities with time to readjust to and plan for the new situation.

106. Counties should however be provided with a right of appeal to the Secretary of State prior to repeal of S42 if a claimant appears ineffective. After that period S42 arrangements should cease and work be dealt with either via voluntary agency or directly by the county. Counties should then be free to refuse to renew an agency, when an agreement expires, should they wish. They should also be free to terminate an agency if an agent fails to provide the specified service. A two stage process should be used involving a warning of termination, if performance does not improve, followed by termination if there is no improvement. Districts providing the specified service do however require safeguards against unnecessary withdrawal of their agency. An appeal mechanism is required. This might involve the Secretary of State or some other neutral party. Whoever hears the appeal, the only grounds should be that the termination is unjustified because:

— the district is working within county guidelines and is providing the specified service;

or

— failure to provide the service is because the policies are unrealistic given the funds provided by the county.
107. If the volume of appeals justified it, a standing body could be established for an interim period to arbitrate on claims or provide advice to the Secretary of State. All appeals should be a last resort to ensure that whoever deals with them is not repeatedly involved in petty disputes. Legislation should therefore:
—place the burden of proof on the appellant;
—require that all costs arising from the appeal be borne by the unsuccessful party;
—allow the appointment of an outside consultant or adviser to examine the detail of a case on behalf of the Secretary of State with this cost too being borne by the unsuccessful party.

Reduce overlaps of responsibility

108. In the Commission's view certain other changes in the law are advisable, to reduce the overlap between district and county council responsibilities and so remove the capacity for misunderstanding and disagreement. Three clarifications of the law would be especially helpful:
—district councils should be made entirely responsible for all street sweeping and cleansing of local authority roads as is the case in Scotland. (Districts' ability to appoint counties as agents means that, if authorities wish, the change can be made without disrupting existing service delivery arrangements);
—district councils should similarly be made fully responsible for grass cutting and other horticultural maintenance on urban local authority roads. (There is normally no amenity grass cutting in rural areas). Again, agencies with the district as principal can be used to retain existing service delivery arrangements;
—the distinction between footway and road lighting should be ended and counties required to assume all lighting responsibilities.

A FRAMEWORK FOR CO-OPERATION

109. Clarification of the responsibilities of principal and agent is urgently required in many cases. The essence of the agency arrangement is contractual. Indeed much of the confusion might be avoided if the word contract were used in the place of agency. The Commission believes that the responsibility for this clarification must rest with negotiators at local level working within the changed legislative framework outlined above. But certain principles should guide representatives of the councils concerned. In each case they should:
—clarify the differences between responsibility for policy and for service provision;
—set ground rules for consultation;
—specify the scope of the agency by reference to available data on relative efficiency;
—specify the terms of the agency as precisely as possible;
—define the role of county and district members once the agency has been agreed.

The differences between policy and service provision

110. Policy is the legitimate and primary concern of members. It relates chiefly to future year decisions on service levels and priorities. Service provision takes place in a policy context. It is a current year matter, dealt with primarily by officers. Authorities need to differentiate more clearly between the 'client' and 'contractor' roles in service provision. Their major role is the 'client' one of stating what needs to be done and then ensuring that the job is carried out as efficiently, effectively and economically as possible. The 'contractor' role is separate. It can be fulfilled by an authority's own direct labour, by external contractors or by other local
authorities, depending upon which approach provides the best value for money.

111. The county council as the highways authority bears the ultimate responsibility for most highways matters. It must make the policy and ensure that it is succeeding, irrespective of whether services are being provided by its own employees or by a district council acting on its behalf. District councils have some responsibilities in their own right on the highways. They can make policy decisions in these areas but they should not seek independently to apply their own policies for matters which are the county council's responsibility.

Consultation

112. Districts have a legitimate input to make to county policy formulation on highways matters — county policies on cyclic maintenance affect districts' amenity spend on sweeping and grass cutting; poorly maintained roads can adversely affect tourism and efforts to attract new industry and commerce; county council policies on traffic management and development interact with districts' land use responsibilities. But this input has little to do with agency. Counties and districts should hold formal, regular, member-member discussions on important issues whether or not the district acts as the county's agent on highways matters. These should concentrate on policy questions, for example the procedures the county uses to allocate funds between competing demands not whether District X should receive more money; the policy towards provision of pedestrian crossings outside schools not simply whether to provide a crossing near a particular school. Members taking part in such discussions will often be supported by officers. This too is quite separate from agency and should be funded by the officers' and members' own authority.

Use of agency

113. Although county councils are, in general, better placed than the vast majority of shire districts to exercise the full range of highways responsibilities, there are nevertheless functions, particularly some maintenance activities, which can be dealt with satisfactorily by district councils. These vary with the size and history of the district; in general the larger the district the greater the range of functions. The general picture on functions suitable for agency is summarised at Exhibit 17 overleaf (though there are local exceptions to this outline which is intended only for general guidance). Appendix E describes how the principles set out in this section can be used to manage maintenance agency.

114. Traffic management fees for professional and technical services should be based on the staffing the county would need if it dealt with the work itself. The power to make traffic regulation orders should only be granted when both parties are happy with the arrangement. Irrespective of who makes orders, traffic management (and highways aspects of development control) are matters on which district and county members both need to make an input. Successful arrangements require consultation between members from the two tiers whether this be via ad hoc advisory committees, joint committees possessing delegated powers or co-option of members from one authority onto a committee of the other. Appendix F gives more detail of how traffic management and development control agency should operate.

115. Authorities need to move away from long term agencies towards shorter, more tightly defined arrangements lasting 3–5 years, which include provision for revocation or change if there are problems in meeting the performance specified in the agreement. The agency could be extended if a district is providing better value for money than the county's own operations or restricted or abandoned if performance is poor. Given the
bitter history of some agency arrangements, some county councils might be tempted to restrict agency on the smallest and slightest failure. Some period of notice and opportunity to correct problems should therefore be provided. The particular problems of urban areas dictate a predisposition to retain, or award, maintenance agency to efficient urban districts with populations over 100,000. Efficient former county boroughs, in particular, should also usually possess traffic management agency.

Exhibit 17

**FUNCTIONS SUITABLE FOR AGENCY**

Individual districts' capacity to undertake different functions vary with history and current expertise, but some general guidance can be offered.

<table>
<thead>
<tr>
<th>FUNCTION</th>
<th>TYPE OF DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maintenance</strong></td>
<td>A, B, C</td>
</tr>
<tr>
<td>- Grass cutting</td>
<td></td>
</tr>
<tr>
<td>- Sweeping</td>
<td></td>
</tr>
<tr>
<td>- Gully emptying</td>
<td></td>
</tr>
<tr>
<td>- Relaying footway</td>
<td></td>
</tr>
<tr>
<td>- Cleaning signs, bollards and traffic signals</td>
<td></td>
</tr>
<tr>
<td>- White lining*</td>
<td></td>
</tr>
<tr>
<td>- Fencing</td>
<td></td>
</tr>
<tr>
<td>- Patching</td>
<td></td>
</tr>
<tr>
<td>- Potholing</td>
<td></td>
</tr>
<tr>
<td>- Kerbing</td>
<td></td>
</tr>
<tr>
<td>- Resurfacing</td>
<td></td>
</tr>
<tr>
<td>- Reconstruction</td>
<td></td>
</tr>
<tr>
<td>- Barriers</td>
<td></td>
</tr>
<tr>
<td>- Gritting and salting (winter maintenance)</td>
<td>A, B, C when routes devised by the county lie wholly or largely within the district. All districts are also capable of carrying out pavement snow clearing on a Goods and Services Act basis.</td>
</tr>
</tbody>
</table>

| | Carried out by county |
| | A |

| Minor capital works | A, B |
| Non-strategic** traffic management investigation | A, B |
| Non-strategic** development control responsibilities | A, B |
| Private street works/public utilities/S38 adoptions | A |
| Major capital works (other than bridges and structures) | A (where this helps ‘iron out’ peaks and troughs in county workload) |

Key: Type of District

- **A** Population over 180-200,000
- **B** Other districts with populations of over 100,000
- **C** Other districts

* Providing the work is carried out by contractors — 'in house' white lining operations are usually expensive
** Strategic issues are those affecting principal roads or generating more than a threshold traffic volume on any other county road
116. Authorities will face problems, even when change is phased. There will for example be major ‘one-off’ alterations in cyclical and routine maintenance budgets as authorities move to needs-based budgeting. There are likely to be similar substantial year to year changes in budgets for structural maintenance, when viewed at district/division/area level. These will create difficulties with the utilisation of professional staff and of direct labour and of plant. New needs-based approaches may also alter professional and technical staffing needs in different parts of a county. To overcome this, authorities need to take a much more flexible and imaginative approach to the way in which they use dlos and their professional and technical staff. The Goods and Services Act allows them to carry out work on each others’ behalf while one authority’s dlo can bid for tenders issued by another council. Authorities need to make greater use of these facilities to iron out the effects of year to year budget fluctuations and to optimise their resource utilisation on both the client and on the dlo side. They also need to recognise that allocation of work to dlos, and competitive tendering by direct labour, is quite independent of their client side functions. This move to imaginative use of direct labour, and a more flexible approach to the use and sharing of plant and depots, may be essential if direct labour organisations are to remain viable as legislatively driven competition requirements increase.

The scope and terms of agency

117. The role of agency then becomes clear — to arrange to apply county policy in a particular area, ensuring that necessary work is carried out to a satisfactory standard. The agent authority is providing a managerial service, as though it were an engineering consultancy employed by the county council. Its role is to deal with the client side function, in a way comparable in scope and discretion with the work of a divisional engineer employed directly by the county council.

118. Agents should be allowed some discretion, comparable to that which county policy affords to its own officers dealing with similar problems and expenditure. The larger agents, such as many former county boroughs, would normally therefore be given more discretion than small, more rural, districts. Formal rules on virement and discretion will help. These rules should avoid penalising efficiency — agents and divisional/area engineers who provide the specified service at less than budget should, for example, be allowed defined discretion on how to use the saving.

119. Agency should therefore be treated just as a contract. This is fully compatible with the business-like approach to responsibilities that local authorities have been developing in the last 5–10 years. It is also the approach the DTp/Welsh Office are taking towards highways agencies and with the more accountable approach many water authorities are now taking towards sewerage agency. It does mean abandoning the ‘trusted agent’ concept, the idea that an agent can simply be given a sum of money and relied upon to use it wisely and efficiently. This is in any event difficult to reconcile with the way in which direct labour is now treated — the requirements to tender for work, produce trading accounts and demonstrate success. The only criterion which need be applied by a county council when deciding whether to extend, or curtail, agency is the agent’s performance against standards set in advance. It would be beneficial to call these new arrangements ‘highways contracts’ rather than agency (See Note 5).

Roles of officers and members

120. The roles of officers and members in agency then becomes clear. The operation of the agency agreement is primarily an officer matter with member involvement confined to those areas where county policy allows
discretion; agents with highways/transportation committees should disband them. The involvement of district council members should be the same as local highways authority members under trunk road agency, where they are informed of matters and may make representations through their officers but have no final say. The way in which members and officers would then operate in practice is summarised in Exhibit 18.

Exhibit 18

THE ROLES OF OFFICERS AND MEMBERS IN AGENCY

The respective roles of officers and members in counties and districts should be clearly defined

121. The changes described will not be easy to achieve. They will require goodwill and determination on both sides. But the consequences of failure to reach agreement could be severe. At the very least the prospect is of a continuation of the existing unsatisfactory state of affairs. And, beyond that, there is the possibility that central government may decide — faced with two quarrelling tiers of local government — to take more direct control itself over highways affairs.

122. The incentive for councils to develop more fruitful relationships is therefore clear. And there is no reason or need to wait for legislative change to embark on the process. The practical steps to co-operation will
differ county by county. The Commission would not wish to prescribe a
detailed approach. But the necessary steps are clear:
—First, the county in consultation with the districts needs to
develop a coherent set of policy guidelines. These must be defined
at a level of detail which will offer practical assistance in the
definition of contract terms, covering, for example:
• safety standards by type of road;
• maintenance standards for carriageways and footways;
• priority areas for capital works;
• the balance between traffic throughput and environmental
  preservation by area;
• service levels by maintenance type and geographical area;
• the inter-relationship with development policies.
—Second, the councils concerned must develop a resourced strategy
to effect these policies, defining priorities and service levels —
preferably over the medium term — and setting guidelines for the
resolution of conflicting demands on finite resources.
—Third, the county must put in place the systems needed to
implement the strategy and monitor progress. These systems must
provide the county with the basic information needed to set
expenditure priorities, including physical inventories and road
condition.
—Fourth, the county must decide on the appropriate structure to
carry through the strategy. Only here does the issue become the
one of who is best able to deliver the services implied by the
strategic plan by work type and geographical area.

Timetable for change

123. This process will take time. Local authorities will need to phase
changes over several years. Policy issues can be addressed relatively quickly
— within a year; the other changes will take longer and may not be
complete for 2 years.
124. The Commission’s auditors are now examining routine highways
maintenance and have already collected information on local agency
arrangements. They will move on in 1988 to examine other aspects of
highways maintenance and individual agencies. The Commission hopes
that this work will be of assistance to authorities in assessing their agency
arrangements.
125. Changes in the law such as those discussed above are unlikely to be
introduced before those reviews have been completed though the Com-
mision believes it would be helpful if Ministers made their intentions clear
as soon as possible. The Commission will review the results of auditors'
reports as they are produced and may comment further on agency and the
changes needed in legislation in its report on highways maintenance next
year or subsequently.

* * *

126. The next year offers an opportunity for county and district
councils to demonstrate their ability to meet the demands placed upon
them and provide value for money to road users, tax and ratepayers. There
are few more obvious opportunities — in the local authority world, or
indeed elsewhere — for achieving up to £100 million worth of value
improvements through carefully planned managerial and administrative
change.
NOTE 1 — THE GOVERNMENT'S ENCOURAGEMENT OF AGENCY

1. The widespread use of highways agency reflects the policies of successive central governments dating from the preparation for the 1974 reorganisation of local government. Central government sought to minimise the potentially disruptive effect of the change by promoting agency arrangements between county and district councils. The intention was that in a particular locality services would be provided by whichever of district or county had inherited the relevant expertise and experience from its predecessors. The policy applied to many services, not just to highways, and envisaged that counties might act as agents for districts for some services with districts acting as agents for counties on others. The Local Government Act 1972, which created the new structure, therefore provided authorities with general powers to create agencies (S101).

2. The government recognised that some authorities might be unwilling to award agency and that authorities might sometimes be unable to reach mutually satisfactory agreements. S110 of the 1972 Act covered these points. It allowed authorities, whether districts or counties, which believed that they should be granted agency for some function, to appeal to the appropriate minister. The minister could then direct that they enter into an agreement. The minister could only make directions before 1 April 1974, i.e. before the new structure came into being, while directions applied for a maximum of five years from that date. Government did not, however, view district involvement in service delivery on the highways simply as a transitional arrangement, but as something which might need to be continued indefinitely.

3. Section 187 of the Local Government Act 1972 gave district councils the right to maintain urban unclassified roads, subject to a speed limit of 40 mph or less. This was not an agency, but a right which districts could exercise if they wished. The county council had no power of veto, and no power to appeal to central government for a direction that the right should not be exercised.

4. Classified roads were not covered by the Section, which thus preserved the county council’s position as the strategic authority. Its application to other urban roads suggested that government accepted district arguments — summarised in Appendix B — about the need to integrate highways services, environmental services and land use planning functions within complex, densely populated, urban areas. The Section was in effect a safeguard, something to be used if districts were refused agency, or continuation of an arrangement originally made under S110 direction, or if authorities could not reach mutually satisfactory agreements.

5. The dissolution of the metropolitan counties, which also had difficulties with highways agency, might be regarded as taking government thinking full circle in that responsibilities passed to the lower tier. The differences in size between metropolitan districts and shire districts mean, however, that the analogy is not valid. In addition, the metropolitan districts are still dealing with some highways matters via joint units, lead authorities etc.

6. A further twist in government thinking is illustrated by last year’s proposals for the water industry, which involved the repeal of Section 15 of the 1973 Water Act, the effect of which would be to make sewerage agency arrangements a free choice by privatised water authorities. More recently, the Secretary of State for Transport has ruled that, in the case of Section 42 claims, the county has the right to allocate money according to its overall policies and budgeting procedures, rather than accept the district’s assessment of need. The effect of recent decisions and proposals is therefore to strengthen the principal’s role in agency arrangements and dilute the discretion of agents.

NOTE 2 — AUTHORITIES REVIEWED IN DEPTH

Agency arrangements have been examined in detail in the following authorities:

<table>
<thead>
<tr>
<th>Counties</th>
<th>Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheshire</td>
<td>Congleton</td>
</tr>
<tr>
<td></td>
<td>Vale Royal</td>
</tr>
<tr>
<td></td>
<td>Warrington</td>
</tr>
<tr>
<td>Devon</td>
<td>Exeter</td>
</tr>
<tr>
<td></td>
<td>Plymouth</td>
</tr>
<tr>
<td></td>
<td>Torbay</td>
</tr>
<tr>
<td>Essex</td>
<td>Brentwood</td>
</tr>
<tr>
<td></td>
<td>Colchester</td>
</tr>
<tr>
<td>West Glamorgan</td>
<td>Lliw Valley</td>
</tr>
<tr>
<td></td>
<td>Neath</td>
</tr>
<tr>
<td></td>
<td>Port Talbot</td>
</tr>
<tr>
<td></td>
<td>Swansea</td>
</tr>
<tr>
<td>Wiltshire</td>
<td>Thamesdown</td>
</tr>
</tbody>
</table>
The study team has also carried out in-depth work in West Sussex with the county council and Crawley and Worthing districts, where agency was abandoned in the early 1980s.

This research has been supplemented by brief visits to and written contact with many counties and districts.

The report has also drawn upon the Commission’s other research on highways maintenance, including in-depth work with:

Cambridgeshire
Cambridge
Fenland

Lancashire
Blackburn
South Ribble

Warwickshire
Stratford-on-Avon
Warwick
Ipswich

NOTE 3 —
A COMPARISON FOR WALES OF MAINTENANCE EXPENDITURE WITH RSG PROVISION

Welsh GRE calculations do not identify a highways maintenance element; figures for expenditure by all Welsh local authorities (essentially the county councils) can however be identified and RSG provision for maintenance compared with expenditure. Local authorities are again spending below provision.

<table>
<thead>
<tr>
<th></th>
<th>Provision 1984/5 (£m)</th>
<th>Outturn 1984/5 (£m)</th>
<th>Diff %</th>
<th>Provision 1985/6 (£m)</th>
<th>Outturn 1985/6 (£m)</th>
<th>Diff %</th>
<th>Provision 1986/7 (£m)</th>
<th>Outturn 1986/7 (£m)</th>
<th>Diff %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984/5</td>
<td>75.2</td>
<td>71.3</td>
<td>-5.2</td>
<td>80.2</td>
<td>74.9</td>
<td>-5.3</td>
<td>83.4</td>
<td>82.8</td>
<td>-0.6</td>
</tr>
</tbody>
</table>

Source: Welsh Office

NOTE 4 —
SECRETARY OF STATE FOR WALES’ DETERMINATION ON ACTIVITIES COVERED BY S42 HIGHWAYS ACT 1980

Items falling within the definition of highways maintenance:
1. Weed killing, grass cutting and tree maintenance, where the trees are in the highway.
2. Renewal of road markings and cats-eyes.
4. Sweeping, gully emptying and repairs to drains.
5. Street lighting maintenance.
6. Surface dressing.
7. Footways and carriageways resurfacing and reconstruction including strengthening works except where work involves altering levels, gradient or direction.
8. Mining subsidence works.
9. Winter maintenance i.e. snow clearing, salting and gritting.
10. Maintenance of structures i.e. bridges, subways but excluding replacement and reconstruction.

Items not falling within the definition of highways maintenance:
1. Traffic signs, and associated new road markings.*
2. Traffic signals.
4. Pedestrian and pelican crossings.
5. Erection of new street lighting.

NOTE 5 —
THE IMPLICATIONS OF INCREASED LEGISLATIVE REQUIREMENTS TO AWARD WORK COMPETITIVELY

The Local Government Bill 1987 proposes extensions to the type of work which must be awarded competitively; in particular, street sweeping, grass cutting, gully emptying and sign cleaning are included. However, it would appear that the discretion allowed under agency means that clause 3(3) of the Bill (as originally published) would apply and the agency agreement would not constitute a ‘works contract’. The county council would not need to go out to tender before awarding agency for sweeping, grass cutting, gully emptying or sign cleaning. Having been awarded the agency, a district would then have to comply with competition requirements when arranging work.

* Secretary of State’s footnote. The erection of traffic signs is vested in a traffic order-making authority which may be different from the highways authority. Section 84C (3) of the Road Traffic Regulation Act 1967 refers to ‘requiring the authority by whom any such order is made to place and maintain … such traffic signs …’. The duty to maintain therefore goes hand in hand with the power to make the order and the maintenance of traffic signs is not within the meaning of highways maintenance.
Appendices

The following appendices are included with this report:

A — The current extent of highways agency.
B — The ACC and ADC views of agency.
C — Comparisons of county and district efficiency in highways maintenance.
D — S15 sewerage agency.
E — How to manage highways maintenance agency.
F — How to manage traffic management and development control agency.
Appendix A

THE CURRENT EXTENT OF HIGHWAYS AGENCY

S101 Agency

1. There are 333 non-metropolitan districts in England and Wales and forty-seven counties, an average of about seven districts per county. Two counties contain only two districts each; three contain fourteen but six is a more typical number (see Exhibit A-1).

2. The three out of the forty-seven counties in England and Wales which have no agent districts or S42 claimants are: Powys, a highly rural county with no major urban centres, comparable in population to many districts; the Isle of Wight, geographically isolated and again comparable in population to many districts; and West Sussex where agency was ended in the early 1980s.

3. About two thirds of districts have some sort of S101 agency and carry out some function or functions on at least some county roads. The more comprehensive agencies tend to be held by the larger, more urbanised districts, particularly former county boroughs. The arrangements vary widely in scope and coverage both from county to county and from district to district within counties. To illustrate:

   — simple engineering tasks, particularly cyclic maintenance (sweeping, grass cutting, gully emptying) are more likely to be awarded than other maintenance tasks: 66% of districts have grass cutting agency, while 50% carry out virtually the full range of maintenance activities;

   — urban core and island agencies are common as are restrictions on the types of road in agency. Eighty one of the district councils carrying out the full range of maintenance cover all county roads in the district; the other 85 are restricted in some way;

   — other functions are less commonly included in agency. Forty seven per cent of districts do capital works; the majority of these agencies are restricted and exclude works above a specified limit. Geographical and road type restrictions also apply and only eleven districts possess unlimited capital works agency on all

Exhibit A-1

NUMBER OF DISTRICTS PER COUNTY IN ENGLAND AND WALES
Six is the most common number of districts per county

Number of counties with stated number of districts

Number of Districts in the County
county roads throughout the district. Only 12% have road safety agency (training, publicity, etc.), and 38% of districts possess traffic management agency; half of these are restricted by road type or geography;  
—bridge maintenance and design is almost invariably excluded from agency;  
—electronic and mechanical maintenance of signals is usually carried out by contractors working directly to the county council. County councils also normally directly manage computerised urban traffic control systems especially when these extend across district boundaries. A few districts operate traffic signal fault reporting centres for counties. Many agent districts carry out simple cleaning and bulb changing of signals.

**S42 Claims**  
4. Only twelve districts have active S42 claims and they are not all alike. Different maintenance activities are treated as falling within the Section in different places. Thus, although all twelve claimants carry out cyclical work — street sweeping, gully emptying and grass cutting — only nine maintain road markings and only six maintain road signs. Eight of these claimants maintain street lighting.

**Agency and S42 claims**  
5. In total, 233 districts (70%) carry out some maintenance work via S101 agency or S42 claims. All but one of these deal with grass cutting, and nearly all cover the other cyclical tasks, sweeping and gully emptying. Just over half of all districts (52%) carry out street lighting maintenance and the same proportion (52%) carry out most maintenance including structural maintenance (resurfacing, etc.). The extent and scope of agency and S42 claims is summarised in Table A–1.

<table>
<thead>
<tr>
<th>Function</th>
<th>District Councils with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) Agency on all roads throughout the district</td>
</tr>
<tr>
<td>Grass cutting</td>
<td>101 30.3</td>
</tr>
<tr>
<td>Carriageway sweeping</td>
<td>106 31.8</td>
</tr>
<tr>
<td>Gully emptying</td>
<td>102 30.6</td>
</tr>
<tr>
<td>Street lighting</td>
<td>100 30.0</td>
</tr>
<tr>
<td>All highways maintenance</td>
<td>81 24.3</td>
</tr>
<tr>
<td>Traffic signals</td>
<td>45 13.5</td>
</tr>
<tr>
<td>Highways improvements: to a maximum value</td>
<td>58 17.4</td>
</tr>
<tr>
<td>Highways improvements: no maximum value</td>
<td>11 3.3</td>
</tr>
<tr>
<td>Traffic management</td>
<td>59 17.7</td>
</tr>
<tr>
<td>Private street works</td>
<td>111 33.3</td>
</tr>
<tr>
<td>S38 adoptions</td>
<td>130 39.0</td>
</tr>
<tr>
<td>Road safety training</td>
<td>39 11.7</td>
</tr>
</tbody>
</table>

The % columns are as percentages of all districts in England and Wales.  
Source: Audit Commission analysis of questionnaire distributed in the summer of 1986.

**Expenditure via agency**  
6. About 45% of counties’ net maintenance spend of £700 million p.a. is via agency/S42. A typical county council will have a highways maintenance budget of about £15 million split as shown in Exhibit A–2. County councils tend to retain responsibility for the more complex activities in engineering terms (e.g. resurfacing and other structural maintenance).
7. This 45% of counties net maintenance spend covers only about 30% of road length. The difference is because agency/S42 is concentrated on urban areas which have high maintenance costs per km. Agencies for other highways functions - public utility work, traffic management etc. - usually, but not always, apply to the same geographical area and road types as maintenance agency.

8. The proportions of county expenditure channelled through agents also vary considerably. One county visited spent two thirds of its net maintenance budget of £27 million via agency, while another, in contrast, spent only 23% of an outturn of £23.6 million via S101 agency. The largest single piece of capital work under agency identified in the fieldwork was a scheme costing £7 million scheduled for 1991-2. Most agency schemes cost far less. The majority of districts with such agency are restricted to schemes worth under £100,000; even the largest districts may be restricted in the value of scheme they are allowed to design or lack the agency completely.

9. The proportions of work carried out under direct county control are greater if DTp/Welsh Office motorways and trunk roads agency is considered. Counties spend £200 million a year on maintenance and £120 million p.a. on capital works under these agencies. Shire districts have virtually no involvement in this — central government limits their involvement to carrying out cyclical maintenance for trunk roads on a Goods and Services Act basis should the county wish; these arrangements must however be approved by the principal and are, in fact, rarely used. County councils thus deal directly with 63% of the £900 million spent on the maintenance of all public highways in their areas and with over 95% of capital works.

10. There are considerable differences from county to county in total road length, in maintenance and in capital budgets. They range from under 1,000 km to nearly 13,000 km (road length), from about £3 million to nearly £33 million (maintenance budgets) and from just over £1 million to about £23 million (capital budgets). This, coupled with differences in the nature of agency from county to county, and in agency arrangements
within counties, creates considerable variation in the value of agency income to different districts in the one county as well as in the proportion of net county highways expenditure made via agency.

11. Agency can involve revenue spends of £4-6 million p.a. when comprehensive responsibilities have been awarded to large, highly urbanised authorities which have inherited a tradition and expertise in highways matters from predecessor county boroughs. But most agencies are worth less than this. The same is true of S42 claims; even in highly urbanised districts the Section only applies to the relatively less expensive urban unclassified roads and excludes urban classified roads. Relatively urbanised authorities with populations of well over 100,000 can thus have incomes of under £1 million under S42 with the county directly spending as much or even more on rural roads and on classified roads in the same district.

Exhibit A-3

HIGHWAYS AGENCY REVENUE INCOME PER DISTRICT IN ONE COUNTY

Agents typically receive £1-3 million each from the county

![Diagram showing revenue income per district in one county]

Source: Audit Commission analysis of fieldwork data, 1985/6

12. At the other end of the scale small rural districts may have agency only for grass cutting, covering expenditure of just over £20,000 p.a. Most agencies, of course, lie well within these extremes. Districts with populations below 200,000 but which possess comprehensive maintenance agency and wide traffic management and development control agency, usually have expenditure in the range of £1 -3 million. Exhibit A-3 shows expenditure in ten agents with extensive agency in one county visited.
Exhibit A–4 shows how these budgets are typically split between activities. Street lighting and footway activities confined to urban areas are more significant parts of these agent budgets than in the overall county budget; traffic signals, bridges and earthworks are conversely absent or insignificant.

Exhibit A-4

**TYPICAL DISTRICT HIGHWAYS MAINTENANCE SPEND UNDER AGENCY**

Footways maintenance makes up a larger proportion of agency budgets than county budgets

13. District councils are the main source of funding for street sweeping and grass cutting. Revenue for such work received under agency is thus part of a pool used to meet the cost of an overall service. This approach is often extended by quasi-contractual arrangements under the Goods and Services Act 1970. Some districts without agency thus also receive contributions to their sweeping and grass cutting costs from the county council. The approach sensibly ensures that two different authorities do not carry out the same function on the one stretch of road. There are, in addition, some instances where the county council carries out all sweeping or grass cutting, including amenity work, receiving contributions from district councils under the Goods and Services Act. The variable effect of county contributions is illustrated by one district visited, which met only £70,000 p.a. out of a total street cleansing spend of £450,000, the rest being paid by the county; another district visited, which had gross expenditure of £125,000, received only £45,000 from the county.
Appendix B

THE ACC AND ADC VIEWS OF AGENCY

The ACC view

1. The Association of County Councils believes that county councils as highways authorities should develop:
   — policies, priorities and standards;
   — plans to carry out and implement these policies;
   — budget setting and fund allocation procedures which reflect these policies, and thus direct resources to areas and functions of greatest need;
   — methods of monitoring achievement, both physical (checking that work has been carried out) and financial (monitoring expenditure) to ensure that policies are being applied and the public provided with value for money;

   and that they should also:
   — use whatever service delivery arrangements are most appropriate and most likely to provide an efficient, effective means of carrying out the council’s policy.

2. The ACC believes that agency with districts is one option by which a county council can discharge its responsibilities. It also believes that agency should be operated in the context of county council policies. This means that it should be quasi-contractual. The agent’s role should essentially be to work to county council policy and to report to the county council on progress and expenditure. Agents would thus exercise discretion only where granted by the principal and would even then be expected to operate within county council policy guidelines. The implication of this is that the relationship should predominantly be between officers. Members of both the county council and the district council should make the decisions on whether or not to set up an agency arrangement. Afterwards, however, the strong policy guidance from the county council and quasi-contractual nature of the relationship should mean that there is no need for member involvement.

3. County council members would make all policy and priority decisions; district council members would have no role other than to agree to agency and to then apply any discretion granted under the terms of the agency, within county council guidelines. Such limited discretion might, for example, apply to certain traffic management and development control matters. The ACC also argues that agency should be an entirely voluntary arrangement freely entered into by both parties without the threat of an S42 claim. The Association therefore believes that the Section should be repealed on the grounds that:
   — it guarantees the continuation of agency, or a district’s involvement in maintenance by direct exercise of its S42 rights, even when this may not be the best value for money approach;

   and, in particular, that:
   — it leaves the principal with no effective remedy if a district council fails to apply county council policy, is inefficient or provides too costly a service. The only action open to the county council in these circumstances — a reduction in the funds provided to the district — may reduce waste but also means that the population of the agency/S42 area, and other users of roads in the district, receive a lower standard of service than the county council wishes to provide.

4. Many of the ADC’s arguments for wholesale granting of agency are not accepted by the ACC, which argues, for example, that:
—county council members are quite capable of responding to local needs, that they deal well with highways matters in the many areas not covered by agency and look after local needs on other matters, such as education and social services, where there is no district involvement;
—highways maintenance, capital design etc. involve specialisms which counties as the larger units are better suited to provide;
—any duplication can be removed by concentrating service delivery in county hands; the county would be able to rationalise plant holdings across districts, moving equipment about the county to maximise utilisation.

The ADC view

5. The Association of District Councils has said that it believes that roads and traffic are part of the fabric of the community which directly impact on peoples' daily lives. It also believes that the highways function is inextricably linked with local planning, housing and development, particularly in complex urban areas. In the longer term, the Association favours a reorganisation of local government under which most functions, including all community services, of which highways and traffic management would be part, would be dealt with by district based authorities. (See 'Closer to the People', ADC May 1987).

6. Agency is viewed by the ADC as a second best substitute for the direct exercise of highways authority powers by its members. It argues for comprehensive agency (or conferment of powers) on the grounds that:
—district councils are more immediately accountable and locally aware than county councils (both in terms of area and in terms of number of electors per member) and therefore better placed to decide local needs, priorities and standards and the allocation of available resources;
—the nature of many highways functions, particularly the improvement, maintenance and traffic management of roads, backways etc. in urban areas is inappropriate to a strategic authority and more akin to functions related to the local environment and its improvement;
—local co-ordination and implementation is helped considerably if highways responsibilities are in the same hands as those for local planning, housing, conservation, urban regeneration, parking, town centre and industrial schemes and other new developments;
—highways and traffic work (and also sewerage agency work) can best be done through a single locally based technical organisation, one which the district council needs in any event as developers of land and as housing authorities;
—district councils dealing with highways matters can make fuller and more flexible use of professional expertise, depots, plant and vehicles and so spread overheads while the availability of highways work helps recruitment and retention of good quality professional staff;
—the public have ready access to their local district councillors and the town hall as a common focus for suggestions, representations, complaints and enquiries about a whole range of local services;
—there would be no duplication of facilities with counties if districts were providing a comprehensive service; the operation would be more efficient and cost-effective.

7. Many of the claimed benefits only accrue, however, if the district council possesses reasonable discretion and is given sufficient freedom to respond to a need or problem it has identified. The ADC also emphasises
that county and district councils both consist of elected members. Agency is therefore a relationship between members which cannot, in the ADC's view, be treated as a simple officer-officer matter. Elected district council members should have a major role in agency. The ADC thus sees agency as a relationship under which district members exercise the widest possible discretion in the context of broad county council policies, standards and objectives.

8. Districts also argue that highways agency provides other benefits outside the highways field. It broadens the scope of district councils' engineering and thus:

—provides engineers working for districts with a more attractive career which helps recruitment;
—helps spread central overheads and on-costs across a wider base;
—helps maximise plant utilisation (a gully emptying machine owned by a district council can be used for highways agency work, sewerage agency activities and for district council funded work such as cesspit emptying);
—helps optimise the use of professional and technical staff, who can be moved between highways and sewerage work, and other activities such as building maintenance;
—ensures that districts have the in-house capability to deal with their own highways related responsibilities such as car parking and environmental improvement;
—makes it easier for the district to provide an enhanced highways service by 'topping up' county funds (e.g. to provide a better quality paved footpath rather than the 'blacktop' finish specified by the county).

9. The ADC for its part maintains that the ACC view of agency — a quasi-contractual arrangement largely excluding member involvement — is far removed from the original concept envisaged by the government and represents a major change in the accepted understanding of the concept of agency. It was always intended that agency agreements should give the agent authority the greatest measure of initiative in decision-making and the preparation of programmes of work (involving both members and officers of the agent authority) subject, rightly, to the statutory responsibility of the principal for the finance, for overall standards of policy, and for the development of the service (DoE Circular 131/72). Consistent with this view, the ADC believes that the benefits currently accrue from comprehensive agency, and that all of these stand to be lost under the ACC's interpretation.

10. In addition, the ADC argues that the ACC case focuses on two issues, namely that the authorities they represent are solely responsible for the highways function and that the delivery of service, particularly in respect of maintenance, is of primary importance to that function.

11. In the ADC view these arguments are weak. Counties, because of the nature of the functions for which they are responsible, tend to see each activity in isolation. Except for a broad annual assessment of the distribution of available money between functions, there is no evident co-ordinating role required between social services, education or highways — the main expenditure areas. Each service stands independently of the others. Consideration of highways policies and priorities is apparently divorced from the implications for other functions, whether district or county led. What may be seen as good in purely highways terms may not, therefore, necessarily optimise the delivery of services to the community.

12. Furthermore, in the ADC's view, the ACC's preoccupation with highways maintenance — which, in practice, is frequently an officer to
officer orientated issue sterilised from elected member intervention — is excessive. It is not normally the serious issue of dissent between authorities which the counties claim. Evidence of this distortion is demonstrated by the great importance attached by the ACC to the existence of S42. In fact under 4% of districts have active S42 claims which is indicative of the fact that in most cases districts have 'value for money' considerations very much at heart; the real value of S42 is in encouraging reasonable arrangements to be worked out between authorities. Failure to achieve such arrangements (which thus leave the counties with no effective remedy against a district's default, such as they may be) are primarily a failure of the counties effectively to negotiate adequate safeguards and are not a fault of the legislation itself.
Appendix C
COMPARISONS OF COUNTY AND DISTRICT EFFICIENCY

1. In this Appendix, we look at the relative efficiency of counties and districts as indicated by the highways model prices. The highways models are a set of specified maintenance jobs which authorities are asked to price as though their dlo or contractor had tendered for the work. The models are still being used in the audits of individual authorities and therefore, to avoid disclosing expected prices, we show only the relative prices rather than the absolute values. The Audit Guide on the Management of Highways Maintenance, Phase 1 gives full details of the models*

1. Examples of jobs where districts and counties tend to have similar prices

   a. Emergency repairs to potholes in a class B road

   c. Lay road markings

   b. Erect and maintain traffic signs

   d. Gully emptying rounds

* Available from the Audit Commission, St. Lawrence House, 29-31 Broad Street, Bristol, BS1 2EX, price £10.
2. Examples of jobs where districts tend to have lower prices
   
   a. Relay pre-cast concrete paved footway
   
   b. Mechanical sweeping rounds
3. Examples of jobs where counties tend to have lower prices
   
a. Excavate and relay bitmac footway

   Price

   Authorities

   District  County

c. Lay surface water drain on B class roads

   Price

   Authorities

   District  County

d. Street lighting maintenance: comparisons of agent and county costs from two counties — actual costs rather than highway model prices. County A is more efficient than most of its agents, while County B is more efficient than all its agents

   Cost

   COUNTY A

   Agencies

   Direct Control

   District  County

   COUNTY B

   Agencies

   Direct Control

   District  County
Appendix D

S15 SEWERAGE AGENCY

1. S15 of the Water Act 1973 stipulated that local authorities (London boroughs, shire districts and metropolitan districts) should act as sewerage agents for water authorities unless both parties agreed otherwise. Shire districts thus possessed a presumptive right to the agency. The agency covered both revenue work and capital works and was extensively used.

2. Some, though not all, water authorities publicly expressed dissatisfaction with the compulsory nature of S15 arrangements and the problem this could create in securing value for money; the Anglian Water Authority and the North West Water Authority both made cases to the Monopolies Commission (which reported on the issue in November 1982). Anglian's case was based on savings it believed it would make by removing duplication of effort and the costs of monitoring and liaising with agents and carrying out the work itself. North West Water argued that it could exercise only limited control over district councils and therefore over the service for which it was responsible and for which it provided the finance; the relationship had deficiencies in the planning and design of capital projects and in day to day operation and maintenance. The Authority believed it was handicapped in its ability to ensure that priorities were consistently assessed, and that value for money was achieved in design and construction. The Authority said it was working at one remove in its assessment of priorities as it did not have first hand knowledge of the sewer system and there was sometimes a lack of common interest; as all design work was done by districts, high priority sewerage schemes could be delayed when a district's chief technical officer wished to concentrate on other schemes (housing, industrial estates); the smaller districts were not always able to deal promptly with high priority sewerage projects and the Authority had no power to insist upon the use of consultants where a district's resources were over stretched.

3. The Monopolies Commission rejected the proposal that S15 be repealed. It accepted that the 'so called' agency was an odd one under which the principal had no choice about whom he employed as agent and saw great difficulty in dismissing him if his performance turns out badly. It also said that there was no doubt that many district councils considered that historically the sewerage business was theirs, and whatever the statute or model arrangements, resented and resisted interference by their principals. The Monopolies Commission recommended changes in the DoE sponsored 'Model Arrangement' between the two parties to put beyond doubt the powers of the water authorities to control the operations of their agents as may be needed, and to make clear that the authority was responsible for the formation of the capital programme and did not merely respond to proposals from district councils. The Monopolies Commission preferred this approach to the repeal of S15 and termination of agencies, sought by the two water authorities, on the grounds that termination would create spare capacity in district councils, particularly smaller ones, which could prove difficult to eliminate. This would waste resources, leaving districts with a residual cost.

4. Section 6 of the Water Act 1983 substituted new text for S15 of the Water Act 1973 and added a new schedule, Schedule 4A to the earlier Act. Paragraphs 2 to 5 of the new schedule are particularly relevant. They provide that:

—arrangements be made with a view to ensuring that the water authority's sewerage functions, taken as a whole, are carried out efficiently;
— the Secretary of State may make regulations governing sewerage arrangements;
— under certain circumstances the duty on the water authority and local authority to endeavour to enter into arrangements shall not apply;
— arrangements may be brought to an end or varied by either party or both;
— a local authority refused agency by a water authority or served with notice of termination of agency can apply to the Secretary of State asking that he review the decision. The Secretary of State may confirm the water authority's decision or direct that agency be awarded, or continued, in accordance with terms set out in his direction. When carrying out such a review the Secretary of State must take account of the likely financial consequences for the parties of the proposed action.

5. The Secretary of State has made regulations — the Water (Sewerage Arrangements) Regulations S1 1984 No. 1788. The 1983 Act thus meets several of the Monopolies Commission's criticisms. The regulations require:

— the water authority, in formulating policies or proposals which significantly affect the role of the agent authority, to consult that authority and
— to reimburse the agent the reasonable costs of discharging sewerage functions but allow it to impose limits on the costs and expenses to be reimbursed;
— agents to comply with any reasonable guidance or instructions and requests for information made by the water authority, and
— to consult the water authority about the capability in terms of skill, experience and resources of any person who it is proposed should design or carry out sewerage works of a capital nature. The water authority is under no obligation to pay when it reasonably doubts the capability of the person proposed to do such a job.

The requirement on the Minister under the 1983 revision to consider the likely financial consequences for the parties when reviewing refusals to award, or terminations of, agency means that residual costs to a district, on termination, could be taken into account in his decision.

6. Sewerage agency provides local authorities with a revenue income of just under £100 million p.a. and is held by over 90% of shire districts. It is therefore more common than highways agency or S42 claims and is held by a substantial proportion of districts without highways agency or with only restricted highways agency. In general S15 agency appears less acrimonious than highways agency, primarily because it is so widely used that water authorities possess few sewerage engineers and there is thus little officer-officer professional rivalry, and partly because sewerage is less of a public and political issue than highways; district members are therefore less inclined to become involved with the agency.

7. The Government now, however, proposes to transfer the water authorities to the private sector and has issued a consultation paper (November 1986) on sewerage agency. This suggests replacing the amended S15 with a power to enter into arrangements if local authorities, and the new Water Services PLCs, agree. These arrangements would not be regulated by the Secretary of State but established by agreement between the parties and enforceable in the manner of contractual agreements. WSPLCs would have freedom of choice to decide how to meet their sewerage obligations; local authorities would need to demonstrate that
they are efficient and effective in carrying out sewerage operations in order to retain the agencies. The consultative document also suggests that, where this is the case, there is no reason why arrangements should not continue to everyone's benefit. The Government also proposes that existing arrangements remain in force until varied or terminated by the parties themselves.

8. The Government suggests that one full financial year should pass, after the enactment creating the WSPLCs, before a WSPLC can give notice of termination of agency and that notice should, even then, be 'reasonable'. It believes that the terms of the Local Government Agency Arrangement (Staff Transfer and Protection) Order 1976 which apply to current agreements, protect local authority staff wholly or mainly engaged on sewerage work, ensuring that they are transferred to the WSPLC if an agency is terminated.

9. The change is not likely to lead to the wholesale abandonment of sewerage agency. Most water authorities contacted by the Commission expected, instead, to take a more 'hard nosed' and business-like approach, abandoning merely those arrangements which were inefficient and too costly. Capital works agency may be more extensively revoked than maintenance work. Different water authorities did however have different expectations about the number of agencies which would be abandoned — one visited expected a major diminution, another intends to retain the services of local authorities to undertake sewerage activities renegotiating the conditions and terms of arrangements (and it is possible that some districts may then decide not to act as agents) and to discontinue arrangements with a very limited number of local authorities whose performance has been consistently unsatisfactory.

10. The proposals for sewerage do however accept that the principal-agent relationship should be the business-like, quasi-contractual one advocated for highways agency. They also differ from the Monopolies Commission conclusion by ignoring residual costs to districts should agency be terminated. Staff wholly or mainly engaged in sewerage work would be transferred to the Water Services PLC, so that any residual costs would essentially involve shared depots, plant and accommodation which could not be immediately disposed of by the district. This, plus the smaller base for central recharges would increase the overheads borne by a district's remaining engineering services. But it will be the district's job to find ways of overcoming such problems which should not influence the principal's decision about whether or not to continue with an agency arrangement.
Appendix E

HOW TO MANAGE HIGHWAYS MAINTENANCE AGENCY

1. This Appendix concentrates on highways maintenance, the major expenditure area under agency, using it to illustrate the approach discussed in the main report.

2. County councils should address the management problems discussed in the report, and in consultation with districts develop policies, strategies, assessment systems, performance monitoring and management information systems. These should be applied both to agency and to directly controlled work.

3. The success or failure of agency should be judged by comparing the actual performance of agents, and of directly controlled areas/divisions with performance requirements which have been specified in advance as part of the agency agreement. The comparison will only be fair if agents and officers dealing with directly controlled work have budgets which adequately reflect the expected service levels. Agents must therefore receive fair and realistic allocations. Realistic unit costs, as well as accurate inventories, must be used in setting cyclic maintenance budgets. Provision for structural and other maintenance must also be realistic. Performance monitoring and feedback on previous years' costs, comparisons with Audit Commission guidelines and, especially, the increased use of comparisons with market place prices, will all help in this process.

4. County councils need to gather and analyse management and performance data not only on agency but also on their own directly controlled operations. The common practice of simply assuming that area and divisional engineers are working to county policy should be abandoned; in reality many area and divisional engineers do not apply county policy and behave as independently of county HQ as many agents. Theoretical calculations of directly controlled performance and cost need to be replaced by measures of actual performance and real cost. Counties should also be willing to expand agency where this is the most efficient and effective approach.

5. Counties should however rely upon districts' professional staff to collect management information, supplementing this with occasional financial and technical audit, rather than attempt detailed, 100% supervision of all agent activity. Comprehensive supervision of agent activities is wasteful in its use of counties' professional and technical staff; heavy handed attempts at detailed day to day supervision of agents have contributed to the problems with some relationships. The way in which county HQ supervises agents should resemble the way in which it supervises its own area and divisional engineers. Agents' officers should be encouraged to show initiative in identifying potential improvements and to discuss these openly and, initially, informally with their county colleagues. The overall budget setting and performance monitoring cycle is summarised at Exhibit E–1 overleaf.

6. Highways services are not fully programmable and predictable in advance — emergencies arise, weather conditions affect contractors' performance and winter maintenance needs can vary from year to year. Some operational flexibility is needed, particularly in maintenance. Virement rules should apply irrespective of whether service provision is directly controlled or via agency. Arrangements should also avoid penalising efficiency. Agents and area/divisional engineers who are able to provide the specified service at less than budget should, for example, be allowed discretion on how to use these current year savings.
7. A contractual approach to agency means that the county council should pay districts only for the services the county would have to provide directly in the absence of agency. Counties are therefore under no obligation to fund work performed for a district council, to cross-subsidise other district technical functions, to subsidise prestige accommodation or to subsidise a district's central support organisation. Counties equally need to avoid the, often incomplete, calculations now used in discussions on these questions. One approach is to:

— specify the services required by the county council;
— identify the full staffing commitment associated with work dealt with directly by the county;
— calculate the total cost of employing those staff;
— relate these manpower and expenditure figures to workloads (road length to be maintained, operational spend on maintenance);

and then
— set agent fees on a similar basis.

8. Counties should circulate full details of these calculations to agents to help gain acceptance and commitment to the county’s approach.

9. Administration fees should adequately reflect the effort the district is expected to put into providing management and financial information; introducing management support systems may require some increase in agency fees. County councils and other authorities acting as agents for the DTp/Welsh Office are, of course, using similar arguments in seeking increases in the administration fees they receive from central government. Counties should also use realistic accommodation costs when calculating fees; allowances derived from the costs of county accommodation in urban, agency, areas (e.g. offices used by social services or education departments) may be preferable to those based on highways departments offices located in rural areas. Counties should also recognise that a simple percentage may not be the best way of calculating the administration fee for maintenance. Inefficient agents can then receive administration fees which are high in relation to the volume of work done. The move to needs-based budgeting will also create year to year fluctuations in budgets and in administration fees calculated on a simple percentage. This may cause problems with deployment of client side staff. Greater flexibility in the inter-authority use of staff can help overcome this problem.
10. The potential difficulty can also be eased by recognising that there are two elements to the administration fee:

— a *highways management element* which covers highways inspection, site assessment, inventory updating etc. This is largely unchanged from year to year and largely independent of the amount of maintenance carried out in any particular year;

— an *operational element* covering contract letting and supervision, collection of performance information etc. which varies according to the spend in the year.

11. The fee for the highways management element may be approximately equivalent to 2 to 3% of the operational spend, but may best be dealt with by a flat monetary fee, which will vary from agent to agent depending on their responsibilities and the road lengths they deal with (though the fee needs to be reviewed every 3–5 years to take account of changes in the road network). The operational element can still be dealt with on a percentage basis at below the 8% often used at present. Hampshire County Council and its agents are currently developing such a dual approach to administration fees. Whichever method is used, agency fees for maintenance, expressed as a percentage of operational spend, should be closer to 10% than the 8% often paid currently. Counties may also need to fund some initial inventory collections as 'one-off' exercises. Those developing computer based inventories, and other information systems should also consider providing agents with access.

* * *

12. The different elements of successful maintenance agency are summarised at Exhibit E–2 overleaf. A timetable for introducing them is given at Exhibit E–3 overleaf.
## HIGHWAYS MAINTENANCE AGENCY

Successful maintenance agency requires a clear definition of responsibilities

<table>
<thead>
<tr>
<th>CONTROL</th>
<th>County council, as highways authority, is in control and makes final decisions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>POLICIES</td>
<td>County council develops policies, priorities and standards after consultation with agent and non-agent districts.</td>
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<tr>
<td></td>
<td>County council defines frequencies of service for cyclical maintenance; response times for emergencies, winter gritting etc.; intervention levels for structural work.</td>
</tr>
<tr>
<td>BUDGET SETTING</td>
<td>Budgets allocated with the help of objective assessments of need.</td>
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<tr>
<td></td>
<td>County wide inventories established to help with budgeting for cyclical maintenance.</td>
</tr>
<tr>
<td></td>
<td>Regular condition surveys carried out to help with budgeting for structural work.</td>
</tr>
<tr>
<td>SERVICE PROVISION</td>
<td>County and agent officers provide services in line with county council policy.</td>
</tr>
<tr>
<td>OPERATIONAL DISCRETION</td>
<td>County council defines virement rules etc. Agents and county officers with similar responsibilities enjoy similar freedom of action.</td>
</tr>
<tr>
<td></td>
<td>County council does not penalise success; agents and areas/divisions providing the specified service, within budget, allowed discretion on how to use the remaining funds. Agents’ members do not become involved in current year service provision, except where the county has granted discretion.</td>
</tr>
<tr>
<td>PERFORMANCE MONITORING</td>
<td>County council defines, in advance, the performance it expects from agents and from its own areas/divisions, applying similar criteria to both.</td>
</tr>
<tr>
<td></td>
<td>County HQ collects and analyses management, financial and performance data from agents and areas/divisions.</td>
</tr>
<tr>
<td></td>
<td>County council carries out sample based financial and technical audits of agents; it does not attempt 100% supervision.</td>
</tr>
<tr>
<td>ADMINISTRATION FEES</td>
<td>County council funds inventory and condition systems (possibly financing initial data collection for inventories as a ‘one-off’).</td>
</tr>
<tr>
<td></td>
<td>Agency administration fees cover the costs of providing management, financial and performance data (eg. a 10% fee, or separate data collection flat fee plus a, lower, works supervision percentage).</td>
</tr>
<tr>
<td></td>
<td>Fees also cover reasonable local accommodation costs (eg. by comparison with costs of education or social services offices in the agency area).</td>
</tr>
<tr>
<td>LIAISON</td>
<td>County and district officers consult on technical matters of mutual concern — efficiency, effectiveness, working methods.</td>
</tr>
</tbody>
</table>
THE WAY FORWARD - WHAT COUNTIES AND DISTRICTS NEED TO DO TO IMPROVE THE MANAGEMENT OF HIGHWAYS MAINTENANCE

Developing a well-founded agency structure may take about two years

**COUNTIES**
- Consult with districts on policy, standards, budget setting procedures
- Develop agreed county-wide inventory, needs assessment and monitoring systems
- Evaluate and compare agency and directly controlled costs; review and improve efficiency
- Review agency in consultation with districts

**ALL DISTRICTS**
- Members consult with county on policy standards, budget setting procedures

**AGENTS**
- Officers assist county with inventory and condition assessment systems
- Officers provide cost and other performance data to county; district reviews its own costs and improves efficiency
- Officers and members consult on future of agency

* Assuming little inventory and condition data currently available.
  If data exists, this can be reduced to six months or less
Appendix F
HOW TO MANAGE TRAFFIC MANAGEMENT
AND DEVELOPMENT CONTROL AGENCY

1. This Appendix offers advice on how to deal with these agencies, particularly with the professional and technical fees to be paid and the question of who makes traffic orders.

Professional and technical staffing fees

2. A contractual approach to agency means that professional and technical staffing allowances for traffic management (and for highways referrals in development control) should be based on the staffing the county would need if it performed the work directly. Counties also need to pay particular attention to the special needs of built up areas when deciding these staffing levels. Districts for their part need to accept that traffic management is an open ended activity to which the law of diminishing returns applies and to accept that cash limiting is therefore necessary. District councils also have to recognise that they, rather than the county council, should fund traffic surveys and similar work carried out in support of districts' planning responsibilities.

Decision making

3. The amount of heat and dispute generated by traffic management has been so great that agency for traffic orders should be granted only if both parties are genuinely satisfied with the terms. Compromises whereby districts receive fewer powers than they wish to possess but counties still delegate wider powers than they would wish to grant (e.g. as part of an arrangement whereby S101 agency is granted in part of a district in return for an agreement to forego S42 claims elsewhere) have not worked.

4. Some authorities have therefore adopted an approach whereby either a joint committee of county council and district council members is established with delegated power to make orders, or the district council is granted the power (with the county possessing some defined stand-by or call-in powers on strategic issues) but is required when making decisions either to consult with the county council, or to co-opt county members onto the district committee. District officers can still carry out investigative work on traffic management and supervise works under an agency, even when these joint approaches to decision making are used. Capital schemes for traffic management or to assist development still need to be dealt with by the county as part of its capital programme; the case for expenditure can however be forwarded to a county council committee from a joint committee or from its agents' committees.

5. The success of these approaches depends upon clear terms of reference which ensure that such committees do not attempt to influence current year highways maintenance. They provide ways of allowing district input to traffic management decisions and can also be used to deal with highways authority aspects of development control. They can also be applied to districts which lack agency but still wish to make an input to the county's traffic management or development decisions and have been successfully complemented by technical traffic management and development control meetings between county and district officers and other interested parties such as the police. There is the further advantage that policy decisions are separated from exploratory work such as traffic surveys and from the actual implementation of measures — placing of plates, laying white lines etc. — both of which can still be handled contractually. Individual county and district councils should therefore
consider using these co-operative ways of dealing with traffic management and development decisions. The consultative mechanisms, and other characteristics of such well managed traffic management arrangements, are summarised at Exhibit F-1. Similar principles can be applied to the highways authority role in development applications.

Exhibit F-1

**TRAFFIC MANAGEMENT AGENCY**
County and district members need to consult on traffic management

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<th>County council, as highways authority, makes final policy decisions.</th>
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</thead>
<tbody>
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<td>POLICY</td>
<td>County council develops policies after consulting agent and non-agent districts.</td>
</tr>
<tr>
<td>INVESTIGATING NEED AND DESIGNING SCHEMES</td>
<td>Agency areas treated in much the same way as directly controlled parts of the county when funding investigative work.</td>
</tr>
<tr>
<td>PROFESSIONAL AND TECHNICAL FEES</td>
<td>Professional and technical allocations to agents take account of local accommodation costs (eg. by using costs of education or social services accommodation in the agency area). Agency district council funds any investigative work which lies outside county council policy guidelines.</td>
</tr>
<tr>
<td>MAKING ORDERS</td>
<td>County council decides whether to award agent districts the power to make orders. Counties awarding the power retain the right to deal with or ‘call in’ major proposals.</td>
</tr>
<tr>
<td>EXECUTING WORKS</td>
<td>Carried out by whichever of district or county carries out similar maintenance or improvement work.</td>
</tr>
<tr>
<td>LIAISON</td>
<td>District and county members liaise on overall policy. District and county members also consult on individual orders eg. by: • co-opting district members onto county committee (if county makes orders); • co-opting members onto district committee (if district makes orders); • using joint committees; • ad-hoc contacts between the authority making the orders and the members for wards affected. County and district officers liaise about mutual problems; meet jointly with police and other interested parties on major problems.</td>
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