

HOUSE OF COMMONS

COMMUNITIES AND LOCAL GOVERNMENT COMMITTEE

THE BALANCE OF POWER: CENTRAL AND LOCAL GOVERNMENT

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INTRODUCTION

Why local government?

Why is local government important? Four values provide the justification for local government - for its potential, because some local authorities may fail in practice to realise their potential.

1. First, Pluralism: local government avoids concentrating governmental power in one place, which makes it a significant part of our constitutional arrangements of checks and balances. Local government has its own legitimacy, rooted in election, and its own taxation, the council tax.
2. Second, Effectiveness: local government promotes effective service delivery, since it has a better knowledge of local conditions, has a better sense of local priorities and can better join up a variety of services into a coherent package than can central government or a series of separate local boards and commissions. Governing at the local level can be more manageable than at the national level, because there are fewer elements to be taken account of - there is less complexity. Local government is able to recognise and react quicker to problems that arise in society, because it experiences them first, responding more speedily to changing conditions and tastes. It is able to innovate, trying a variety of solutions in different authorities to policy problems, while the centre propounds only one, from which little can be learned.
3. The third value is Efficiency: local government can encourage efficiency, if most of its revenues are raised from local people, because they will be better able to assess the balance between their spending aspirations and the taxation needed to finance them. Citizens can see a closer connection between the taxes they pay to their local authority and what they receive from their local authority than they can from central-government expenditure and taxation.
4. Fourth, Democracy: local government provides more opportunities, than can central government, for people, as citizens, to participate in governing themselves, or in controlling their representatives

who govern, and in exercising control over the organizations that provide and produce public services.

5. The role of local government should depend upon the value of pluralism and the expression it gives to effectiveness, efficiency and democracy. While local government gives expression to pluralism, central government gives expression to effectiveness, efficiency and democracy through uniformity based on centralized decision-making. A choice has to be made. Sir Michael Lyons in his recent report on local government and its financing posed the question that we both faced as members of the Layfield Committee over thirty years ago:

"whether all important governmental decisions affecting people's lives and livelihood should be taken in one place on the basis of national policies; or whether many of the decisions could not as well, or better, be taken in different places, by people of diverse experience, associations, background and political persuasion." (Lyons, 2007, p.40) and (Layfield, 1976, p. 299).

The role of local government

6. Local government is the government of difference, representing, responding to and creating diversity, as local authorities respond to the needs and aspirations of their areas and the communities they represent. They show in their responses differences in ideas and approaches that are the source of innovation. Against the government of difference, central government determines national policy, brings forward national legislation and sets national standards. It imposes uniformities in the name of the unity of the national state.

7. An effective system of government in a complex and changing society should recognize the importance of diversity within, while recognising the necessity of certain uniformities. The problem is to achieve a balance between them through a balance of power between central and local government. We consider that the present balance is out of kilter because of the undue dominance of national prescription that allows too little place for the diversity that reflects a dynamic society. Limits have increasingly been set to the boundaries of local choice, yet it is local choice that enables diversity and justifies elected local government.

8. Diversity has a value in a system of government creating the capacity to respond not only to differences in needs but also to differences in aspiration, helping to build a basis for democracy at local level where it is easier for citizens to be involved. A capacity for diversity adds to the capacity

for learning both in government and in society, as different approaches are developed to the problems facing communities and are tested in practice. The tendency to uniformity of approach, inherent in government at national level, means learning is limited to a single approach. It is often assumed, in alarm over the so-called post-code lottery, that uniformity ensures equality, but equality may require differences of response and of local choice on that response.

9. The difference between local difference and national uniformity and between national and local choice defines the central-local relationship and constitutes a necessary tension within that relationship. The policies of recent governments have sought to resolve that tension by asserting the supremacy of national policy over an ever-increasing range of issues and in ever-greater depth of detail. These actions have limited local choice and weakened the accountability of local authorities to their electorate on which the effectiveness of local democracy rests.

Central government and central-local relations

10. Central-local relations have become dominated by a central-government approach based on command and control whose effect has been to reduce local choice and therefore the scope for local initiative, substituting accountability to central government for local accountability. This approach rests upon assumptions of the superiority of the central mandate and of the knowledge and experience of those who operate at the centre. While certain important steps have been taken by this Government that could have widened the scope for local choice, by the powers of well-being and the development of the local authority's role in community leadership, these changes have been less effective because of the dominant practice within central government of command and control over the working of local authorities. Central government has tended to see local authorities not as political institutions in their own right, but as agencies for the delivery of services in accordance with national requirements.

11. Command and control have been given expression in:-

- The tendency to legislate as the first response without considering the impact on local choice and whether a statutory requirement is necessary. This attitude is illustrated by the government's proposal to legislate on how petitions should be handled by local authorities without any detailed investigation of how local authorities handle petitions.

- The detailed prescription associated with legislation. This approach is illustrated by the detailed prescription through at least fifteen regulations, three directives and one hundred and fifty pages of guidance on political structures, constraining local choice and therefore innovation on the form taken by the executive models introduced under the Local Government Act, 2000.

- The proliferation of targets and performance measures. The number of targets has been recently cut back, but still retaining 35 national targets as well as at least sixteen statutory targets in education and early years. The Committee should investigate the extent to which, apart from targets, local authorities have still to report performance on other activities. 1,200 plus such measures had to be reported to central government by local authorities. An investigation for the Government concludes that 80% of the time spent by local authorities on performance reporting was upward to central government rather than to their local electorate (DCLG, 2006).

- The role of the inspectorates backed by the threat of intervention by central government. There are dangers that the process of inspection limits local choice by making assumptions as to how local authorities should operate, criticizing practices that are outside those assumptions and may be important innovations. There is an equal danger that the Government assumes too readily that the inspectors are correct in their judgments - the assumption of inspectorial infallibility. There is a further danger that inspections take up too much of the time and attention of senior managers and councillors that could be better devoted to their ongoing responsibilities and local concerns. The process of inspection can make it more important for authorities to satisfy the inspectors rather than their local electors. Yet despite all these problems, there has been no detailed investigation of the impact of inspections on the working of local authorities.

- The centralized financial arrangements. The impact of capping, the undue dependence on government grant and the growth of specific grants all combine to limit local choice and weaken local accountability, as discussed later in this paper.

- The movement of functions away from local authorities to local appointed boards or quangos accountable to central government. This shift has transformed the pattern of local governance, reducing the range of activities under local elected control, and limiting local choice and local accountability.

- The proliferation of requirements on local authorities to submit plans to central government. Research by the Government established that 66 such plans had been imposed on authorities (DTLR, 2002), and even that was later found to have left out a number of plans.

12. These changes have had a combined effect in limiting local choice, weakening local accountability and absorbing the time and attention of councillors and senior staff, turning their attention away from local people to meet the requirements of central government and the inspectorates.

13. Many of these developments happened over time in a series of separate steps without consideration or possibly even knowledge of their impact on the role and working of local authorities, on central-local relations and on the pattern of local governance. Each step was justified on its own merits as seen by the department initiating the change, and too little regard was had the cumulative effect of such changes - the machinery to consider the effect of such change did not appear to exist. The Government has taken certain steps to meet these issues: the Committee should consider whether they are working effectively. Although there have been attempts to reduce the number of targets, the plans required, specific grants and inspections, it is not clear how far this trend has gone. The combined impact of the pressures discussed above remains significant, and the attitudes that led to these developments remain embedded in the working of central government. As in the past a reduction of controls can be eroded over time as new controls are created, as happened following the "bonfire of controls" in 1979-1980.

14. The dominance of past attitudes is seen in the continuing process of legislation and the detailed prescription associated with it. Change is likely to be effective only if a new style of working is introduced in central government's approach to local government. As discussed later in the paper, an enabling approach should replace command and control. The approach required was summed up by Professor Helen Sullivan in calling for "explicit acknowledgement by Whitehall that central policy judgments do not necessarily trump local judgment where the two conflict" (Sullivan, 2008, p.35). There is no point in local choice if the only choice is to do what central government wants.

Local government and central-local relations

15. In a relationship problems are unlikely to arise on only one side. The problem in local government has been the growth of deference as too many authorities have come to accept the requirements of command and control as normal. In doing so they have accepted the limits on local choice and therefore on innovation and initiative. Some authorities have almost invited the limitation on local choice by asking for guidance, giving central government a justification for the detailed guidance described by Sir Michael Lyons as "soft controls" (Lyons, 2007, p.79).

16. We accept Sir Michael's analysis that "the centralisation of governmental and public service functions has confused the accountability for local service delivery. This has generated a relationship that 'crowds out' local government's role in responding to local needs and priorities, and limits local government's contribution to the kind of society we want. I believe also that this downgrading of the local has contributed to a sense of powerlessness among some local politicians and officers, which needs to be reversed if local government is to deliver its full potential in helping to meet the challenges we face in the 21st century". (Lyons, 2007, p.173).

17. There is a need to strengthen local democracy as a basis for a more confident local government. The low turnout in local elections is a symptom of a wider weakness, found also in national elections. Like national government local democracy is, and has to be, based on representative democracy, and will remain so as the practical approach to government. The primary issue for all those concerned with the state of democracy is how to strengthen representative democracy. Participative democracy can strengthen representative democracy, but cannot replace it. It strengthens representative democracy by enabling interactions between representative and citizen.

FURTHER DEVOLUTION

Does local government need greater autonomy from central government? If so, in what ways?

18. It follows from the arguments that we have put forward that local authorities need greater autonomy from central government, or as we prefer to put it, the capacity for local choice should be enhanced and local accountability strengthened.

19. We emphasize the need to reduce the extent of detailed prescription and to challenge the assumed need for excessive legislation to secure the government's aims. Government should consider whether detailed prescription limits local choice unnecessarily and whether the changes sought through legislation require it or whether there are other ways to encourage change in local government.

20. There is a need to review the existing body of legislation, regulation and guidance to see how far it can and should be reduced. In part the Task Force on Lifting the Burdens is undertaking this review, but the Government's response to its reports is not yet clear and is in some cases disappointing. A progress report from the Task Force for 2006-7 stated, "Ministers may have widely accepted that the regulatory regime has gone too far and is now inhibiting the improvement of public services. This view seems to be shared by senior civil servants too, but there is still a mindset that the burden is every other department's fault, not their own, and central government still knows best" (DCLG, 2007, p.7).

21. In any case the Task Force, according to its terms of reference, is concerned with "reducing unnecessary burdens and [sic: should be "on"] opportunities for improving performance arrangements", (Lifting the Burdens Task Force, 2006) rather than extending local choice. A review

is required of whether existing provisions unduly constrain local choice. Thus it could be found that where legislation was considered necessary to establish a practice, it was now no longer necessary. Once a practice is established, prescription may not be required. If the practice proves unsatisfactory, and local authorities have tested it, they should be free to change it. In certain cases sunset legislation and sunset regulation could be introduced, setting a time limit to prescription. Duties can be turned into powers, leaving for local choice whether and how they are used.

22. One example of where change is desirable is the extent of prescription on political structures. There could be much greater variation and scope for innovation within executive models. The reverse has happened since the Local Government and Public Involvement in Health Act, 2007, prescribes the tenure of Leaders in ways that make it difficult to see how they can be fully realized in practice and increases their powers in ways that could previously be determined by each authority.

23. We draw specific attention to three areas in which the extent of local choice should be extended:-

i. The powers to make by-laws should be freed from the requirement for ministerial approval. Part 6 of the Local Government and Public Involvement in Health Act removes the requirement in respect of DCLG, but those provisions should be extended to encompass other departments.

ii. The provisions under Section 107 of the Local Government and Public Involvement in Health Act, 2007, enabling The Secretary of State to require a local authority to make changes in the Local Area Agreement should be removed. It is hardly a local area agreement when changes are imposed by ministers rather than agreed.

iii. Changes may be required in the powers of well-being in the light of decisions by the courts if sustained on appeal. In the recent [2008] decision on the case of Regina (Risk Management Partners Ltd) v Brent London Borough Council and Others it was held that the financial well-being of the authority was not the same as the economic, social or environmental well-being of the area. The Act could not therefore be construed as authorizing a local authority to do whatever it considered would be likely to promote its own well-being. If the decision is upheld, it is the first sign of a judicial process limiting the use of the well-being powers. Surely the effectiveness and efficiency of an authority contribute to the well-being of an area. Parliament should be prepared to clarify the position if necessary after the appeal process has run its course.

Do local government's role and influence need to be strengthened in relation to other public services such as policing and health?

24. Our answer to this question is "Yes". Indeed we would go further and say not merely influence, but powers over such public services.

25. One of the most important and welcome developments in the Government's programme for local government has been its recognition of the role of the local authority in community leadership. In Its 1998 White Paper the Government stated it would "enshrine in law the role of the council as the elected leader of the local community with a responsibility for the well-being and sustainable development of its area" (DETR, 1998, p. 8.10), in effect extending the authorities' capacity for local choice beyond the services for which they were directly responsible.

26. This commitment was given expression in the Local Government Act, 2000, which provided local authorities with the powers of well-being and the duty to prepare what have now come to be called sustainable community strategies in consultation with other local bodies and local communities. Local authorities have been encouraged to form Local Strategic Partnerships [LSP] under their leadership, composed of their partners and representatives of the local community. Part 5 Chapter 1 of the Local Government and Public Involvement in Health Act, 2007, laid a duty on local authorities to prepare and submit a local area agreement [LAA] setting targets for improvement not merely for its services but for its area generally including the services of its public partners. Only the local authority has the statutory duty to prepare and submit the LAA, although its public partners have a duty to co-operate with the local authority in determining the targets and to have regard to the targets in exercising their functions.

27. The local authority's role in community leadership is clear under the legislation; it is accountable for its performance of that role and in particular for the LAA and its implementation; but it lacks the means to ensure the performance of that role because it lacks any powers over its public partners. Without those powers it can be held accountable for issues beyond its control because they are the responsibility of other public bodies of which the most important are those concerned with the police and the health services.

28. Until recently the Government argued that local authorities could exercise their community leadership role in relation to their public partners through influence and persuasion, and without any statutory requirement on those partners to pay heed to local authority views. Consensus would be achieved between a local authority and its partners. Consensus, although normal, will not always be achieved, and influence and persuasion may not be enough to achieve it. Disagreements can exist

on priorities in the community strategy, and targets in the LAA can be neglected; yet the local authority is given the responsibility for the strategy and the LAA and will be held accountable for them. In an attempt to meet this problem the Local Government and Public Involvement in Health Act, 2007, has laid an obligation on the public partners to co-operate in the preparation of the LAA although not specifically in the preparation of the sustainable community strategy. The Act also requires the public partners to have regard to the targets in the LAA. The Act does not, however, give the local authority any powers over the public partners if these uncertain requirements on the public partners prove ineffective, as they will where no consensus emerges. The Government has stressed investigations through the overview and scrutiny role of the local authority, but again the local authority has been given no powers to enforce the findings of such investigations.

29. We consider local authorities require powers to enforce their community leadership role, since they have been given that role by Parliament. It has been suggested that the local authority be given responsibility for commissioning the services of its key partners, by, for example, assuming the commissioning role of primary care trusts. They could be given the responsibility for approving the payment of all or part of government grants to the partners as the basis for such commissioning. Sir Simon Milton, when Chairman of the Local Government Association, suggested the local authority should have responsibility for "hiring and firing police and health chiefs". (Milton, 2008, p. 6)

30. We recommend that the local authority should be in the driving seat of LSPs and in the final resort that the public partners should be obliged to follow the lead of the local authority. We recommend that the Committee should consider more generally how the powers of the local authority should be enhanced to support the role of community leadership.

EXISTING POWERS

To what extent are local government services a product of national or local decision-making?

31. There are no simple answers to this question, because in practice there is continuing interaction between national and local decision-making, the nature of which varies between services and local authorities, and over time. As one example of the difficulties in answering the question because of the interactions, innovation by a number of authorities can lead to national prescription. Looking over the post-war period, concessionary fares and even free travel for the elderly, comprehensive education, smoke control and competitive tendering for basic services were all pioneered by local authorities before being adopted as national policy. National policy may then limit the possibility of further innovation by local choice if enforced by detailed prescription.

32. The scope for local choice and therefore the importance of local decision-making has been reduced by a change in the nature of legislation described by Professor Loughlin in *Legality and Locality, the Role of Law in Central-Local government*. "Though local government has since the nineteenth century been placed on a statutory foundation, positive law has not been a primary determinant of the relationship. Statute law has established a facilitative framework through which conventional arrangements for regulating central-local relations could evolve and which, in effect, constituted a non-juridified structure of administrative law. One consequence of the Government's recent actions in subverting the administrative network has been to transform law into a primary instrument of regulation" (Loughlin, 1996, p. 418). Although Loughlin was writing about the position reached by 1996, his conclusions are equally applicable to 2008. A facilitative framework of law in central-local relations has been replaced by a regulatory framework that has reduced the scope for local choice.

33. This regulatory framework is reflected in the detailed prescription highlighted earlier. There remains a degree of local choice for local authorities with the confidence to exercise it, recognising that much guidance does not have statutory force. There has always been a tendency in some local authorities to exaggerate the extent of statutory constraint or, put another way, to accept "the myth of statutory constraint" (Stewart, 1983, p.148), even in the period of the facilitative framework of law.

34. The Layfield Committee on Local Government Finance sought to establish the extent to which local government expenditure was mandatory or discretionary which, if discovered, would go a long way to answer the Committee's question. "We asked many witnesses how a systematic classification might be achieved, but even those who had advocated separation of discretionary and mandatory expenditure as a first step in changing the financial system were unable to suggest how it could be done...The difficulty we encountered throughout was that the categories of local government expenditure which are manifestly either totally discretionary or totally mandatory are very limited: the bulk of local government expenditure falls somewhere between the two extremes, being determined not by formal requirements alone nor by free local choice alone but by a complex mixture of pressures and influences. Informal advice and exhortation from government departments, inspection, nationally accepted standards, accumulated past practice, professional attitudes, political influences and actions by pressure groups, national and local, all play a part in determining local government expenditure, along with the statutory provisions" (Layfield, 1976, pp. 403-4). To this complex of influences should now be added public attitudes, local and national.

35. The finding that most local government expenditure is subject to national requirements, normally based on statute, but within which local authorities have discretion, has been confirmed in the few authorities that have tried to classify their expenditure into mandatory and discretionary. They have had to place most of their expenditure into a third category, mandatory as to the activity but discretionary about how the activity is carried out and the level of expenditure. There has been no equivalent study of decision-making generally; such a study would almost certainly have

reached a similar conclusion to that about expenditure. Our own impression is that the scope of discretion for local decision-making has been greatly reduced, but significant discretion remains for those local authorities with the confidence to use it. The readiness to use that discretion, however, has been undermined by the prevalence of greater prescription, detailed guidance and the time and attention required to meet the demands made by central government.

Does local government make adequate use of its existing powers, such as well-being, charging and trading powers? What scope is there for greater use of these powers?

36. The three sets of powers are examples of the scope for local choice being extended. The Government has indicated its disappointment on the limited use made of these powers, and there is certainly scope for their greater use by local authorities, but the reasons for the limited use must be explored.

37. These powers and, in particular, the well-being powers represent a major change in the role of local government. Local authorities traditionally have been organized around their established functions and have focused on the problems at which those functions have been directed. Use of the powers of well-being requires thinking beyond the problems which the authority is organized to deal with and for which it already has the powers required. Some authorities have used the powers of well-being imaginatively, but the failure of others to do so reflects their lack of confidence and the growth of deference. Despite the Government's complaint about the limited use made of the powers, the main demands made by central government departments relate to their existing functions. These demands have required the attention of senior management and councillors rather than the use of the new powers.

38. The extent of use of the powers can reflect local political choice. One political view may oppose the use of greater charging for public services. A different political view may oppose any extension of trading functions in competition with the private sector. Local choices are not necessarily the choices that would be made by the Government, but local choice is what local government is about.

39. Certain uncertainties about these powers need clarifying if they are to be more widely used. The recent judicial decision described above has raised doubts about the scope of the powers of well-being and have confirmed the fears of those who have argued the powers fell short of the powers of general competence found in many countries. There has been some uncertainty about the extent to

which charging powers can be varied according to need and to the income of those charged, and about the extent to which trading powers can be used to make a profit for the local authority.

40. There is a need to recognize uncertainty about the powers, and that local political choice can vary in the use of the powers. But above these factors it is important to recognize that the demands made by central government on local authorities turn attention away from the use of the powers.

FINANCIAL AUTONOMY

To what extent do the current arrangements for government funding act as a barrier to local authorities fulfilling their 'place-shaping' role? In particular:

Does local government need greater financial freedom? If so, in what ways?

Should local government be able to raise a greater proportion of its expenditure locally?

What effect does the capping of council tax rises have on local accountability?

41. The problems with the local-government finance system, and how to correct them, were clearly identified in the report in 1976 of the Layfield Committee. The Lyons report of 2007 praised the approach of Layfield, recognising that the same problems still bedevilled local-government finance. But Lyons strangely failed to consider the central recommendation of the Layfield report. The problems remain today and Layfield's main recommendation is still relevant for enhancing both democracy and efficiency in local government.

42. In 1976, as now, a major concern of people was with increases in local tax bills, then domestic rates and now council tax. The first question to address is who is responsible for council tax increases. Central government says local government, and local government says central government. Each blames the other in an annual ritual when no one is prepared to accept responsibility. Here is confusion of responsibility. Layfield's approach was that this confusion must be eradicated. The main responsibility for local government spending and taxing should be laid somewhere, either on central government or on local government. That was a political decision for the Government to take, and then having made the choice, the next task is to devise a local-government-finance system to sustain the chosen allocation of responsibility.

43. If the centralising model is adopted, then it is appropriate for central government to control local expenditure and local taxation, doling out the lion's share of local government funding in the form

of grants, leaving local authorities with responsibility for spending those resources, and being held accountable for the way they spend the resources.

44. If, however, the decentralising model is adopted, then it is appropriate for local authorities to control local expenditure and local taxation, and to be accountable for those spending and taxing decisions. This latter model was Layfield's preferred choice, which we have championed since 1976.

45. The Lyons report, like Layfield, recognised that the Government had first to decide whether it wanted a centralised or decentralised system, and came down on the side of decentralisation. The Committee, also, must make the choice between the two models, which we advocate should be, as Layfield and Lyons urged, the local government model. We advise the Committee not to seek some "middle way": that path has been followed for years and has led to the present confusion and disarray. A hard choice has to be made.

46. Having made the initial decision, the Government must devise appropriate financial arrangements. Layfield argued that taxation matters. A decentralised model of governance could not be sustained if central government grant was the predominant source of local government's revenue. Local responsibility and accountability should be sustained by local taxes bearing on local voters. Central grant had to be reduced, and replaced by local taxation.

47. At this point it is necessary to note two erroneous objections to our position. First, we are not saying that shifting from a predominantly grant-financed system to a predominantly locally-financed system will automatically lead to a decentralised model. There has first to be a decision in favour of decentralisation, and then, to support that decision, a change from the predominance of grant to the predominance of local taxation. Second, we are not saying that grants will disappear. They will still be needed to help authorities with scarce resources and high needs-to-spend, to put them on a level playing field with better-off areas. This equalisation can be achieved with much lower levels of grant than now, and distributed by mechanisms independent of central government.

48. The next question to address is what sort of local taxation. Both Layfield and Lyons liked a property tax for local government: indeed it is an ideal tax for local government. Lyons favoured making it fairer, by adding new bands at both the top and bottom ends, with regular revaluations, and turning council tax benefit into an automatic entitlement and not something that had to be applied for. Layfield argued that property tax alone could not finance local expenditure. After reviewing other possible taxes it advocated a Local Income Tax, not to replace the property tax but to supplement it. We have a virtual local income tax now: it is that part of national income tax that goes from localities to the national Exchequer and is returned to local government in grant. Layfield

advocated that this hidden local income tax should be made explicit, and determined by local authorities accountable to their local voters.

49. Lyons did not take this step. For some reason, still unexplained, the Lyons report contained nothing about Layfield's proposal for council tax to be supplemented with a local income tax that would reduce central grant and hence national income tax. The Committee should put this option back on the agenda. HM Treasury should welcome this reform as a way to make local authorities its allies in seeking the wise use of resources. No longer would local authorities be like drug addicts calling on central government each year for their fixes of grant. Instead they would be incentivised to be responsible local decision-makers, balancing their spending against their taxing decisions.

50. The Government seems to think that local accountability can be effective if it covers only the way local authorities spend the money allocated to them in grant: accountability for expenditure not for taxation. That approach is too narrow. If councils are not accountable for their taxing decisions to local voters, and only account for the way they spend money, then councillors and voters are encouraged to behave irresponsibly. They do not have to balance their desires for extra spending, higher and improved service standards, with the inevitable consequences of those decisions on local tax demands. Responsible decision-making by councillors and by local voters can occur only if spending and taxing decisions are fused.

51. The rebalancing of funding away from national grant to local taxation would remove the problems that flow from the gearing effect whereby small changes in grant are magnified in local tax changes, giving distorted signals to local voters about the expenditure decisions of their local authorities. Without the gearing effect voters would see clearly in the changes of local tax rates the consequences of the spending decisions of their local authorities.

52. At present the confusion of local-government finance system is a barrier inhibiting local authorities from being community leaders, and place-shaping their localities. As Lyons recommended, capping should be abolished, and local authorities given more financial freedom: and, we go further, not just over spending but over taxing too. Capping is not appropriate for the decentralising model, since it undermines local accountability and makes central government responsible for decisions on local budgeting.

53. DCLG seems to have forgotten about Layfield and Lyons. Within a few hours of publication of the Lyons report the then Minister of State at DCLG rejected recommendations from Lyons about the abolition of capping, regular revaluations, extra council tax bands and transforming council tax benefit into an entitlement. The Local Government and Public Involvement in Health Act, 2007, and the white paper of 2008 [Cm 7427], Communities in control: real people, real power, failed to

address the central issue of local government finance. The Committee should ensure that DCLG tackles the problem that has eroded local government for so many years: the confusion over responsibility and accountability for local government finance.

IMPROVING THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL GOVERNMENT

What difference has the central-local concordat made to central-local relations?

Should an independent commission be established to oversee the financial settlement for local government?

THE CONSTITUTIONAL POSITION

Given the UK's constitutional settlement, what protections should be placed in law to ensure local government's ability to fulfil its responsibility as a balance on the powers of central government?

What role should Parliament have in the protection of local government's position within the UK's constitutional settlement?

54. To reinforce the choice to rebalance the system of governance in favour of local government, and to protect that choice against centralising encroachments, there is need for a Constitutional Settlement, embedded in statute, about the relationship between central and local government.

55. A first step in doing so was taken on December 12th 2007 when the Government and the LGA signed the Central-Local Concordat on central-local government relationships. It seems to have disappeared without trace. Local authorities rarely refer to it, while central government has paid it scant attention. Despite the Concordat, inconsistent central government messages continue to flow. The reason lies in the weakness of the Concordat. It needs reassessment, rewriting and then a statutory basis to ensure it makes an impact on both central and local government.

56. We are concerned that the Government does not regard local government as part of the Constitution. A Constitution lays down the rules of the game, the main institutions and processes of government, the relationships between the various institutions, and the relationships between these institutions and the people. The Concordat does none of those things. Its main feature is a list of service outcomes agreed by central and local government, revealing that central government regards local government as an instrument for service-delivery not for local community self-government.

57. Local government is part of the Constitution: rooted in elections, an example of representative democracy; with its own local tax, council tax; an array of services to run and functions to carry

out; a responsibility for the well-being of its people and areas; and shaping the development our cities, towns, counties and villages. It is often written into the Constitutions of other countries. Sir Michael Lyons called for a constitutional settlement and has already told the Committee in oral evidence [Q 2, 23 June 2007] that the Concordat is a "diluted version" of what he had recommended. We urge the Committee to recommend a statutory constitutional settlement with the following elements. It should:-

i. Recognise the constitutional position of local government, indeed that local government is part of our constitution, requiring care and respect befitting a basic institution of our system of government. This point was not explicitly stated in the Concordat. It did, however, reaffirm that "The Government is committed to constitutional reform and will work with the LGA to ensure the roles and responsibilities of local government are reflected in proposals as they are developed." [para. 1] To that extent the Concordat is an interim statement, and the Committee should press for a full recognition of the position of local government in the constitution.

ii. Contain a clear statement that the primary role of local authorities is the government of local communities, enabling their well-being. The Concordat contains statements of such a role for local government, but it is not set out as the primary role that should determine its rights and responsibilities. Rather the Concordat emphasizes some specific services delivered by local authorities and hoped-for outcomes, not the shaping of the development of the locality.

iii. Contain a clear statement that local government needs the powers and resources to carry out this primary role. The Concordat does not go far enough in asserting the rights and responsibilities necessary to sustain the primary role. There is no indication that central requirements should normally be set out in primary legislation, limiting detailed interventions that arise from over-prescription and over-regulation. There is no recognition of the importance of the quasi-legislative powers of a local authority to set by-laws in the interest of the local community, free from central control. The suggestion in the Concordat of the need for flexibility of funding is ambiguous, avoiding such fundamental issues as the balance of funding and the freedom of local authorities to determine their own expenditure and level of local taxation.

iv. Clarify that the primary accountability of local authorities is to their electorate. The Concordat says too little about accountability, and yet this issue needs clarification to avoid the danger that local authorities are seen as accountable to central government rather than to their electorates. The constitutional settlement should emphasize clarity of accountability to avoid the confusion in accountability exposed by the Layfield committee in 1976 that has increased since its report. Local authorities have to act within the law, the scope of which has been greatly extended by the powers of well-being, but they should be explicitly accountable to their electors for their actions.

v. Express a commitment to give local authorities powers to ensure quangos and appointed boards at local level should be accountable to local people through local authorities for their contribution to the government of the area. Paragraph 16 of the Concordat does recognise the need to increase local accountability for key public services, and Sir Simon Milton suggested how this need could be met, proposing that local authorities have powers to remove key officials in the health and police services. We hope the Committee will lead a discussion of this and other approaches, including giving local authorities the role of commissioning such services.

vi. Recognise that the primary role will entail local authorities responding to diversity between different areas and creating diversity between them. This diversity should be welcomed, indeed celebrated, as an expression of local initiative and innovation.

vii. Promise to establish an independent Commission or Joint Committee of both Houses of Parliament to monitor central-local relationships. The Government has said that it and the LGA will monitor the Concordat, which could lead to revisions. But there is need to go further to create a firm framework for central-local relations as is appropriate for a constitutional relationship and provide protection for it. An authoritative body is needed, not dependent on either central or local government. This body would keep the financial relationship under review, including the grant settlement, but should not itself make that settlement which is and should be a political responsibility, since it involves issues of national distribution and redistribution. The role of the independent body would be to appraise and report on that decision about the settlement.

58. The Concordat recognises that changes are required in the behaviour and practices of central government in the same way as change is required of local authorities and other local bodies. The change required of other local bodies is to recognise their accountability to local people. The change required of local government is to regain confidence in showing initiative and innovation in community leadership. The change required from central government is that its departments should accept that the Concordat requires they exercise restraint in prescription and regulation. The Government must ensure that the words and spirit of the Constitutional settlement are accepted in the deep recesses of departments.

FURTHER ISSUES

Should central-local relations be based on national standards?

59. Even some champions of local government are reluctant to take the decentralising path because they fear it will lead to unacceptable variations in standards of services, the so-called post-code lottery. The Committee should confront and demolish this thesis, and show the value of diversity.

60. Central Government's line is it needs to be sufficiently confident that controls are in place to prevent unacceptable inequality in service provision as a result of poor provision in some areas. It wants to end postcode lotteries, whereby in some parts of the country standards fall way below the rest - but who is to judge, why central government and not local people?

61. Do people really want uniformity, the same everywhere? If they do, then that is not necessarily a justification for central government enforcing its standards, since local authorities, responding to their local people, would, if they had discretion to make their own choices, voluntarily choose the same. The need to enforce a standard is a sign there is no consensus about the standard.

62. Another problem arises because most people don't know what's done elsewhere, and know only what takes place in their area. Their own experiences shape their perceptions and motivations, not what happens elsewhere. What they want is something better than they now have - improved services, higher standards, excellence close at hand, while paying lower taxes than now. Inconsistent? They are the confused messages that politicians elected by the people have to reconcile.

63. Centralisers rely much on polls of public opinion that, they claim, show the public, when asked to choose between, on the one hand, national standards, where the government ensures services are exactly the same everywhere, and, on the other hand, minimum standards, with local government having the ability to vary standards above the minimum by levying higher council tax, choose by a large majority, between 60% & 70%, national standards (www.ipsos-mori.com). But the question asked surely prompts that response. Who in their senses would ever want to choose the "minimum" of anything, and have to pay more for what they really want above it? A "minimum" standard has no rhetorical appeal for most people. Would MPs be happy to campaign for a minimum standard of anything?

64. Some think local government could flourish if central government confined itself to minimum standards. This issue divided the Layfield Committee (Layfield, 1976, pp. 302-15). The dissenting minority said the centre should fix minimum standards and pay for them, leaving local government free to adopt higher standards to be paid for out of local taxation. Such an approach, the minority argued, would resolve the confusion of responsibility. You still hear this approach urged as a way ahead.

65. How does one define a minimum standard for a service and cost it? We are told not to assess performance by inputs, or throughputs, or even outputs - we should focus on outcomes; but again how does one define, measure and cost them, and enforce them? Imagine the controversy over calculating for each local authority the costs of providing the minimum standard of each service. And if there were a failure to meet the standard, how do you decide whether it was the consequence of inefficiency by the authority or of conditions beyond the control of the authority? And how do you enforce the minimum standard if there is failure?

66. Another key question is: could minimum standards be stable? Since no one would be satisfied with just a minimum, central government would be constantly under pressure from all kinds of groups, lobbying to raise the minimum. These pressures for ever-higher standards, all focussed on the centre, would make it impossible for the centre to stick to a minimum. It would be continually revising the minimum upwards, curbing local discretion and causing instability.

67. The standards approach, both for minimum and higher standards, is artificial and restrictive, concentrating attention on particular elements in particular services, and it fails to have regard for the local impact of the totality of services or of the interactions between services and organisations. It ignores the complexity of policy.

68. National minimum standards would stifle creative thought in local government about policy. All a local authority would have to do is to check it had met the national standard and tick the box. It would have to think no further. It would not have to explore changes in local circumstances and wishes, but simply follow the national standard.

69. Some worry that without minimum standards local authorities would allow their services to deteriorate, in a race to the bottom. But that's unlikely: local authorities operate in the same atmosphere of public opinion as does central government, responding to similar pressures and views about what is acceptable, and if services became unacceptable the local electorate could vote them out. Common standards would tend to prevail, but they would have been adopted freely, not imposed from the centre, and they would fit local conditions and wishes. Some authorities would go beyond even common standards, and compete to have better standards than others. Sir Michael Lyons' report attacked those who deplored 'postcode lotteries' in service provision. He argued that an approach based on local choice, leading to differences in services in different areas, would achieve a more efficient balance between needs, preferences and resources than would a centralised system. It's not only a more efficient use of resources overall, but also fairer, as long as all areas have that choice.

70. The concept of national standards is inherently centralising. It displays the arrogance of centralists who think they know the answers to complex social problems and are justified in imposing their uniform solutions everywhere. Society's problems are too complex to be captured by such an inflexible approach. Far better to have many local authorities devising not just their own ways of implementing national policies but their own policies to suit their distinctive localities. Local authorities could learn from each other, and not be just arms of central government.

71. We urge the Committee to celebrate decentralisation and diversity and reveal that fears of post-code lotteries are groundless.

What is the role of the Local Government Association in central-local relations?

72. In considering the relationship between central and local government we are concerned with much more than the relationship between the Local Government Association and central government. We are more concerned with improving the relationship between central government and local authorities and the impact they have on each other, or fail to have. But the LGA has a role to play, particularly in mediating the impact that local authorities seek on the policies and practices of central government

73. The LGA faces a dilemma, since it has to represent the diversity of views and practices in local government, based on the principle of local choice, making a national association of local government almost a contradiction in terms. It faces two dangers - first it may reduce the diversity of views in local government to a uniformity that does not and should not exist: second, operating in close contact with central government, it can come to accept the assumptions made in Whitehall about local government. Effective central-local relationships at this level require the LGA to be aware of these dangers and avoid them. The Committee should consider how far the LGA avoids these dangers.

WHAT SHOULD BE DONE?

74. We urge the Committee to recommend:

- i. A significant reduction in the extent and scope of legislation on local government, based on consideration of whether legislation is required or whether local government could deal with the issue concerned without legislation. Let legislation be the last resort.
- ii. Where legislation is undertaken, detailed prescription should be avoided. The principle should be that where a duty is imposed on local government, local authorities should be given freedom as to how that duty is carried out.
- iii. Targets and performance reports should be reduced to a minimum - a minimum that has not yet been achieved.
- iv. A major review should be undertaken of the work of the inspectorates to establish their impact on the operations of local government, including the time taken to deal with them, and to establish whether they encourage local initiative and innovation or whether they discourage changes that do not conform to the inspectors' concept of good practice.
- v. The financial arrangements should support local choice and local accountability.
- vi. Changes sought by central government departments in both the structure of local governance and in central-local relations, such as the creation of new local appointed boards or quangos, new specific grants, planning procedures, targets and performance reports, should be considered not merely on their individual merits, but for their impact on the overall structure of local governance and the working of local authorities, to avoid the danger of the unexpected cumulative impact of such changes. The Committee should consider whether changes in the procedures for handling such issues deal adequately with the problem.
- vii. There is a need for regular reviews of the state of central-local relations and of the impact of changes on the relationship. These reviews should be reported annually to Parliament and whenever a special report is required on a proposed change. These reviews should be conducted by an independent body, which could be a Joint Committee of both Houses or a permanent independent Commission. Central government and the LGA should carry out their own reviews as a basis for giving evidence to such a body.

75. These changes are unlikely to take place without changes in the style of working of both central government and local authorities. Central government's command and control model is based on its assumptions about the superiority of central government's mandate and about its superior

knowledge and experience. Such assumptions about the superior mandate expressed in parliamentary sovereignty and statutory powers should not be allowed automatically to trump local decisions; otherwise there would be little point in elected local government and local choice, themselves created by Parliament. Nor can it be accepted that knowledge and experience in central government are superior to the knowledge and experience of those in local government who face daily and directly the problems of local communities. Central government has much to learn from local government.

76. We argue for an enabling style in central government's approach to relations with local government, based on an appreciation of the value of local government and on respect for the knowledge, experience and the ability of those who work in and for local government. It would be expressed not merely in consulting local government on policy but in involving its representatives in developing that policy to a greater extent than at present. It would mean that where central government were concerned with an issue it would work with local government to find out whether that concern was shared, how it should be dealt with, rather than assume almost automatically that legislation was required. Discussion and mutual learning are characteristic of the enabling style, and powers are often more relevant than duties.

77. An enabling style should also characterize the inspectorates and the approach of the central government to their findings. Central government's approach should not be based on an assumption of inspectoral infallibility, recognizing that the knowledge, experience and ability of those inspected are often greater than that of the inspectors. Inspectors should recognize the dangers of absorbing the time and attention of local authorities and the danger of curbing initiative and innovation if inspectors assume that they rather than the authority know the right approach to its tasks. The danger is of inspectors acting as commissars rather than as partners in shared learning recognising they have as much or more to learn from the authority as the authority has to learn from them.

78. From local government a new confidence is required, abandoning unthinking deference to the centre. Its mottoes should be "Never ask for guidance; if you ask, you may not like it" and "Work it out for yourselves". Confidence should grow if local democracy is strengthened, and that requires strengthening representative democracy, based on interactions between elected and electors. Participatory democracy should reinforce that interaction, and can in this way strengthen representative democracy rather than be seen as an alternative to it.

79. The Committee should recommend a rebalancing of the relationship between central and local government in favour of local government in the ways we have proposed. This choice for decentralization should be reinforced by local-government funding arrangements designed to reduce local government's dependence on high levels of grant by establishing local taxation based on a fairer property tax and a local income tax. A statutory Constitutional Settlement that protects the

place of local government within the Constitution should further reinforce this choice for decentralization.

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