



House of Commons  
Political and Constitutional  
Reform Committee

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# Prospects for codifying the relationship between central and local government

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*Written evidence from Session 2010-12*

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## The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

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### Publication

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Hannah Stewart, Helen Kinghorn (Legal Specialists), Lorna Horton (Committee Specialist), Louise Glen (Senior Committee Assistant), Jim Lawford (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

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# List of additional written evidence

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(published in Volume IV on the Committee's website [www.parliament.uk/pcrc](http://www.parliament.uk/pcrc))

	<i>Page</i>
1 Andrew Stevens, Japan Local Government Centre	Ev w124
2 Professor George Jones and Professor John Stewart	Ev w124, 127, 128
3 Bristol City Council	Ev w130
4 Local Government Association	Ev w131
5 Professor Steve Leach, Professor Vivien Lowndes and Dr Mark Roberts	Ev w133
6 Andrea Hill, Chief Executive, Suffolk County Council	Ev w137
7 Professor Colin Copus, De Montfort University	Ev w138
8 Centre for Public Scrutiny	Ev w144, 149
9 Localis	Ev w151
10 City of London Corporation	Ev w152
11 Henry Peterson	Ev w152
12 Core Cities Group	Ev w159
13 Unlock Democracy	Ev w162
14 Association of Council Secretaries and Solicitors	Ev w164
15 Sir Howard Bernstein	Ev w165
16 Mayor of London	Ev w169
17 Local Government Information Unit	Ev w171
18 Mr Clive Betts MP	Ev w174
19 Chris Himsworth, University of Edinburgh	Ev w177
20 Bill Moyes	Ev w179
21 Cllr John Faulkner, High Peak Borough Council	Ev w182
22 Mark Ryan, Coventry University	Ev w182
23 London Councils	Ev w183
24 Stephen Hughes, Sir Howard Bernstein and Andrea Hill	Ev w186
25 Professor Colin Copus, De Montfort University	Ev w189
26 London Councils (further evidence)	Ev w197
27 Andrea Hill, Chief Executive, Suffolk County Council (further evidence)	Ev w199
28 Centre for Public Scrutiny (further evidence)	Ev w202
29 Professor George Jones and Professor John Stewart (further evidence)	Ev w205
30 Baroness Eaton DBE DL, Chairman, Local Government Association	Ev w206
31 Sir Howard Bernstein (further evidence)	Ev w208
32 Professor Tony Travers	Ev w210
33 Cllr Roger Gough, Kent County Council	Ev w213
34 Lord Bichard	Ev w214
35 Stephen Hughes, Chief Executive, Birmingham City Council	Ev w214

# Written evidence

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## Written evidence submitted by Andrew Stevens, Japan Local Government Centre

I write as the Research Manager of the Japan Local Government Centre (JLGC) in London. JLGC is the UK office of CLAIR—the Council of Local Authorities for International Relations. CLAIR was founded in 1989 with the support of Japan’s Ministry of Home Affairs (Ministry of Internal Affairs and Communications). CLAIR is a joint organisation of local authorities working to promote and provide support for localised internationalisation.

My response (as an item of information) is to the following question set out in the committee’s terms of inquiry: “Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?”

The committee may find the following publications on Japan’s Local Autonomy Law (as issued under Japan’s Constitution, articles 92–95) of interest in relation to the question:

[http://www.kantei.go.jp/foreign/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html)

<http://nippon.zaidan.info/seikabutsu/1999/00168/mokuji.htm>

[http://www.clair.or.jp/j/forum/other\\_data/pdf/20100216\\_soumu\\_e.pdf](http://www.clair.or.jp/j/forum/other_data/pdf/20100216_soumu_e.pdf)

[http://www.jlgc.org.uk/en/pdfs/CHAPTER\\_1.pdf](http://www.jlgc.org.uk/en/pdfs/CHAPTER_1.pdf)

12 November 2010

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## Written evidence submitted by Emeritus Professor George Jones and Emeritus Professor John Stewart

1. The report of the Communities and Local Government [CLG] select committee on *The Balance of Power: Central and Local Government*, published in May 2009 (HC33–1), concluded “The power to govern in England remains too heavily centralised to be efficient or effective. Put simply, the balance of power between central and local government in England is currently in need of a tilt towards localities...Not only should there be a shift in the balance of power, it should be given a degree of permanency.” [Paragraphs 146 and 149]. But the then Government’s response [Cm 7712] was weak—leaving the issue for further consultation, dialogue and debate.

2. We applaud the Political and Constitutional Reform select committee for undertaking this inquiry into the prospects for codifying the relationship between central and local government and hope it will recommend a way to achieve a considerable “degree of permanency”. Since the relationship between central and local government is between two major elements of governance, it can truly be called a constitutional relationship.

3. In most countries in Europe local government is a recognised part of the constitution, which necessarily shapes central-local government relations. Local authorities in the United Kingdom as elected bodies with powers of taxation and a wide range of functions should be recognised as clearly part of the constitution and treated as such in the working of the system of government and in their relationship with central government and the devolved bodies.

4. The need for a “degree of permanency”, indeed for a constitutional settlement, derives from problems in the relationship which have arisen because central government has not had proper regard for the role of local government in the constitutional arrangements of the country and for its contribution to the democratic basis of government. The relationship has not reflected the respect for the importance of local government one would expect from central government towards a constitutional institution. Too often the relationship has reflected assumptions by central government of the need for command and control of what it has perceived as mere agents of central government rather than as genuine local government.

5. This attitude has been reflected in

- Resort to legislation and regulation as the first step in tackling policy problems;
- Prescription not merely in principle but in detail;
- Proliferation of targets, performance measures and reporting requirements;
- Growth of external inspections as judgments on individual local authorities, almost replacing the judgment of the local electorate;
- Centralised financial arrangements that have undermined local accountability;
- Transfer of functions from local elected control to control by appointed boards; and
- Destabilisation of the legislative framework with continuing statutory changes in the structure, internal organisation and finance that have been imposed on local government.

6. The total effect of these developments has changed the constitutional relationship, without it being explicitly recognised, as each change has been considered on its specific merits without concern for the cumulative effect on the working of the relationship between central and local government. Some, but not all, of these developments are being reduced by the Government, but could easily be reintroduced by future

governments, or even by the present government, in the absence of constitutional protection, or in the absence within the working of government of the capacity to consider the constitutional implications of such developments.

7. Two documents adopted by the Labour Government, the Central-Local Concordat and the European Charter of Local Self-Government, set out the conditions for effective local government and expressed certain principles that should govern central-local government relations. They have had little impact in part because of weaknesses in the documents, but also because the documents are little known within central government and because they have no statutory authority. This ineffectiveness was illustrated by the replies of two ministers to questions by the Communities and Local Government Committee on the Balance of Power, which showed they had no understanding or knowledge about the Concordat.

8. There is a need for a statutory statement of principles on the constitutional position of local government. They should include recognition that:

- Local government is part of the constitution, as in other countries;
- The primary role of local government is the government of local communities, enabling their well-being;
- Local government needs the powers and resources to carry out that primary role;
- The primary accountability of local authorities is to their local citizens;
- Local authorities require powers to ensure the accountability of local appointed boards to local people;
- Central government should respect the constitutional position of local authorities, taking full account of their views on any legislation or policy bearing on them, and limiting prescription to where there is a clear national interest.

9. This statutory recognition of the role of local government should require central government to make clear whether any proposed legislation or regulation is consistent with the statutory statement and why it is proposing any action inconsistent with that statement. There should be a Joint Committee of both Houses that should consider and report on any proposals it judged inconsistent with the principles, and should review the cumulative effect of changes, reporting annually on the tendencies implicit in central-local relations. Such monitoring of bills, white papers and departmental activities would expose whether central government was acting in accord with the provisions of the constitutional statute. It would make explicit for Parliament and the public if there were a breach of the provisions, thus enhancing the accountability of the Government to Parliament.

10. The need for a statute is shown by the quotation in the Political and Constitutional Reform Committee's paper on Issues and Questions from Professor Vernon Bogdanor who told the CLG Committee of 2009 that "the main barriers to a new localism are not constitutional, but political and cultural". We agree about the importance of political will and cultural change in altering the attitude of central government, both ministers and civil servants, towards local government.

11. A major effort is required to change the culture and attitudes of central government. Codifying a desirable relationship between central and local government in the form of a statute and setting up a joint committee of the two Houses of Parliament to monitor the activities of departments towards local government would shake the prevalent culture of Whitehall, ensuring that specific proposals from the Executive comply with the constitutional codification embodied in a statutory framework.

12. The main method to alter the attitudes of ministers and civil servants is to make them work in a new way where local government is treated as an equal partner in governing and not as a section of the department. New constitutional arrangements expressed in a statute are essential—to permeate deep into departments from ministers and top officials. The required shift in the balance of power between central and local government can be achieved only by such radical change.

#### THE COMMITTEE'S QUESTIONS

Our answers to many of the Committee's questions are contained in what has been written above, but it may be helpful to give a short response to each question.

Question 1. (a) Yes. The relationship between central and local government should be codified and given a considerable "degree of permanency", as we propose above. (b) No. The relationship between central and local government is so unbalanced and damaging to our system of government that it requires focussed attention and urgent action. The danger of considering wider constitutional codification is that attention will be diverted from dealing with central-local government relationships to far more complex and controversial issues about a written constitution. But if there is to be consideration of a wider constitutional codification, local government should be involved in that process, since it is part of the Constitution.

Question 2. Local government should not be seen as a part of central government: it has its own constitutional status. But it is bound by Parliamentary legislation which should be confined to where there is a clear national interest.

Question 3. The status and primary role of local government cannot be firmly entrenched, but they can be given a “degree of permanency”, as set out above. This statutory codification would inhibit changes that would undermine that status or prevent local authorities discharging their primary responsibility effectively. The monitoring by the Joint Committee would not entrench the relationship but ensure that any significant changes in the balance were made explicitly with an awareness of their consequences.

Question 4. Local authority’s primary accountability is to local citizens through the elected council. They are not accountable to central government, but to the law as enacted by Parliament.

Question 5. Up to a point. The devolution settlement may be a guide but not necessarily a model. The relationship between central and local government is a topic in its own right. Its elements should be examined directly and not by analogy, or metaphor or simile with other governmental relationships.

Question 6. The Political and Constitutional Reform Committee may find it useful to explore the constitutional settlements between central and local government in other countries, since such comparative analysis can sharpen understanding of one’s own system, and raise aspects to copy or avoid. But such investigation of the arrangements in other countries should not distract attention from the imbalance of the relationship in this country. Inquiry into how other countries operate takes time, and demands resources and appreciation of the historical and cultural contexts of those countries that may make their practices inappropriate for adoption elsewhere. The Committee should focus its attention on tackling the imbalance in central-local government relationship in this country.

If the Committee, however, decides to undertake a comparative inquiry, then the main provisions can be found in the constitutions of the various countries, although there can be legislation that changes the constitutional relationship, for example in France in its decentralisation legislation. Details of the constitutional provisions in Western Europe are contained in Appendix B covering “Constitutional Regulation of Municipal Affairs” of Angelika Vetter’s *Local Politics: A Resource for Democracy in Western Europe*, Lexington Books (2007).

Question 7. The Concordat and the Charter are too general, too limited, and with qualifications at critical points, to give adequate constitutional protection for local government. Even if the documents were stronger, they lack statutory authority and appear to have been largely ignored by central-government departments. The value of these documents is they are a useful starting point for devising the elements that should be in an Act of Parliament.

Question 8. It would be important in giving statutory expression to the primary role of local government. We hope the Committee will explore why the Government intends to use the phrase “general power of competence” rather than the long-established expression “power of general competence”. Does the former imply a diminished legal scope for local government compared with the latter?

## CONCLUSION

In the relationship between central and local government there is an imbalance.

It has tipped too much to central government because of the centralisation of the last 30 years that has eroded local government’s powers, discretion and financial responsibility.

There is a need to shift the balance to decentralisation to elected general-purpose local government.

This rebalancing should be protected by the enactment of a statutory constitutional settlement, and underpinned by a local-government financial system that ensures local authorities obtain the lion’s share of their income from taxes on their local voters.

This change in the rules of the game will not be achieved by incremental tinkering, but by a radical change, which requires a cross-party consensus.

The Political and Constitutional Reform select committee, as a cross-party committee, is well placed to take up the cause of revitalising local government. We hope it will do so, by advocating that the rebalancing of the relationship between central and local government more in favour of local government should be given a “degree of permanency” in a statute and protected by a Joint Committee of Parliament.

**Supplementary written evidence submitted by Emeritus Professor George Jones and Emeritus Professor John Stewart**

In my and John Stewart's written evidence to the Political and Constitutional Reform Committee at paragraph 8 we recommended:

“There is a need for a statutory statement of principles on the constitutional position of local government. They should include recognition that:

- Local government is part of the constitution, as in other countries;
- The primary role of local government is the government of local communities, enabling their well-being;
- Local government needs the powers and resources to carry out that primary role;
- The primary accountability of local authorities is to their local citizens;
- Local authorities require powers to ensure the accountability of local appointed boards to local people; and
- Central government should respect the constitutional position of local authorities, taking full account of their views on any legislation or policy bearing on them, and limiting prescription to where there is a clear national interest.”

In our oral evidence session when answering Q50 in the uncorrected evidence I said that the committee might use as the “first building blocks” of a codification the words of The European Charter of Local Self Government, but omitting the qualifications inserted to obtain the acceptance of the British Government. I have made an initial attempt at this task myself. I have taken the clauses from the Charter as initially adopted on 15 October 1985 and removed the qualifications, renumbering the sections. I have not included anything from the additional protocol to the Charter of 16 November 2009 whose clauses dealt with the right of the public to participate in the affairs of a local authority. The focus below is on the essential nature of local government and relationship between central and local government. I have added in italics to Article 1 three sections from the Jones/Stewart evidence above.

**ARTICLE 1—CONCEPT OF LOCAL GOVERNMENT**

1. The primary role of local government, exercised by local elected councils, is the government of local communities, enabling their well-being.
2. Local government needs the powers and resources under their own responsibility to carry out that primary role.
3. The primary accountability of local authorities for the exercise of their responsibilities is to their local citizens.

**ARTICLE 2—SCOPE OF LOCAL GOVERNMENT**

1. The basic duties and powers of local authorities shall be prescribed by statute.
2. Local authorities will be responsible for developing the involvement and empowerment of their communities and citizens in public affairs
3. Local authorities shall have full discretion to exercise their initiative on any matter not assigned by statute to any other public authority.
4. Public responsibilities shall be exercised by those authorities closest to the citizen.
5. Local authorities shall provide leadership to public bodies in its area who will be accountable to local people through the local authorities.
6. Powers given to local authorities shall be full and exclusive. They may not be undermined or limited by any central or other authority.
7. Local authorities shall be consulted in due time in the planning and decision-making processes of central government for all matters which concern them directly.

**ARTICLE 3—PROTECTION OF LOCAL AUTHORITY BOUNDARIES**

1. Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned.

ARTICLE 4—APPROPRIATE MANAGEMENT STRUCTURES OF LOCAL AUTHORITIES

1. Local authorities shall be able to determine their own internal management and political structures.
2. The conditions of service of local government employees shall ensure the recruitment of high-quality staff on the basis of merit and competence and adequate training opportunities, remuneration and career prospects shall be provided.

ARTICLE 5—CONDITIONS UNDER WHICH COUNCILLOR RESPONSIBILITIES ARE EXERCISED

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred and remuneration for their role and responsibilities.

ARTICLE 6—EXTERNAL SUPERVISION OF LOCAL AUTHORITIES' ACTIVITIES

1. Any external supervision of the activities of local authorities shall aim only at ensuring compliance with the law.
2. External inspection and assessment should be initiated by and reported to local authorities and their citizens.

ARTICLE 7—FINANCIAL RESOURCES OF LOCAL AUTHORITIES

1. Local authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their statutory powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities.
3. All the financial resources of local authorities shall derive from local taxes and charges over which they shall have the power to determine the rate. The only exceptions should be grants designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burdens they must support.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace with the cost of carrying out their tasks.
5. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market.

ARTICLE 8—LEGAL PROTECTION OF LOCAL SELF-GOVERNMENT

1. Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the principles of local government.

*February 2011*

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**Further supplementary written evidence submitted by Emeritus Professor George Jones and Emeritus Professor John Stewart**

Since submitting our previous paper on 1 February we have reworked our proposed Code. We hope it will help in the deliberations of the Committee.

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### Written evidence submitted by Bristol City Council

1. Article 4 “Scope of local self-government” of the European Charter for Local Self Government states that “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority”. Yet historically, England has been one of the most centralised democracies in Europe. It can be argued that a significant element in the weakness of English local government in comparison to central government has been the lack of constitutional definition or protection for local government. When examined on a worldwide scale England is not alone in having minimal or no constitutional safeguards for local government, but there are also useful examples where relations are more formalised.

2. In Germany, the constitution (Basic Law) recognises and offers protections for local government. Article 28 (1) guarantees the existence of elected councils for counties and municipalities (though not ruling out changes in their boundaries). Article 28 (2) guarantees municipalities “the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.” It also guarantees their “self-government” within their areas of competence, and critically applies this principle to “the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rate at which these sources shall be taxed.” In Article 28 (3), the Federation stands as guarantor that *Land* constitutions will respect these rights. This is generally interpreted as giving local government right to appeal to the Constitutional Court against *Land* legislation which it believes is contrary to its rights of self-government.<sup>1</sup>

3. The Chairman of the LGA, Sir Simon Milton, has, among others, argued “councils will only be free when we can guarantee the rights of local councils, and the democratic mandate of councillors, in a constitutional convention”. Much of the content of such a resolution could be drawn from the Concordat signed by the Department of Communities and Local Government (CLG) and the Local Government Association (LGA) in December 2007 and from the European Charter of Local Self-Government. To be truly meaningful, however, any such resolution would have to address the issue of finance. In this respect, provisions within the French and German constitutions on self-financing, and on the diversity and buoyancy of funding sources provide useful examples.

4. As we have noted in previous submissions, English local authorities currently have quite a wide service remit, yet a relatively limited and inflexible financial base, particularly in relation to their European and Commonwealth counterparts. There should therefore be a combination of local income sources for local government, which could include:

- A reformed and more equitable property tax;
- The progressive re-localisation of business rates (similar to German model);
- The transfer of a proportion of national income tax to fund local government directly, either initially as an assigned revenue, developing into a local income tax or moving straight to a local income tax;
- A reduction in grant to local authorities consistent with this shift of national income; and
- A basket of smaller taxes and charges, for example:
  - Localised vehicle excise duty;
  - Local sales taxes (not a general sales tax, which would fall foul of the EU VAT regime);
  - Localised stamp duty on property transfers;
  - Land value taxes;
  - Tourist (bed) taxes;
  - More charging for services, using and extending the powers in the 2003 Local Government Act;
  - Charges for utilities’ street works;
  - Local congestion charges;
  - “Green Taxes”.

5. Greater direct management of European structural funding is also essential to ensure that the full potential of the funds can be exploited. Previous experience with European structural funds has highlighted the need to have greater local involvement over the development and management of the programme, ensuring that the policy fits local priorities and has greater alignment with sub-regional strategies and national funding programmes.

2 December 2010

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<sup>1</sup> See Roger Gough, *With a Little Help From Our Friends: International Lessons for English Local Government*, Localis/LGA (2009)

### Written evidence submitted by the Local Government Association

The LGA is a voluntary membership body and our 422 member authorities cover every part of England and Wales. Together they represent over 50 million people and spend around £113 billion a year on local services. They include county councils, metropolitan district councils, English unitary authorities, London boroughs and shire district councils, along with fire authorities, police authorities, national park authorities and integrated transport authorities.

In our submission we answer the questions put forward in the call for evidence that we believe are applicable to our overall response.

*1. Should the relationship between central and local government be codified? Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

Written statements of the relationship between central and local government are already in existence; namely the UK's ratification of the European Charter of Local Self Government in 1998 and the Central-Local Concordat (2007). In light of this further work to codify the relationship is unnecessary. Previous attempts to codify the relationship between central and local government have not resulted in a whole-scale change in the powers available to local government and central local relations and have had limited practical impact on the powers available to councils and relationship between central and local government.

More important is that action to put the aspirations of both documents into practice in a way not previously achieved to date. Enactment of a general power of competence for local government would enable a redefinition of the relationship between central and local government through bottom up action. We talk more about the importance of such a power in our response to question 8.

Codification of the relationship between central and local government would also sit uncomfortably if it were not accompanied in the context of a wider constitutional codification.

In light of our answer to question 1, questions 2–6 are not applicable to our response.

*2. If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

*3. How, if at all, should the status of local government be entrenched, or protected from change by central government?*

*4. What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

*5. Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

*6. Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

*7. What is the value of existing attempts to codify the relationship between central and local government, through: Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

The Chairman of the LGA and the Secretary of State signed the Central-Local Concordat in 2007; both parties intended the Concordat to signal a significant change in the central/local relationship.

The Concordat was signed against the backdrop of the Government having unconditionally ratified the Council of Europe's Charter of Local Self-Government in 1998. That document provides a benchmark for central-local relations where it is widely accepted, that the UK government had not, at the time the Concordat was negotiated, fully implemented. Indeed, a 2006 Council of Europe review of central control over local government placed the UK in the "control/supervision increasing" category, alongside Azerbaijan.

The Concordat established a useful set of operating principles. In a number of cases the policy landscape has changed significantly so as to render parts of the agreement no longer relevant—for example the role of LAAs in aligning central and local government actions. There have also been a number of suggestions that the Concordat was breached. In particular occasions have been cited where the government has apparently failed to consult councils or the LGA about proposed changes in the way the Concordat envisaged.

The role of the Concordat in setting out operating principles must now be accompanied by action to turn these principles into reality. As referred to in our answer to question one we feel further codification is unnecessary but we suggest four key actions which would take forward the relationship between central and local government:

- 1. Providing local authorities with increased flexibility through the Local Government Resource Review.** The review is an opportunity to provide local government with the necessary powers to raise revenue through more flexibilities to levy fees and charges and to determine the rate of local taxes. In the context of the recent significant front loaded cuts to local government, providing local authorities with these flexibilities and powers is more crucial than ever.

2. **Providing local government with the powers and confidence to act ambitiously through a general power of competence.** Further information on the importance of the power is provided in our answer to question 8.
3. **Consolidating local government legislation to provide clarity and confidence to local authorities.** Whether centralising, devolving or simply regulating parliament produces hundreds of pieces of legislation each year that need to be implemented by local government. Recent research indicates that in the last ten years parliament passed 4,000 pieces of legislation, statutory instruments were passed relating to local government<sup>2</sup>. The volume of legislation impacts on councils' ability to respond to the needs of local people by creating uncertainty about their powers. Providing clarity and confidence is key; this is best achieved through a consolidation of local government legislation.
4. **Involvement of local government in pre scrutiny of legislative proposals with an implication for local government.** Of course some of this legislation and policy-making is justified and helpful to local government. Some however is not well constructed and leads to unintended consequences which necessitates yet more action on behalf of parliament to resolve. Local councillors can add value to the legislative process by bringing to bear their experience on the ground. The LGA's publication *One Country Two Systems*<sup>3</sup> proposes that parliament should set up a "committee" charged with pre-scrutinising legislative proposals with local government implications and should involve local government leadership in this. Such a committee already exists in the House of Lords to scrutinise "whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislation to an inappropriate degree of parliamentary scrutiny". An arguably similar arrangement is set up on an ad-hoc basis when the government publishes draft bills. Sometimes they are scrutinised by Joint Committees of both Houses, and sometimes by existing departmental Select Committees.

8. *How would the "General Power of Competence" for local authorities proposed by the current Government affect the constitutional relationship between central and local government*

"Through a new general power of competence councils will be able to do whatever they like as long as it's legal—creating solutions to local problems without getting permission from the centre" David Cameron, *The Guardian*, 25 May 2009

A General Power of Competence for local government has long been advocated by the LGA. There is widespread agreement that the current legal arrangements provide an unsatisfactory combination of detailed legal prescription about specific services, and uncertainty about a general power. A power of first resort would support the role of councils as government and not simply administration, taking distinctive decisions to provide for the needs of the place the council represents, and not simply administering the decisions of central government. In summary the power has the potential to redefine the relationship between local government and central government through practical action.

The Well Being power enacted through the Local Government Act 2000 encouraged some councils to introduce new activities. There has however been uncertainty about its exact scope. This concern was much amplified by 2009 Court of Appeal judgement in the Brent LBC v Risk Management Partners. It upheld the position of the High Court, that the London Borough of Brent did not have the power to participate in the Local Authorities Mutual Limited (LAML), a jointly owned company, set up to provide insurance and risk management services to London borough councils. The judgement has created wide concern within local government about the scope of the well being power, Section 2 Local Government Act 2000, and Section 111 Local Government Act 1972.

A clear power of first resort and a framework to simplify and remove restrictions from existing statute, where these create a barrier is in this context critical to give councils the confidence to act ambitiously without fear of legal redress. We need, as far as possible, to create a power which will not be interpreted in the courts in restrictive way.

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<sup>2</sup> Delivering more for less II, Transparency in Action, Local Government Association, 2010

<sup>3</sup> One Country, Two Systems?, Local Government Association, 2008

<sup>4</sup> Draft Local Government (Power of General Competence) Bill, Local Government Association, 2010

The LGA wants to work with government to enact through the Localism Bill a general power of competence that delivers on the promise of a power of first resort. The LGA has published a draft bill which we intend as a helpful contribution to this debate<sup>5</sup>.

2 December 2010

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**Written evidence submitted by Professor Steve Leach, De Montfort University, Professor Vivien Lowndes, University of Nottingham and Dr Mark Roberts, De Montfort University**

INTRODUCTION

The three individuals submitting evidence all have a long track record of research and consultancy in local government issues. But none of us is a legal expert, nor have we experience of drafting codifying documents of the type covered by the committee's inquiry. In our evidence we therefore concentrate on topics which we think should be addressed in a codifying document (subsequently referred to as a Code) together with some suggestions how such issues should be addressed.

DESIRABILITY OF A CODIFIED SETTLEMENT

We agree strongly that there is a need for a Code setting out the relationship between central and local government. We recognise that the existence of such a document would need to be supported by changes in political and cultural behaviour, and that laws and agreements do not necessarily create relationships. However we are convinced that a Code would be a necessary (though not sufficient) condition in clarifying central-local relationships, and in particular, in avoiding the arbitrary (and politically motivated) interventions and ill-considered changes in the structures and processes of local government of which central governments have, in the last few decades, been from time to time guilty.

The point is best illustrated by examples:

- The disconnected series of changes made by central government in local government structure since 1974—in particular the abolition of the GLC and the metropolitan county councils in 1986 and the ill-judged and inconsistent changes made in the 2006–08 period in local government structures in a range of shire counties.
- The impact of changes made in the mode of finance of local government—typically linked to political considerations such as the perceived need to find an alternative to the community charge, which have led to abrupt and unsustainable changes in the balance between locally-raised revenue and central government grant in the finance of local government.
- Interventions by individual Secretaries of State which serve to confuse the public perception of the powers and responsibilities of central and local government. We might offer as examples here the then Home Secretary's intervention in Humberside Police Authority and suspension of their Chief Constable in 2004, and the intervention by the then Secretary of State for Children, Schools and Families in Haringey Council to "remove" the Head of Children's Services in 2008. (We emphasise here that we are not making judgements on the "rights and wrongs" of the actions of particular individuals in these examples.)

As well as having potential for shaping central-local relations in a positive sense, a Code would have real value in preventing arbitrary actions of this nature.

WHAT SHOULD THE CODE COVER?

We think it important that the Code should address the following topics:

- A clear statement of the **principles** underpinning the Code.
- A clear statement of the **division of responsibilities** between central and local government, including the latter's **roles and functions**.
- A set of guidelines which recognise the need for the **recognition of central government's legitimate interests** in the policies and patterns of service provision of local authorities and which develop means of safeguarding such interests, in different circumstances.
- **The balance between central and local financing** of local government's activities and the ways in which the latter should be generated.
- The **nature of local democratic arrangements**, eg voting systems, frequency of elections modes of decision-making etc.
- **Territorial structure**, and the way in which changes in such structures should be introduced.
- The role of local authorities in **the partnership arrangements** involved in local governance—what rights of leadership, influence or scrutiny should be involved?

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<sup>5</sup> Draft Local Government (Power of General Competence) Bill, Local Government Association, 2010

- Arrangements for **multi-tier government**, in particular the relationship between central government, local government and regional-level “intermediary” bodies.
- The role of **neighbourhood government** and ways in which the **civic rights of individual citizens** can be strengthened.
- The approach to **central regulation of local activity** where appropriate, given the agreed principles, roles and relationships.

We address these issues in turn, some in more detail than others depending on our knowledge and experience.

## PRINCIPLES

We welcome the statement by the current Coalition Government quoted in the “Issues and Questions” papers which emphasises the promotion of **decentralisation** and **democratic engagement** and the **promise of a radical devolution of power and greater financial autonomy**. In our view this stance is absolutely appropriate if it is wished to create and sustain a healthy democracy at the local level. It also provides a real opportunity to embed such values in the form of a Code to ensure they survive future changes in government or governmental attitudes. The creation of a **general power of competence** is one important expression of these values, and is a measure which we strongly support, and which would bring Britain into line with many of our European counterparts.

For similar reasons we support the formal ratification of the European Charter of Local Self Government.

We also consider that the principle of **subsidiarity** should be explicitly recognised and applied in the legal settlement. This principle has implications not just for the allocation of responsibilities to local authorities, but also for devolution of responsibilities to the neighbourhood level. A final important principle should be an explicit recognition of the community leadership role of local authorities in any endeavour to improve the welfare/quality of life of their inhabitants, given their status as the only local democratically-elected multi-purpose governmental agencies that exist at local level.

## ROLES, FUNCTIONS AND RESPONSIBILITIES

Drawing on the above principles, it should be possible to develop a meaningful statement about the roles, functions and responsibilities of central and local government respectively (eg in relation to service provision regulation promotional activities and Community leadership). Indeed it is essential to do so if issues of finance, structure and democratic arrangements are to be addressed on a consistent basis. What should be avoided is the simplistic use of terminology such as “partnership”, “agency” or “local autonomy” to characterise the relationship and to use as a basis for more detailed specification of roles. The reality is that the relationship is too complex to be characterised by any of these vague and over-used terms, as we discuss in the next section.

## SAFEGUARDING CENTRAL GOVERNMENT’S LEGITIMATE INTEREST IN LOCAL AFFAIRS

A number of different service or policy categories can be identified, each implying a different relationship between central and local government:

- Services/policy areas for which the centre retains full responsibility (eg defence).
- Services/policy areas for which the centre allocates part of the policy implementation role to local authorities (eg housing benefit, civil defence), and local government, in effect, plays an “agency” role. (Primary/secondary education has moved progressively closer to this model, and needs to be dealt with constitutionally on these terms—unless major policy changes are proposed).
- Services/policy areas which are allocated to local authorities, either as a statutory requirement (refuse collection/disposal) **or** on a permissive basis (local arts and cultural activities (including museums)).
- Service/policy areas where responsibility is shared. The local authority is allowed wider scope of autonomy but is required to achieve certain goals or targets (eg reducing Co2 emissions, promoting community cohesion).
- Service/policy areas where the centre wants to **influence** local authorities to take action (eg economic development, civic engagement).
- Service/policy areas where the centre wants to ensure that local authorities (as community leaders) have influence on local partner agencies (eg PCTs), for instance through powers of scrutiny, calling to account.

We acknowledge that it would be difficult for a document such as a Code to specify in detail how these six different types of relationship should be structured. However, we think it is important that these differences are recognised because they have important implications for other constitutional elements (eg allocation of finance). There may be a case for a schedule of agreements, attached to the formal Code to set out how these different forms of central-local relationship should be managed, in more detail than would be possible in the Code itself.

## FINANCE

We are not experts in local government finance. However we are clear about the principles which should underpin the allocation of funding responsibilities. The key principle should be that the centre funds those local activities where it has a legitimate interest, for example:

- (a) Services where local authorities act as de facto agents (in whole).
- (b) Services which local authorities are required to provide (in a prescribed form, or on the basis of “minimum standards”).
- (c) Services which are primarily the responsibility of local authorities, but where the centre wishes to specify certain policy/service objectives (and measures for assessing their achievement) (this could be a case for partial funding).

All other policy/service areas should be financed by the raising of local resources (eg council tax, local income tax etc). Policy areas where the centre wished to encourage activity (eg aspects of climate change, economic development) should be financed, in principle, by specific (ring-fenced) grants.

We recognise that there would be considerable difficulty in allocating financial responsibility for (c) (and to a lesser extent (b)). Some kind of formula would be required which recognises differences in local authority size, demography, level of need etc. While negotiation would inevitably prove complex, the broad outcome of moving in this direction would be a major switch for centrally-provided grant to locally-raised finance, a move which would reflect and strengthen the principles of subsidiarity and maximum local autonomy.

## DEMOCRATIC ARRANGEMENTS

The Code would need to address the respective roles of central and local government in deciding different features of local democratic arrangements, for example:

- (a) Voting system (first-past-the-post, AV, or a variant of PR).
- (b) Frequency of local election.
- (c) Definition of wards/divisions.
- (d) System of decision-making (elected mayors, committee systems, etc).

Although there is room for debate about the respective roles in relation to each of these features, on balance we consider that: (a) and (b) should be matters for central decision (in consultation with the LGA and other interested bodies); (d) should be left wholly to the discretion of local authorities; whilst (c) should operate as at present, with local authorities submitting proposals to the Electoral Commission.

## TERRITORIAL STRUCTURES

There are major inconsistencies in the local government structure across Great Britain and in particular England, resulting from piecemeal and often ill-thought-out changes introduced since 1974. There are likely to be inconsistencies between the roles specified for local authorities and their capacity to undertake them efficiently and effectively (eg City of Leicester and Rutland are both local authorities, but one is almost 10 times the size of the other in terms of population).

In principle, there is a strong case for a major independent review to make recommendations for a local government structure which could best deliver the roles specified in the new Code. In the longer term, such a review is essential and should be undertaken by a properly constituted independent body such as a Royal Commission. However, in the shorter term, such a review would probably be impractical in the current climate and an unwelcome source of insecurity. What is essential is that the Code prevents central government from the arbitrary and often politically-inspired reorganisations it has initiated since 1974. The Code should establish a formal process for any future territorial review of local government structures.

## PARTNERSHIP ARRANGEMENTS

Local authorities have long ceased to be self-sufficient entities. Although the Code should have the effect of strengthening the degree of local autonomy, and the scope of local decision-making, the reality is that the current emphasis on partnership working and “local governance” is likely to continue. In this context the key issue which the Code needs to address is how the lead role of local authorities in partnership arrangements is to be expressed, and what levers are available to exercise it. The scrutiny powers which currently exist in relation to health authorities and several other local agencies are one such expression and councils are now taking back responsibilities for economic development and public health.

But, if local authorities are to be genuine “community leaders”, their capacity to do so needs to be further strengthened. The priority here is the development of appropriate skills and capacities, not just in local authorities but in a wide range of local “partners”, and among local politicians as well as professionals. But a new Code can assist by entrenching the principle of local authority “community leadership”, and enabling genuinely innovative partnership working through greater financial autonomy for local government. Partnerships need to operate at different levels to be effective—whether via regional coordination (on economic

matters) or neighbourhood-level community engagement. As discussed in the following sections, the Code needs to situate the roles and responsibilities of local government within a multi-level system.

#### REGIONAL GOVERNMENT

The role and structure of regional government is currently in a state of flux, and hence it would be difficult for the Code to address it directly. However, should central government wish to introduce some form of regional government which had an impact on the roles, functions and responsibilities of local authorities, it should not be able to do so in an arbitrary fashion (as in recent local government reorganisations). This is a matter of principle, whatever proposals come forward in the future for the regional level. A clause should be included in the Code which made the introduction of any such proposal subject to detailed consultation with the LGA, with the possibility of a referendum on options.

In the current circumstances, there would be value in re-designing the role of the government's regional offices, so that they are more genuine regional instruments of mutual learning for both the centre and local authorities. For instance, some regional office staff could be employed by local government, rather than by central government departments as is the case at present. Further use of secondments from local government could also assist in shifting the role of regional offices towards supporting, rather than policing, localism. Given the abolition of the Audit Commission, regional offices could also put more "meat" on their support for localism by taking on aspects of "soft" regulation previously undertaken by the Commission (eg the generation and sharing of "good practice", support for innovation).

#### NEIGHBOURHOOD GOVERNMENT

If subsidiarity is to be guiding principle of the Code (as indeed it should be), it would be important to recognise that subsidiarity does not just refer to the allocation of responsibility between central and local government. It has implications too for the allocation of responsibilities between counties and districts (in a two-tier system); and between town/parish councils and local authorities; and between local authorities and sub-units (such as neighbourhoods, community teams or area offices within them). The recognition of this aspect of subsidiarity is particularly important in the light of the current emphasis on localism and the "Big Society". Neighbourhood level arrangements are central to both stimulating and unlocking sources of social capital in the furtherance of policy objectives (including the co-production of services, mutualism, self-help, and citizen engagement in decision-making).

The Code should require all councils to develop and introduce a "scheme of devolution" (often building on existing set-ups), as was the case when unitary councils were introduced in Wales. The effectiveness of such schemes could be addressed, in circumstances where there were concerns, by the external audit process.

#### REGULATION

We welcome the way in which the current government has recognised and responded to the over-elaborate system of central regulation of local services and functions. Any slimmed-down regulatory system that is developed should focus on services where there is a legitimate central government interest (see p. 3) and upon local authorities where there is objective evidence of poor performance. An enhanced role for regional offices in light-touch regulation has already been suggested above (see p. 6).

#### CONCLUSION

We agree strongly that there is a need for a Code setting out the relationship between central and local government. We have argued that the Code should:

- Clarify central-local relationships and prevent arbitrary and politically motivated interventions in the structures and processes of local government.
- Endorse the general principle of subsidiarity, and commit to the devolution of power to local government, including greater financial autonomy.
- Incorporate the formal ratification of the European Charter of Local Self Government.
- Specify and protect the roles and responsibilities of local government.
- Identify and safeguard central government's legitimate interest in local affairs.
- Develop a model for central-local relationships in the case of shared responsibilities.
- Enable a major switch from centrally-provided grant to locally-raised revenues.
- Establish a process for any future territorial review of local government structures.
- Entrench the principle of local government "community leadership", with particular reference to local partnerships.
- Establish a process for consulting with local government in relation to the future development of regional tiers of government.
- Require local authorities to introduce a "scheme of devolution" to provide neighbourhood level arrangements, in accordance with the subsidiarity principle.



- Establish a light-touch regulatory system via regional offices, relating to those services in which central government has a legitimate interest.

2 December 2010

### Written evidence submitted by Andrea Hill, Chief Executive, Suffolk County Council

In Suffolk we have spent some time and considerable energy in developing a collaborative way of working with our public sector partners. We believe that only by working together across the whole public sector in Suffolk can we meet the twin challenges of improving outcomes for our residents, the communities they live in and businesses in Suffolk, with a reduced financial settlement.

We have had some successes: for example by working in a different way with health and police to support families with complex needs in Ipswich, and improving closer working between GPs and social workers in Southwold to better support older people and reduce hospital admissions/entries into residential care. However we often come up against barriers to collaboration which are, at least in part, created by the nature of the relationship between local and central government.

Local government, despite its democratic mandate, is in many respects a weaker partner in relation to other public services, especially health and police. This means we are unable to bring to the table fully some of our partners who look to central government for their direction. So even when it is in the local interest and backed by a local democratic mandate, often we have found that partners are unable to act with us due to the constraints imposed by Whitehall departments or deprioritise action to achieve local priorities in favour of national priorities.

This reduction in the stature of local government in relation to Whitehall, and therefore its practical impact on other partners locally, has happened over a very long period of time. It is as much, if not more, a political and cultural effect as structural. I have a great deal of sympathy with Professor Vernon Bogdanor's comments to this effect. However, I do believe that *if* codification could assist in the restoration of local government as a more equal partner to central government, then codification would be attractive. To do so, codification would need to be more radical than either the Central-Local Concordat, and the European Charter of Local Self-Government.

Community budgets, which pool funding and enable decisions about funding to be made collaboratively across the public sector, both support a stronger voice for local government, and requires a more equal relationship between all partners.

We look forward to the General Power of Competence and the introduction of the Health and Wellbeing Boards, the transfer of public health to local authorities and the changes to the way in which health is commissioned locally. All of these, we believe, will have a positive effect on the capacity of local government to deliver its mandate in relation to supporting and developing the local economy and working collaboratively with partners to improve outcomes for residents. However, we are conscious that much uncertainty remains over how these reforms will be delivered, and therefore what real effect they will have.

The remainder of this document deals with the specific questions you raise.

*Should the relationship between central and local government be codified? Should codification be considered in the context of wider constitutional codification?*

In addition to the points raised in the opening statement, from a local government perspective it is difficult to determine the extent to which codification would serve a positive purpose without knowing the detail of it, particularly as codification does not automatically endow legal status. Nevertheless, if any such code did have its basis in law, on the one hand, it could:

- Provide a clear operating framework and clarify powers and responsibilities that may otherwise be open to interpretation or challenge, such as the Wellbeing Power.
- Particularly if based on the principle of outcomes, help equalize a currently unequal central/local relationship and serve to strengthen local government's independence *vis-à-vis* central government and therefore the delivery partners of central government, such as health.
- Protect local government from unwarranted prescription and micro-management, and allow it greater flexibility in pursuit of local and shared objectives.

On the other hand, there is a risk that codification would:

- Create an artificial framework that perpetuates the restrictions of a one size fits all approach.
- Be unable to quickly and easily adapt to changing circumstances.
- Inhibit the ability of local government to work in the best interests of the people it serves.
- Unwittingly create new barriers to the delivery of national objectives through local authorities.

*If codification is appropriate, what degree of independence and what powers should local government be given?*

If codification is appropriate, it should be undertaken in the spirit of localism and devolution, and should serve to strengthen local government's independence. It should be based on a small number of principles and the delivery of outcomes, although it may also usefully serve to clarify specific powers and duties.

*How, if at all, should the status of local government be entrenched, or protected from change by central government?*

It would be a retrograde step if codification were to entrench local government to the extent that it was insulated from all change. Codification and the ability to amend the code will require a delicate balancing act to be struck between the right of central government to act in the national interest and to require other tiers of government to do likewise, and the right of local government to act in the local interest.

*What consequences should codification or other changes in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

In the context of current policy and (as referred to above) a more equal central/local relationship, codification should serve to strengthen the accountability of local authorities to local people. It is, after all, from these people that local authorities derive their mandate to pursue particular policies. Furthermore, in light of greater financial freedoms, local authorities will have more scope to spend public money in the pursuit of local priorities and should fundamentally be held to account for this by local people.

*Does the devolution settlement provide a relevant model for possible codification of the status of local government?*

In some respects there isn't a great deal of difference between the devolution settlements and the current central/local relationship: Scotland and Wales have the powers the government wants them to have and the government still holds the purse-strings through a formula-based grant. On the other hand, there might be some attraction for local government in having devolved powers and responsibilities set down in a single Act of Parliament, as for Scotland, particularly if it granted them freedom to exercise those powers in whatever way they see fit.

*What is the value of existing attempts to codify the relationship between central and local government, through the Central-Local Concordat, and the European Charter of Local Self-Government? Should the latter be placed on a statutory footing?*

Neither of these has any basis in law and as such they have very little value except as declarations of intent. I cannot see the point in placing the European Charter on a statutory footing as it sets its principles (no matter how laudable) in the context of national statute/constitutions anyway. In any event, given the discussion in the opening paragraphs above, these have not sought to or succeeded in rectifying the balance of the relationship between central and local government.

*How would the proposed general power of competence for local authorities affect the constitutional relationship between central and local government?*

Depending on how it is framed, the Power has the potential to help equalize the relationship between central and local government. However, as happened with the Wellbeing Power, it is likely that use of the proposed new Power will be challenged and shaped by legal judgement. This could serve to render the power less potent than intended. Also, it remains a fact that the Power will still be constrained by the provisions of other legislation, so it will not be a panacea to current legal barriers.

3 December 2010

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### **Written evidence submitted by Professor Colin Copus, De Montfort University, Leicester**

#### **INTRODUCTION**

In constructing any form of codified relationship between the centre and the localities an assumption is required that the codification will be designed to:

- establish a positive relationship between tiers of government;
- explicitly recognise and establish the value and role of local government;
- formalise some degree of political and governing autonomy for local government;
- protect and establish a continued existence for local government and provide protection to local government boundaries from central interference and control;
- demonstrate trust in councils, councillors and officers;

- share political and governing powers and responsibilities; and
- provide the framework for a relationship between councils and their citizens.

Given the current constitutional arrangements and relationship between central and local government, any agreement which sets out to strengthen the centre would simply be pointless. So, what can be seen from the assumptions above is that any “agreement” between the centre and local government, will limit central government power and room for manoeuvre and see a shift from notions that all power and supremacy rests in Parliament (see Bogdanor, 2009, Copus, forthcoming).

Even if a codification of central-local powers and responsibilities were based on the assumptions above, any voluntary agreement is only as good as the willingness of the volunteers to continue to agree. Moreover, the relationship codified has to be that between local government and the entire centre, not just with the DCLG. The recent discussions around the introduction of academy Schools, for example—whatever the merits or otherwise of the idea itself—does not display an adherence to concordat principles, other than the ones reminding us of the primacy of the centre, which are referred to below in response to question five.

It is not just the process of broad national policy-making that needs to be included in a codified relationship between central and local government, but also the depth to which the centre penetrates the localities. Is it really necessary, for example, that central government set the upper-limit of parking fines to be levied by local councils? Can councils not set these amounts themselves to be judged on this and other policy decisions by their local voters?

Yet, ultimately the centre decides the shape, population, responsibilities, powers and functions of councils in England. It is the centre which can, and does, abolish councils or entire layers of local government and the centre can do this because local government lacks even the most basic constitutional protection, including the right to continued existence.

While the centre will consult with councils and communities about the nature and shape of local government, it is not bound by such consultation, nor are citizens given the final say over what happens to their councils (or what those councils do) via a binding referendum. The British unitary system is based on top-down Parliamentary sovereignty, not a bottom-up citizen democracy. Moreover, English local government looks to the British Parliament and Government, unlike local government in Scotland and Wales which looks firstly and directly to their devolved regional chambers.

Codification must see central government cede power and responsibility to local government, otherwise it is without merit. Moreover, codification has to recognise that local government has a political and representative responsibility, with a mandate deriving from the same source as central government. Local government must be seen as more than a set of institutional arrangements for delivering, or overseeing, public services.

The only purpose of codification is to improve the constitutional position of English local government. It is with this in mind that the questions set by the Committee will be addressed. The questions will also be addressed from a strong localist assumption.

*1. Should the relationship between central and local government be codified?*

*Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

The relationship between central and local government should be codified but only so as to enhance the status, powers, responsibilities and role of local government within the governing structure of England; and, to set out the way in which central and local government will operate together. Any codification must be binding on across government and require all ministers and departments to take cognisance of the code when considering policy and legislation. Codification however, should only deal with the relationships between tiers of government and set out clearly what those relationships are and how they should work, with a presumption in favour of strengthening the localities so as to enhance localism and decentralisation. A code is not the place for details and if local government and localism is to flourish than detailed guidance and regulation must be avoided.

Any codification should be constructed with genuine negotiations with local government itself, not just the Local Government Association; rather, with individual councils, so as to give commitment and ownership to all English councils. Equally, all government departments (even if they perceive they have no dealings with local government) would need to be involved in the construction of the code, again to emphasise commitment as well as knowledge of the code and to enhance the status of local government.

There is most definitely a wider constitutional context within which any code would sit and as can be seen from the response to question six (below) many countries codify the relationship between the centre and the localities within a written constitution—even other unitary states.

The absence of a written constitution need not mean the lack of a constitutional safeguard for any codification. Some legislation is granted “constitutional” status such as devolution legislation to Scotland and Wales and this “constitutional” status results in different treatment by government and Parliament. The Fixed Term Parliaments Bill provides a model in which the aspects dealt with by any code could be protected; a two-thirds majority of the House of Commons, or indeed both Houses, could be required to change the code or

take any government action that offended against the code. Indeed, such qualified majority protection could be extended to any legislation that affected local government and what it does.

*2. If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

Many responses to this question will focus on the service responsibilities of local government and how local government could have greater policy autonomy around the provision/oversight of services. The response here will focus on local government as a politically representative institution that governs its area. J.S.Mill (1948: 282–283) could be interpreted as not only arguing for local government as a school for politics but also as a forum for wider democratic engagement than central government can provide; and, as a governing body in its own right. Toulmin-Smith (2005) went further than Mill and derided both Parliament and statute law for offending against and usurping the institutions and practices of local self-government and the Common Law. Thus, there are well-founded and historical arguments to see the political role of local government strengthened and recognised in law.

Political and legislative power for councils

To strengthen and entrench local government as governing and politically representative institutions, councils should have devolved legislative powers within their own boundaries. Thus, councils should be able to pass ordinances (local laws) that have the same status as primary legislation—not by-laws. Rather than going into specifics of those powers, a general example is outlined.

There is no test in a unitary state for what can be legislated about: every thing is legislatable. For example, there were three groups of people concerned about the abolition of fox-hunting: those that wanted it banned everywhere; those that wanted it allowed everywhere; and, those—arguably the biggest group—who really did not mind either way, unless pushed. So, why was a nationally imposed solution thought to be the only answer? The same case could be made about smoking in public places, the age at which alcohol can be purchased and consumed, how schools are run and a whole range of issues, which could rightfully and properly be the property of local not central government: true localism. Councils should have the right to deal with a raft of devolved legislative issues. Then, after a series of many local debates, many local solutions can be implemented locally; thus, while fox-hunting may be banned by some councils across their boundaries, it will be permitted in others.

In emphasising the “governing” aspect of local government the scope of council control over a range of public bodies and quangos should be extended to include powers to direct such bodies to act in certain ways within the boundaries of the council. Thus, bodies that while having boundaries that are not coterminous with councils but which make public policy decisions and spend public money, would have multiple points of accountability and direction and be responsible to all councils within which they operated. Council oversight of other public bodies would ensure a localist approach to the activities of powerful regionally orientated organisations.

Boundary Protection

There would be no better way of enshrining the independence of local government than that the centre relinquished its power over local boundaries. The 2009 creation of new unitary councils resulted in:

- A reduction of 44 councils to nine.
- A reduction in councilors from 2,065 to a mere 744.

(See, Chisholm and Leach, 2008)

Re-organisation of local government boundaries should no longer rest with the centre but be the property of councils and their citizens. Should councils wish to merge, or for that matter disaggregate they should be allowed to do so on their own initiative or the initiative of their citizens. Binding local referendum should be required before any boundary changes can be introduced. Councils can not be place-shapers if they can not shape their own places. Protection of council boundaries should form part of any codification and safeguards against future governments overturning such protection provided in legalisation.

*3. How, if at all, should the status of local government be entrenched, or protected from change by central government?*

Some ways in which local government could be protected from central government have already been mentioned, such as:

- The status of local government to be protected by constitutional legislation.
- A two-thirds majority in both Houses of Parliament required for Bills affecting local government.
- Councils granted devolved primary legislative functions within their boundaries.
- Local government boundaries to be controlled by councils and their citizens—not central government.

In addition, the position of English local government would be further protected thus (by no means an exhaustive list):

- The creation of an English Parliament which would be the first point of contact for local government and as in Scotland and Wales, would provide a layer of Parliamentary protection to local government against central government (at Westminster and Whitehall).
- The introduction of a radically reformed financing system, in which councils had a far wider range of tax-raising (and spending) powers, which could not be limited or altered by central government—but may be subject to approval by local referendums. Councils could secure financial freedom by generating tax income from not only property taxes but also for example:
  - Local Income Tax.
  - Corporate Income Tax.
  - Sales Tax.
  - Tourist Tax.
  - Car tax.
  - Inheritance tax.

(Each of these taxation powers and others exist for local government across Europe and beyond)

- All councils (of any tier) to be headed by a directly elected mayor. The direct and personal mandate given to elected mayors would enable the mayor to argue from a position of political strength and to demonstrate wide support, from across the voters, for his or her policy positions.
- Substitution of the *Ultra Vires* principle by an *Intra Vires* assumption (which is implied by a general power of competence).
- Councils granted freedom to co-operate with any other council(s) for any purpose or purposes and to form partnerships, associations and co-operations, etc, without guidelines, approval or interference from central government.
- The power for councils to challenge any government proposed primary or secondary legislation, guidance or other proposals, through a mechanism which binds councils and government to the outcome of the challenge.
- Enhanced scrutiny powers to hold local officers and decision-makers from other public bodies, outside the council, to account.
- Enhanced hire and fire powers over officers and senior executives of other public bodies for councillors/leaders and particularly for elected mayors (see response to question 2).

4. *What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

If codification is designed to strengthen local government in relation to central government, then a new line of political responsibility and accountability is opened up: that to local citizens. A strong, politically powerful, independent local government should be accountable to an equally strong and politically powerful local citizenry. Simple mechanisms could be put in place to ensure accountability and citizen sovereignty, for example (and not an exhaustive list):

- the right of citizens to petition for re-call elections for any council leader, councillor or elected mayor;
- a similar right to recall an entire council and for new council elections to be held;
- shorter terms of office for councillors to provide the electorate with opportunities to cast a judgement on the council and councillors;
- term limits for councillors;
- council laws and policies subject to binding referendum;
- power for local citizens to call referendum on any issue or put forward citizen initiatives for public ballot, the results of which would be binding on the council; and
- a public power for citizens to call senior council officers to account and to challenge and demand public explanation and justification for advice given and decisions take by senior officers.

5. *Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

Two common themes have emerged, to varying degrees, in the central—local concordats, existing in the UK (Scotland 2007, Wales, 2008 and Britain, 2007). The first is to see local government primarily as a service providing institution rather than as an autonomous politically representative and governing institution and hereby rests a major problem. Two important questions have not been seriously asked or addressed: what do we want local government to do; and, what do we want local government for? Codification needs to answer

those questions and that has not been done with the existing codifications under devolution. The underlying assumption of recent debates around central and local government relationships has been that the purpose of local government will stay as it is without fundamentally reassessing purpose and role.

The second common theme, again to varying degrees, in central—local concordats, in the UK is a top-down perspective, either in tone or content. Indeed, the central-local concordat signed by HM Government and the Local Government Association, explicitly displays the subservient nature of English local government within the constitutional arrangements (2007: 1, para: 3; 2, para 5; 3, para 8).

As there is no English Parliament the relationships for English councils is with the British centre; English local government is in a doubly constitutionally subservient position, unlike that in Scotland and Wales and only an English Parliament can rectify that situation. The model here is that English local government requires an English Parliament with whom to interact and with whom to construct a set of codified working relationships.

*6. Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

Across most of Europe the relationship between central and local government is codified in some way—either through a written constitution, or through what might be seen as constitutional legislation. Such settlements—while not always providing local government with general competence or strengthening its constitutional position—do provide lessons for the current investigation. Indeed, it is suggested that the committee commission a thorough review and analysis of how central-local relationships have been codified across the globe, to examine the nature of that codification and to draw out the lessons appropriate for changes in this country.

One point needs to be emphasised, and that is that the unbalanced constitutional and devolution model existing in Britain, where one nation within the state (England in this case) is denied or excluded from a devolution settlement, is unique. That situation would not be rectified by creating regional assemblies—as it would deny and worsen the question of national recognition for England and fracture the relationship between local government and any overarching governing arrangement. Rather, it can only be rectified through the creation of an English Parliament to re-balance the constitution and ensure a coherent point of reference for all of English local government.

Examples of appropriate models of constitutional settlements are set out below (others are provided in a document submitted alongside this paper):

- **France's** written constitution, states: “Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level”. (Article 72 du Titre XII). The principle of free administration and general competence has been reinforced under the 2003 constitutional reform.
- The general competence described in France is one of the criteria for defining “collectivités territoriales”, along with elected councils, as opposed to all types of joint bodies (intercommunal bodies) that only have delegated competences from their member-communes.
- A current reform being considered in France however, is for departments and regions to lose their general competence and only have dedicated responsibilities so as to avoid joint (or mixed) financing. Only communes (the smallest level of sub-national government) will keep their general competence—they have since the 1884 Municipal Act.

Article 28 of the **German** constitution stipulates that local authorities regulate community affairs on their own authority and requires that local government is provided with an independent revenue stream for doing this. The details are regulated by the Lander and all 16 Lander constitutions set out their own frameworks that guide local authorities. There are three basic principles underpinning the system:

1. Local authorities are expected to fulfil a national-constitutional obligation to “regulate”; they must act, and they must preserve their capacity for action.
  2. There is a clear obligation to enable democratic participation in local politics.
  3. Authorities are expected to do their jobs efficiently and economically.
- The autonomy of German local authorities in conducting their tasks is legally guaranteed but so is the strict oversight of their operations.
  - There is a significant body of rulings by the Federal Constitutional Court (as well as by the constitutional courts of the Länder) which have defined a “core” of local autonomy (including the scope of the “general competence clause”) immune from legislative encroachment. Councils have been provided (by the Federal Constitution as well as the Länder constitutions) with the right to file appeals to the Constitutional Court, both Federal and Land (so called municipal constitutional complaint, Kommunale Verfassungsbeschwerde) for defending, inter alia, the scope and content of the “general competence clause”.

Article 137 of the **Spanish** Constitution (1978) states that: The State is organised territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall

enjoy self-government for the management of their respective interests (see, document submitted with this paper)

- The 1985 Local Government Law (LBRL) specifies general principles regarding the territory, internal organisation and functions of local government; details are left to regional legislation. Each Autonomous Community can determine its own local government arrangements, but respecting the existence of municipalities and provinces, which have constitutional recognition.
- Article. 25.1 of the 1985 law includes a general competence clause which states “municipalities can promote any activity or deliver any services that contribute to satisfy the needs and expectations of the citizens”.

Further examples can be found in the document submitted alongside this paper and they demonstrate a range of approaches towards the constitutional position of local government and the nature of the relationships between central and local government. A presumption in favour of localism is displayed across many of these examples (although not exclusively so) and governments have accepted limitations (to varying degrees) or their powers over, or in regard to, local government.

*7. What is the value of existing attempts to codify the relationship between central and local government, through: the Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

A statutory basis to the relationship between central and local government would overcome the perception that the current concordat is between local government and the DCLG only, rather than the whole of government. Central government’s willingness to be bound and to be limited is contained in the first article of the 1985 European Charter of Local Self-Government, as follows:

- The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Placing the Charter on a statutory footing would strengthen the position of local government, but the Charter itself contains ways around its own provisions.

It is undoubted that giving the Charter, or rather a specifically designed version of it, a statutory basis would strengthen local government, although it may also lead to numerous legal challenges by and against local government.

Governments, of all political colours, have dealt with local government as a thing to be regulated, manipulated, controlled and used to pursue central government policy. The fact remains that a statutory basis would require central government to permanently relinquish its power over local government and adhere to a fundamentally different role for councils than has hitherto been the case.

*8. How would the “general power of competence” for local authorities proposed by the current Government affect the constitutional relationship between central and local government?*

A general power of competence for English local government would mean a reappraisal of the relationship between the centre and the localities and a rebalancing of the relationship between Westminster/Whitehall and local government. It would underpin a localist presumption in central/local relationships. Central government would be faced with alternative centres of governing capacity that could act on their own merits.

As general competence would reverse the legal environment of local government, allowing councils to act so long as those actions were not directly prohibited by law, the real test of general competence for councils is less with government and more with the courts. The judiciary would have to accept a limitation to their power and accept that they were no longer the final arbiter of all councils’ actions.

Government would have to take action to prevent councils, with a power of general competence, from doing those things central government wished to stop or change in some way, rather than rely on councils not being able to act without specific permission. Government or Parliamentary time would have to be invested in a negative and prohibitive Act to stop councils that attracted central disapproval. Government should, given general competence, resist the temptation to pass a series of general and prohibitive Acts that restrict general competence, otherwise its introduction becomes pointless. The very act of granting general competence rests on central government willingness to cede some power. But, given the safeguards of a strengthened local citizenry, with the democratic tools available outlined in response to question 4, councils could be prevented from taking action with which citizens—not necessarily government—disagreed or disapproved and in a localist context, citizens are the final point of power and accountability.

General competence would remove the need for the expensive and time consuming process of councils securing Local (Private) Acts of Parliament, thus freeing Parliamentary time for other business.

We can see from the position of councils in other countries that general competence, coupled with the binding codification of central and local relationships, based on a presumption of devolution and localism, provides councils with a strong position in the constitutional arrangements. The challenge of general competence is that of a shift in attitudes and practices at the centre in regard to local government.

## CONCLUSION

Codification of central local relationships should be based on a strong localist assumption and designed to grant constitutional protection to councils. Local government needs to be seen as a political representative and governing institution and not just as public service agency. Additional powers—particularly devolved legislative powers—granted to councils, should come with safeguards created though providing citizens with the ability to recall councils and councillors and use binding referendums.

A thorough review should be conducted of the constitutional relationship between central and local government existing overseas and how written constitutions have been used to set a balance between the centre and local government.

3 December 2010

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## Written submission from the Centre for Public Scrutiny

### INTRODUCTION

The Centre for Public Scrutiny (CfPS) welcomes the Inquiry as a timely contribution to the debate about whether power, responsibility and accountability should lie more at local than at national level. We believe that mechanisms to secure effective public scrutiny should be viewed as central to all debates about this rebalancing of power. If there is to be a codification of the relationship between central and local government, it should make clear not only where the power lies to take decisions on particular issues, but also how those who will wield that power will be scrutinised and held to account in a meaningful and constructive way—whether at local or national level. We have structured our response around the consultation questions but have only responded in detail to those questions where we have a particular interest and expertise as CfPS.

### ABOUT CfPS

The Centre for Public Scrutiny is widely regarded as the leading national voice for public scrutiny and accountability. We are an independent charity which aims to:

- enhance understanding of what scrutiny and accountability mean, why they matter and how they can benefit everyone, including decision-makers;
- provide space for decision-makers, scrutineers and other stakeholders to share ideas and learn together;
- highlight what works well and encourage people to try it in their area; and
- provide evidence-based and relevant guidance that gives people the tools to approach their role with confidence.

We promote policy and provide wide ranging practical support. We work across government (for example with the Department of Health, Communities and Local Government, Home Office, Department of Work and Pensions), with the Local Government Group and with stakeholders across primary and acute healthcare, regulators, in parliament and with academics and other think tanks. We have supported councils, NHS bodies, police authorities, universities, Local Involvement Networks and others individually and collectively through our comprehensive published guidance, on-line tools, events and network of expert advisors.

In summary, our mission is to promote better scrutiny to achieve greater accountability, transparency and involvement. We believe that better scrutiny means better government, because someone who makes a decision should not be the only one to review or challenge it.



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## SUMMARY OF OUR SUBMISSION

- Before the relationship between central and local government can be codified, the purpose of local government as opposed to local administration/delivery should be clarified.
- There should be consistent acceptance across government of the principle that while national government can determine national priorities, where these impact on the role and purpose of local authorities, they should be able to determine how to achieve outcomes locally, based on their knowledge and understanding of the local situation.
- Robust, evidence-based scrutiny is a key element of good governance at all levels of decision-making and must be recognised and supported as such in any codification of powers.
- It should be clear in any codification that where local government may be given new powers, these must be matched by strong accountabilities, to provide checks and balances on the exercise of power.
- Scrutiny contributes to the principles of accountability, transparency and involvement, which are the three pillars supporting a healthy democracy and can help achieve the government’s aim of moving from “bureaucratic” to “democratic” accountability.
- Local accountability arrangements need legitimacy, credibility and utility to be effective.
- National and local scrutiny could usefully learn from each other in order to improve accountability across the board.
- CfPS’s Accountability Charter offers a tool to help organisations assess their own accountability and transparency to ensure their governance systems are fit for purpose.
- The power of “general competence” should be underpinned by a “presumption of subsidiarity” to embed the principle that decisions should be made at the most local level appropriate, closest to citizens, in order to strengthen local transparency and accountability.

## QUESTIONS

1. *Should the relationship between central and local government be codified? Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

1.1 We think that before the relationship between central and local government can be codified, the purpose of local government as opposed to local administration/delivery should be clarified. The benefits of local government as opposed to local administration are, amongst others:

- Greater local accountability and transparency in decision-making.
- Services more appropriate and responsive to the needs of the local population.
- More ability of local people to influence the extent and nature of public services.
- Providing a representative voice for a local area and its communities.
- A fundamental democratic principle that decisions over allocation of resources and service priorities should be made by elected representatives.

1.2 Any codification and its implications for other strands of government and the public sector should also be clearly signed up to by the whole government, not just one department, in order to address the problems of inconsistency that we set out in response to the Committee’s second question below.

2. *If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

2.1 It is entirely right that the elected national government should have the ability to direct national resources according to its national priorities. Foreign and defence policies are clearly national issues. In domestic matters, the national prerogative is most obviously relevant when it comes to redistribution of resources in order to tackle inequalities of resource, opportunity and outcomes that may exist between different localities of the country. However, elected local government should nonetheless be able to determine the ways in which it tackles those inequalities in its locality as it sees fit. If central government can determine what, local government should at the very least be able to determine how.

2.2 The previous government was certainly guilty of “sucking up powers to the centre” and dictating not only the “what” but also the “how”, and thereby reducing local agencies’ capacity to actually achieve the “what”. To give an example from one policy area, tackling the problems of crime, violence, ill-health etc arising from drugs abuse was identified as a national priority, targets were set and funds provided specifically in order to meet those targets. In many local areas, the same problems of violence, crime and ill-health derived from alcohol abuse, yet the funding could only be used to deliver actions on the drug abuse targets. The real aims of tackling the outcome problems of crime and violence were lost because of narrowly specified targets drawn around inputs and closely ring-fenced funding.

2.3 The new government has said that it will rebalance the relationship between central and local by removing the large number of targets set by the previous government. Along with a new power of “general competence” and removing some of the ring-fenced funding streams, the stated aim is to free up local

government to focus on what matters locally. In October, for example, reporting on 4,700 targets was removed with the abolition of Local Area Agreements. Instead there will be a single set of agreed “Whitehall data requirements”. There are two caveats to this greater proposed independence and welcome reduction in reporting upwards on nationally determined targets (although many of the LAA targets were set locally and then agreed with the centre).

2.4 Firstly, it would be a mistake to go too far in the other direction. Collecting data on a consistent basis enables comparisons to be made and accountability to be exercised locally, whether on questions of value for money and efficiencies such as unit costs or on choices which have been made locally and their justification. If central government removes itself from this arena, it will fall to the local government sector to collectively agree what data it needs to collect for comparative purposes.

2.5 In **Lincolnshire**, for example, there is a value for money committee, chaired by a member of the opposition, which provides independent assurance by examining key projects in depth and ensuring a focus on value for money is maintained. Members of the committee make significant use of the National Indicator Set to help them assess how well their council is doing. Following the announcement of the abolition of the NIS, they are examining “what to count” in Lincolnshire to determine how to replace it locally. However, if others do not carry out the same exercise, the comparative element will be lost.

2.6 Secondly, and more fundamentally, governments are not consistent in their approach to local government. The previous government often went around local government by creating new bodies such as New Deal for Communities Boards to administer ring-fenced funding streams, often duplicating or competing with local authority plans and services. Departments within the current government vary considerably in their approach to granting new local powers and freedoms: at DfE, schools are to be removed still further from local government influence and support, while in other departments the approach to localism does not mean providing powers to local government but to new structures such as elected police commissioners and GP commissioning consortia.

2.7 Even at Communities and Local Government, there are still pronouncements to councils over how frequently bins should be collected and how often council newspapers should come out and what they should contain. Codification would bring welcome consistency to all governments’ approaches to local governance and service delivery, but the most important element of any codification needs to be a clear statement, owned collectively across government, agreed with local government and consulted on with the public, about the role and purpose of local government—as opposed to local service delivery by disparate agencies of central government. Only with this clarity of purpose and role can the public then exercise meaningful accountability over both central and local government.

3. *How, if at all, should the status of local government be entrenched, or protected from change by central government?*

3.1 See our comments below in relation to the European Charter of Local Self-Government.

4. *What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

4.1 We believe that codifying the relationship between central and local government could help clarify and strengthen local accountability, but only if the importance of democratic scrutiny and the contribution that it can make to accountability is incorporated into any codification.

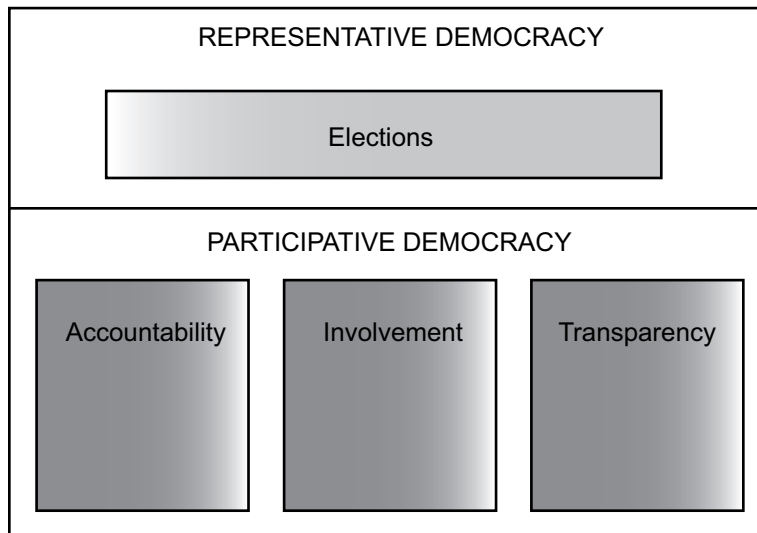
4.2 Our recent research, “**Accountability Works!**”, a copy of which is attached, established that there are many different kinds of accountability and that they need to interact and be mutually reinforcing if accountability is to be meaningful. For example, accountability can be achieved:

- Through the ballot box and elections.
- Through transparency of information and the media investigating and reporting publicly on decisions.
- Individually through the market and consumers exercising choice or raising complaints and seeking redress for wrongs.
- Through regulation, inspection and audit.
- Through internal management processes.
- And through scrutiny carried out by lay non-executives in select committees or local government overview and scrutiny committees.

4.3 No single one of these forms of accountability can deliver on its own. For example, elections only take place every four years and there need to be other ways of holding politicians and public services to account in between elections. Consumers are helped in exercising choice through the provision of information from the press, inspection reports and transparency. Scrutiny can hold services to account by drawing on customer feedback to challenge performance and policy, and can do this by involving service users and vulnerable groups in new and innovative ways. In **Cheshire West and Chester**, for example, councillors and officers spent time with looked after children at the local zoo and “Go Ape” leisure venue to build up the young people’s trust

and get their views and input to a scrutiny review. It can also draw people into the democratic process: in **Enfield**, for example, two people involved in a hospital closure campaign stood for election to the council because they had seen the potential of health scrutiny to influence service change and wanted to get involved in a more holistic way.

4.4 In “Accountability Works!”, we set out how **accountability** is thus one pillar supporting a healthy democracy, alongside public **involvement** and **transparency**, and how all three bolster traditional representative democracy by bringing more participative mechanisms into play. This is illustrated in the diagram below:



4.5 Scrutiny and challenge by non-executive councillors is a key way of ensuring that executive councillors are more accountable to local people for the services which they lead, and that public officials are more accountable to elected councillors and local people for the services which they manage. Democratic scrutiny complements transparency and provides a route by which the public can get involved to raise their concerns about published information and get things investigated and action taken—strengthening accountability between elections.

4.6 It should therefore be clear in any codification that where local government may be given new powers, these must be matched by strong accountabilities, to provide checks and balances on the exercise of power. Powers should devolve in the first place to the council as a corporate body, not simply as executive functions to the leadership of the council. If the executive functions of the council are expanded, the powers of other councillors to scrutinise and challenge the executive should also be expanded, and this should be clear in the codification. We think that this would help meet the government’s stated aim of moving from “bureaucratic accountability” to “democratic accountability”.

4.7 Secretary of State Eric Pickles has said that he only needs to know that local decision-making arrangements are “open, transparent and accountable”. We think that there are three tests for whether local arrangements not only deliver these principles but are also effective. They should be **credible** (in terms of having the powers, expertise and resources necessary to justify a position of local influence) and **legitimate** (in involving local people, and being led by people who are selected, or elected, by local people or groups). Furthermore, the system needs to have **utility**—it has to demonstrate that it can succeed in improving services, rather than just providing accountability for its own sake. This conclusion also derives from our recent research “Accountability Works”.

4.8 CfPS is developing an **Accountability Charter**, based on our research, which will enable all organisations spending public money to deliver public services to demonstrate how—in whatever way they consider appropriate to their local circumstances—they are meeting the principles of openness, transparency and accountability and doing so in a way which is credible, legitimate and useful.

4.9 We also think that there could be stronger links between local and national scrutiny in order to improve accountability across the board. The vital work carried out at national level by select committees should be promoted to local scrutiny committees, and local scrutiny committees’ findings about how services need to improve on the ground should be drawn on to inform the national assessments of such services by select committees. CfPS works to encourage these links in practical terms, for example during purdah, we facilitated a number of placements with local overview and scrutiny teams for select committee clerks to share experiences and perspectives, and this was felt to be useful by all concerned.

5. *Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

5.1 This is not our area of expertise so we have no comments.

6. *Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

6.1 It is difficult to compare English local government profitably with that operating in other countries. Lessons from elsewhere are likely to have limited application because local service delivery is bound up in wider structural and constitutional issues relating to the operation of Government more generally, and to social, cultural and political issues beyond the purview of this inquiry. Some limited lessons might, however, be learned from the experiences of Commonwealth countries whose systems of governance most closely resemble that of England, and to the United States, where strong and highly local civic leadership forms a central part of citizens' relationship with the state. However, the whole constitutional context is very different in America, with a population who are citizens (not subjects) with an elected head of state and clear separation between executive, legislature, judiciary and church.

6.2 Having said that, in South Africa, **Johannesburg** has for some years been trialling an executive/scrutiny split in decision-making which is now being rolled out across the country and it would be interesting for the inquiry to examine why they have chosen to adopt this model of local governance from English local government, particularly in the context of a very consciously and recently adopted written constitution.

7. *What is the value of existing attempts to codify the relationship between central and local government, through: the Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

7.1 The European Charter of Local Self-Government contains the broadest and most universally accepted set of principles around local self-government. Since these principles have been accepted (in spirit if not in law) by successive governments to varying degrees, but the imbalance of power between central and local government has been maintained and even extended further towards the centre, it could be argued that only by putting it on a statutory footing will the principles become meaningful and enforceable.

7.2 Putting the Charter on a statutory basis would add clarity and transparency to the relationship between central and local government. In other words, central governments could be scrutinised and held to account against a public commitment to localism articulated in quite specific terms. We think that this would be in tune with the thrust of the coalition's programme for government and its commitments to transparency.

8. *How would the "general power of competence" for local authorities proposed by the current Government affect the constitutional relationship between central and local government?*

8.1 A "general power of competence" for local government would not, of itself, prevent central government potentially interfering to an unwarranted degree in matters properly left to local discretion, since it only allows local authorities competence on issues which are not proscribed by national law. To avoid this potential for undermining the principle behind the "general power of competence", it should be underpinned by a "presumption of subsidiarity"—that decisions are made at the most local level appropriate to the nature and scale of the decision. This is clearly expressed in the European Charter of Local Self-Government at Article 4: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen."

9. *Additional comments*

9.1 To reinforce the points we have made about the need for strong local accountability to replace the previous approach of focusing accountability upwards to the centre, we would add that developing a culture of open decision-making is as important—if not more so—as any constitutional structures and codes. However, structures can be important. For example, the opportunity for objective, evidence-based challenge and review is key to developing a culture of open decision-making.

9.2 We are concerned that proposals to allow councils to return to the committee system of decision-making may lose this essential quality, since by definition service committees are designed to enable the majority group to get its decisions on services agreed by its members on the committee. While the principle of councils determining their own structures is entirely in accord with the European Charter of Local Self-Government, we believe that there are many strengths deriving from the opportunity for independent, objective scrutiny which it would be detrimental to accountability to lose.

9.3 For example, we believe that there is evidence of how scrutiny with real teeth can work well particularly in health scrutiny, where health overview and scrutiny committees have the power to refer consultations on major reconfigurations of health services to the Independent Referrals Panel who then advise the Secretary of State. The IRP have commented that health scrutiny committees have acted responsibly in exercising these powers, which have generally been used only as a long stop, when all local attempts to build consensus have failed. The IRP's view is that health scrutiny has been "good for everyone". While the recent Health White Paper initially proposed removing formal health scrutiny powers, responses to the consultation overwhelmingly backed retention of health scrutiny and we understand that the government is actively considering this. There were also concerns expressed about the potential abuse of the "call-in" power, when it was originally introduced, but other than in a few cases, by and large it has been responsibly exercised, with the average

number per authority remaining low at two to three per year. We believe that this demonstrates that when given real power, scrutiny can be trusted to exercise it responsibly and to support a culture of local openness and accountability.

9.4 The **Birmingham** “Who Cares” report is a further example of where scrutiny has acted in a genuinely independent and rigorous fashion to provide challenge and identify the key areas where action was needed to improve the service, and a summary of this example of strong local accountability is included in the attached “Successful Scrutiny 2010” report. The press coverage of the Birmingham scrutiny report (produced by a committee chaired by a member of the majority party) constantly referred to it as “external” and “independent” as if they could not believe that such a hard-hitting report could have been produced internally. The chair has now been co-opted by the executive to oversee implementation of his committee’s recommendations, and has himself argued that, having been a committee chair in the old metropolitan county council in the 1980s and 1990s, scrutiny provides more power to create change and improve things than the old system.

9.5 We look forward to expanding on any of the above points in our oral evidence session and can provide further examples of good practice on the ground to illustrate these points if that would be useful. We would like to thank the Committee for giving us the opportunity to contribute to this important and timely inquiry.

3 December 2010

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### Supplementary written evidence submitted by the Centre for Public Scrutiny

1. *Professor Tony Travers told us that “blurred accountability suits both central and local government”. Do you agree?*

Yes I do agree, so long as we are clear about who in central and local government we are talking about ie decision-makers. Blurred accountability does not help those whose responsibility at central and local level it is to hold decision-makers to account. This blurred accountability enables the government in particular in the current financial climate to get away with what we might characterise as the “centralisation of resources” and the “localisation of blame”. Reducing central regulation is fine but whatever the systems of accountability (not the same as regulation) we need to be clear who is accountable for what and to whom.

— *If so, would codification help to clarify where accountability—lies?*

Yes if the issue we discussed at the Committee is addressed—that greater consensus is developed across government about the relative roles of local and central government and that codification is not as per the status quo.

2. *If there were to be greater clarity about the responsibilities of local government, how would you limit the extent of Ministerial accountability in these areas?*

Ministers should be held to account where funding is allocated to achieve clearly state national aims, priorities and programmes. If central funding is allocated purely to achieve resource equalisation ie to areas that cannot raise their own resources through other income streams such as localised business rates that in itself should not give Ministers extra influence and therefore require them to be held to account for expenditure for those funds. Even where funding streams are allocated in support of government priorities voted by parliament, Ministerial accountability should be limited to “what” not “how” ie for the broad outcomes, not for prescribing the detail of how funding is to be spent at local level.

3. *In what circumstances, if any, should a Minister be able to intervene in local services to protect the citizen?*

Ministerial interventions should be limited to services for vulnerable children and adults and serious financial and governance mismanagement where the local authority has shown itself incapable of resolving its own performance despite support and other forms of intervention short of Ministerial intervention. The form of such intervention should be according to a clear terms of engagement between central and local government, and part of an agreed framework of self-regulation and improvement, which would make it clear that the first line of responsibility for local service delivery is the local authority as the body democratically elected and closest to the citizens affected. In this we would endorse the basic principles of the Local Government Group’s proposals around local self-regulation and improvement, although CfPS has argued for a much stronger role for scrutiny. We would reject the form of Ministerial intervention taken by Ed Balls when he intervened directly in the employment and work of Haringey over its handling of the Baby P tragedy, which raised serious questions about the extent of Ministerial power in the internal affairs of local authorities and was not based on any kind of agreement between central and local government.

4. *How should a local authority be called to account for serious mismanagement, if central intervention is to be avoided? Are periodic local elections enough?*

We do not think that periodic elections are enough. Mechanisms are needed to ensure accountability between elections. Stronger local scrutiny is part of this picture (see below and attached). Elsewhere CfPS have called

for a “web of accountability” which sees all the different forms of accountability working together more effectively than in the past:

- through the ballot box;
- through transparency and media investigation;
- through customer complaints and forms of redress;
- through internal performance and line management;
- through inspection, regulation and audit; and
- through scrutiny.

We have argued that accountability needs to go along with transparency and involvement, which we describe as the three pillars of a healthy democracy. This argument is set out in our publication, *Accountability Works* (attached plus a summary document).

We are developing an Accountability Charter (draft outline attached) which will enable organisations to work out all their different accountabilities and to determine for themselves (in consultation with their stakeholders) how they aim to be held to account. We think this is an appropriately localist approach to accountability as it puts responsibility at local level but requires organisations to be transparent, inclusive and accountable for their accountability. I would commend the Charter to the Committee.

— *Are mechanisms needed at a local level to resolve complaints about the organisation and management of local services?*

— *Do decentralised services require decentralised forms of democratic scrutiny?*

Yes. Decentralised services require stronger decentralised forms of democratic scrutiny. In our submission to the LGG on self-regulation and improvement (attached) we argue for local democratic scrutiny to have a clear power to trigger outside intervention (which could include improvement support from within the sector, as well as an additional inspection or audit outwith the scaled back approach now envisaged). We see this working in the same way as the current power for health scrutiny to refer a major health service reconfiguration proposal to the Secretary of State, which experience shows has been used responsibly by local scrutiny functions.

In my oral evidence I also argued for closer working arrangements between local and central democratic scrutiny functions, as I believe that both have much to learn from each other and could inform each other’s work. Thus a select committee inquiry into a particular topic could seek views and evidence more directly from local overview and scrutiny functions. Joint evidence sessions could take parliamentary scrutiny evidence sessions out beyond Westminster into the local areas most affected by a particular area under scrutiny and recommendations could then be made jointly to the appropriate decision-maker according to where accountability lies—locally or nationally.

##### *5. How should, or could the role of elected mayors affect democratic accountability?*

Although the numbers of directly elected mayors are limited, making comparisons and generalisations difficult, CfPS research about the effectiveness of scrutiny functions in Mayoral authorities does not reveal that they are necessarily more challenging or difficult environments in which to ensure strong and effective scrutiny. I should declare an interest in that my partner is an elected Mayor, I was a councillor in a mayoral authority and I am currently a government Commissioner for a mayoral authority in intervention! I think having an elected Mayor puts democratic accountability into sharper focus which is by and large a good thing in terms of clarity of responsibility although this is obviously sometimes uncomfortable.

In the mayoral authority currently in intervention, some of its difficulties arise from the electoral arithmetic which has meant that the Mayor can be voted down by the largest group but that this group in turn does not have enough votes to secure their alternative position in the major budget and policy decisions, leaving the authority in constant danger of stalemate. Some of its other problems predate the mayoral model and others can be more ascribed to personalities and individuals than the fact that one of them is a Mayor.

If elected mayors had more far reaching powers, which arguably they should have by virtue of their stronger local mandate, there would then be clearer grounds to argue for stronger scrutiny mechanisms to hold them to account for their decisions and the exercise of those powers.

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## Written evidence submitted by Localis

### PROSPECTS FOR CODIFYING THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL GOVERNMENT

A written constitution as an idea is potentially quite interesting, but codifying the relationship between central and local government does not require it. The relationship must be considered in the whole, including consideration of local government finance, performance management, interactions, administrative capacity and the presence of the centre in localities as well as a whole range of other factors. A constitution can be undermined by central government as the evidence of other countries shows. The driver of this interference is most likely the result of a range of factors that go beyond a constitution.

Whilst codification might not need to be constitutional, it is important that permanent measures are put in place to ensure that the centre cannot change the rules of the game at its own will. There are a number of ways that this could be achieved:

#### LOCAL GOVERNMENT FINANCE

Addressing the balance of funding between central and local government is the single most important change in addressing the relationship between central and local government in the UK. Whilst this must be coupled with sufficient and significant administrative powers, this would be one way of ensuring a long lasting and meaningful change in the relationship between central and local government.

Whilst the UK is not unique in central government's use of reorganisations, rate capping and other financial burdens, it is often said that the UK is one of the most centralised countries in the developed world, due in large part to the low degree of self funding that UK local government receives.

There are a lot of questions and problems as to how exactly you achieve the rebalancing, but one obvious place to start would be to look at how to re-localise business rates, which makes up a large proportion of the formula grant which is distributed by central government

#### PROVIDE LOCAL GOVERNMENT WITH GREATER ADMINISTRATIVE CAPACITY

Without responsibility for sufficient, and importantly, the right functions, local government will never be considered to be an equal partner with central government. The right powers need to be devolved to the local level, particularly those that are considered to be creating duplication or waste when run centrally. These would sit within a broad commissioning role for local government, and could be further enhanced by pooled or community budgets.

#### GIVE LOCAL GOVERNMENT A PLACE AT THE DECISION MAKING TABLE

There are many ways that this could be achieved. It may be possible to get a stronger local government representation in the upper house, although something similar could be achieved through a joint committee of both the houses.

#### CLARIFYING ACCOUNTABILITY AND RESPONSIBILITY BETWEEN DIFFERENT TIERS OF GOVERNMENT

Codifying what lies at what level will provide greater clarity and lines of accountability, so as to ensure that people are more likely to turn to their local councillor rather than their MP over the most appropriate issues.

#### LOCALISM TO RUN THROUGH DEPARTMENTS

The current Government has created a Structural Reform Plan, which is designed to provide a framework to ensure that localism is a theme that runs through every department, and not just CLG. There are a range of initiatives that would enable understanding of local government issues, such as secondments from central departments to local government.

#### GENERAL POWER OF COMPETENCE

The General Power of Competence is potentially a far reaching power that could help to codify a clear intention that local government is able to do whatever it wants in the interests of its residents.

### Written evidence submitted by City of London Corporation

This letter responds to the recent invitation to submit written evidence to the above inquiry. It is widely recognised that the majority of the mechanisms for the delivery of local services by local authorities are the result of national decision making. Such mechanisms are not always appropriate for implementation in the City, especially if, when designing these mechanisms, there is little or no scope for local flexibility.

As the Committee may be aware, the atypical nature of the administration of the City of London necessarily means that direct comparison with practices in the London boroughs, or local government more generally, is limited. By way of example, spending on education and social services usually represents the largest component of a London Borough's budget but in the City of London this element represents a fraction of the City's "local authority" spending. In contrast, the largest proportion of government grant to the Common Council (which exercises the functions of a local authority and police authority in the City) is for the police, a function which is not exercised by the boroughs or, for that matter, local authorities outside the capital.

The distinctiveness of the City Corporation's internal management and representational basis makes apparent the difficulty of attempting successfully to shoehorn the City into general internal management provisions applying to statutory local authorities. For this reason, the City has been afforded provision in a range of statutes which allow for the City to achieve the same policy objectives as in other authorities but in a way most suitable to the City's internal structures.

The executive arm of the City which undertakes local authority functions conferred by Parliament is the Court of Common Council. The Committees of the Common Council deal with particular subject or policy areas, whether they derive from local authority or other powers vested in the City. The members of the Common Council's Committees are not elected on a local government franchise under the Representation of the People Acts, but by a franchise set down by a combination of private parliamentary acts and the City's own legislative instruments, enacted by a procedure somewhat like Parliament's. Most of the members of the Common Council are elected on a business franchise which gives incorporated bodies an entitlement to appoint representatives as business voters based on the number of people employed. Such an arrangement does not, of course, exist at all in respect of statutory local authorities. In consequence the interests which most Committee members represent, and thus their accountability, is not (as in statutory local authorities) to residents, but to business. As with the statutory local authorities therefore, "local" services in the City of London include those for the small residential population but, unlike other areas, most services are geared toward the running of the City as centre of international business.

30 November 2010

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### Written evidence submitted by Henry Peterson, Consultant

#### EXECUTIVE SUMMARY

This submission to the Select Committee argues that:

- codification of basic constitutional principles, defining the interlinked roles of central and local government, would have benefits for the citizen and for those working at all levels of government;
- codification, and a legislative redefinition of the statutory status of principal councils in England should accompany the proposed general power of competence, and replace the ultra vires doctrine;
- the European Charter of Local Self-Governance provides the best starting point for such codification;
- the devolution settlement offers a potential model for a more radical devolution of decision-making in England;
- such moves would need to include a rethinking of the principles of Parliamentary accountability for public expenditure, opening the way to place-based budgets and more cost-effective use of resources;
- codification would assist in clarifying the Government's direction of travel (and destination) on the devolution of power and "localism", and would reduce current ambiguities in the Government's approach; and
- a widely drawn general power of competence would have profound effects on the constitutional status quo. Research evidence on "use" of the current wellbeing power is not a meaningful measure of levels of innovation by local councils.

#### QUESTIONS

1. *Should the relationship between central and local government be codified? Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

As the committee has noted, a number of local authorities have said in the past that codification is not high on their list of priorities, preferring instead early action on specific new powers for local government.



Both should be possible. Codification would help to widen public understanding of how government works, and provide a degree of security for the role of local government within our constitutional settlement.

From a practitioner viewpoint, local authorities currently operate in world where the groundrules can change at any time. As early witnesses to the committee have evidenced, incoming governments can (and regularly do) substantively re-interpret the role of local government. These changes may be abrupt, or may take several years to develop. Either way, those trying to make sense of decision-making and public service delivery at local level find the ground shifting under their feet.

One of the products of our unwritten constitution is that the average citizen, seeking an answer to the basic question “how am I governed?” will search in vain for an answer. His or her local authority website may give an explanation of how the local council reaches decisions. The Parliamentary website does a good job in explaining how that institution works. But there are few sources which set out the basic principles underlying the interdependent relationship between the two levels of government.

The LGA publication *one country two systems*<sup>6</sup> points up how the very existence of local government has largely disappeared from more recent texts on the UK constitution, whereas 19th century classical accounts of British government machinery would have focused on the connections between democratic local government and a parliamentary state. What the LGA refer to a “*continuum of government*”, with taxation and representation at central and local level, is no longer coherently or widely promulgated as the core of our system of government.

Historians and analysts of our constitutional settlement have traced the shifts of in roles, relationships, and the “balance of power”. Your predecessor committee explored these in depth. Similar enquiries were carried out by the Joint Select Committee in the 1995–96 session of Parliament.<sup>7</sup> Much of the evidence submitted to that inquiry, including the case for moving to European principles of subsidiarity, remains relevant today.

The Principles of Local Government,<sup>8</sup> as drawn up in 1991 by the Association of County Councils, the Association of District Councils, and the Association of Metropolitan Authorities, long predate the 2007 “Concordat” (and are arguably better drafted and closer to the European Charter).

Codification would help in three main respects:

- It would remind people that our system of government is a continuum of national and local. The latter will often have the most direct impact on their daily lives. Citizens need to be more aware that their avenues for influencing their democratic representatives are twofold, and that their local council (or councils, in two tier areas) has autonomy over many issues and is not merely an agency of Whitehall.
- It would provide local government with a principled basis for challenging those central government directives which appear to have no relevance or utility to a local context.
- It would help to shift the culture of central and local government away from what has become an unhealthy relationship of master-agent on the one hand and growing subservience on the other, restoring important elements of pluralism in our democracy.
- It would help to secure a more consistent role for local government, avoiding the widely varying interpretations which different central governments have adopted over the past 30 years.

## 2. If codification is appropriate, what degree of independence from central government and what powers should local government be given?

The most recent formal attempt to articulate the level of independence of local government culminated in the December 2007 Concordat agreed between CLG and the LGA.

This expressed the roles of local and central government in terms of “rights and responsibilities”. The “right” of a local council to address the priorities of their communities was asserted, subject to the proviso “without unnecessary direction and control”.

This took matters little further. As pointed out above, successive governments have taken very different views on what constitutes “necessary direction and control”. This formulation is very different from that of European principles of subsidiarity, as the committee has already heard from witnesses such as Roger Gough.

A perennial concern of Whitehall has been that left to their own devices, local councils will pursue too disparate a range of priorities and policies, contrary to the overall national interest. There is little evidence that this would be the case. In the early years of the Local Area Agreement framework (2004–10), the last Government insisted initially that a significant number of indicators and targets in the “outcome framework” developed for LAAs should be mandatory on councils and their local partners. Top-down control of the detail of policy implementation was seen as essential.

<sup>6</sup> *One country, two systems* LGA December 2001 chapter 1

<sup>7</sup> Select Committee on Relations between Central and Local Government, which reported under the title *Rebuilding Trust*. Written Evidence HL Paper 97-II

<sup>8</sup> These principles, as agreed by the ACC, AMA and ADC (forerunner bodies to the LGA) are set out on pages 120–121 of HL Paper 97–11, as part of evidence to the 1995 Joint Select Committee which published *Rebuilding Trust*

In practice, the degree of convergence between the selection of targets made by local partners, and those that Government Offices sought to impose from above, was sufficiently high (70–80%) for Whitehall to relax in later rounds of LAAs. Mandatory targets were dropped.

The question “should there be limits to localism?” is being explored by the CLG Select Committee. Complex and difficult issues of universality, uniformity, local discretion and postcode choice are involved. Ultimately this must surely be a matter of political choice. There can be no objective standpoint from which to judge whether political priorities chosen locally are going to prove “better” or “worse” than a set chosen centrally, as the judgement is in the eye of the beholder. International experience does not suggest that devolved and decentralised models of government produce worse outcomes overall.<sup>9</sup>

Without any form of codification, public servants work in a world in which views of the “right” level of independence of local government can change swiftly.

As an example, the new Government has chosen to take a very different view from the old on what is now described as “top-down performance management and bureaucracy”. Government business plans show Whitehall departments intoning the opposite of what they held as unalterable truths only eight months ago. Departments now rival each other in their insistence that the old ways of ensuring delivery of policy at local level were misguided, and the new approach the only formula for success.<sup>10</sup>

Only three years ago, the central/local relationship was defined in the CLG/LGA Concordat as follows:

Central government has the responsibility and democratic mandate to act in accordance with the national interest. Acting through Parliament, it has the over-riding interest in matters such as the national economic interest, public service improvement and standards of delivery, and taxation.<sup>11</sup>

Three years on, central government takes a different view on where responsibility lies for public service improvement. Central micro-management is no longer the answer, and the LGA case for sector-led improvement is largely accepted.

In briefing material provided by civil servants to Eric Pickles on the abolition of the Audit Commission (and published on the CLG website in response to a FoI request) the latest Whitehall view of this aspect of the constitutional settlement appears to have changed markedly from the past. The Ministerial briefing note reads.<sup>12</sup>

With localism, local public bodies principally need to operate within a framework of local democratic accountability and transparency. They still need to have accountability to Parliament for the use of public funds **but there is at most limited accountability to Government** (my emphasis). The aim therefore is to create an accountability framework fit for a localist world.

This principle that local public bodies have “*at most limited accountability to Government*” will come as news to the many thousand public sector employees who have been employed in recent years in upward reporting to Whitehall, as part of the former National Performance Framework. They can be forgiven for being sceptical that this change of heart will last for long.

Small wonder that public sector employees, let alone citizens at large, are frequently confused as to respective roles of central and local government. There is little solid to cling on to. Hence any progress on codification, establishing broad principles rather than attempting to lock in place a set of functions for local government, would be of benefit.

### 3. *How, if at all, should the status of local government be entrenched, or protected from change by central government?*

Various options have been floated in the past, in efforts to get round our historic national reluctance to adopt a written set of constitutional principles.

A Local Government Act which incorporates a codification of the central/local relationship might last no longer than a single government. But it would at least be a start. The 1972 Local Government Act (as is often pointed out) managed to lay down the principles of local authority decision-making in a form that lasted for nearly three decades (besides being much simpler than its 2000 successor).

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<sup>9</sup> *With a little help from our friends* Roger Gough, Localis and LGA, Jan 2009

<sup>10</sup> See for example the Home Office Business Plan which states “*The Department will no longer impose unnecessary burdens and bureaucracy on the police through top-down targets, the Policing Pledge and a confusing set of national policing bodies and ring-fenced grants*”. It is unsurprising if public servants at local level do not know whether they are coming or going.

<sup>11</sup> Paragraph 5 of Concordat agreed between CLG and LGA, December 2007 at <http://www.communities.gov.uk/documents/localgovernment/pdf/601000.pdf>

<sup>12</sup> Document 20, Part B, as published on CLG website at <http://www.communities.gov.uk/corporate/foi/disclosure-log/disclosurelog2010/abolitionauditcommission/>

The committee may wish to consider whether the **general power of competence** will prove a game-changer in terms of entrenching the status of local government. If defined sufficiently broadly<sup>13</sup> such a new power presumably has the effect of overtaking the *ultra vires* doctrine? Will this prove a timely moment to re-frame the legislative status of local authorities?

Given powers to do anything lawful, unless specifically outlawed by legislation, the role of councils, as a layer of government extending beyond defined functions, duties and powers, is finally affirmed. Even if the new power allows for specific exclusions to be introduced via secondary legislation (as has been hinted recently) this shift of position from a “vires” principle would be achieved.

Depending on how the new power is framed, this may prompt a useful re-visiting of the question of what exactly is an English principal local authority, in strict legal terms?<sup>14</sup>

Another factor likely to re-awaken public interest on the role and status of local government vis-à-vis central government is the impact of expenditure cuts. The question of “who decides”, with its related issues of local and national electoral accountability, could return with a vengeance as a range of former public services begin to disappear.

*Subsidiarity—are we developing a unique English version?*

New government policies prompt the question of whether the UK is pursuing a different form of subsidiarity as compared with European peers. The Coalition has committed to “*promote the radical devolution of power and greater financial autonomy to local government and community groups*”.<sup>15</sup>

Direct devolution of power or resources to community organisations or social enterprises, or other bodies which are not “emanations of the state”<sup>16</sup> is surely a rather different form of “subsidiarity” than that pursued elsewhere in the EU?

Professor George Jones has labeled such devolution as “sub-localism”. Where it involves the transfer of power or funds to organisations which are not public bodies, or which have no obvious public accountability, and with locally elected representatives bypassed on the way, contentious issues will surface.

As currently being explored by the CLG Select Committee, the “localist” agenda is now taking different forms. These might be described as:

- Big Society localism (power and resources devolved directly to non-state bodies such as mutuals and social enterprises, described as “sub-localism” by Professor George Jones).
- “silo localism” (where individual Whitehall departments shed responsibilities outwards, with little regard to how these will then be integrated with other public services at local level).
- “integrated localism” (where local authorities continue to attempt a convening or “system leader” role, as with ideas around place-based budgets, Community Budgets, and local strategic partnerships/public service boards).

A firmer constitutional positioning of local government, with a wide general power of competence, would place councils more firmly at the heart of the current agenda on devolution and localism. This would follow a more European model of subsidiarity with a series of spatial levels of representative government, and decisions made as close as is practicable to the citizen.

If the results of this committee’s endeavours lead to no moves towards codification, or to a more lasting constitutional settlement, this will be interpreted as a conscious move by Government to resist European models of subsidiarity in favour of a dispersed and fragmented form of pluralism.

Proponents of the Big Society argue that it will release innovation and competition, and be more responsive to citizens. Others raise concern over the risks of fragmentation and potential loss of democratic accountability.

The recent call for evidence from HMT/Cabinet Office on public service reform<sup>17</sup> signals a direction of travel that suggests that local authorities will play a diminishing rather than growing role in providing integrated public services to the citizen.

<sup>13</sup> The Conservative policy document Control Shift described such a power as one which would “*give local authorities an explicit freedom to act in the best interests of their voters, unhindered by the absence of specific legislation supporting their actions. No action—except raising taxes, which requires specific parliamentary approval—will any longer be ‘beyond the powers’ of local government in England, unless the local authority is prevented from taking that action by the common law, specific legislation or statutory guidance*”.

<sup>14</sup> This question is not a simple one in legal terms and surfaced in the 1990–91 case of *Hazell v. Hammersmith & Fulham*, in which the banks argued (without success) that the council had acted as a “municipal corporation” under legislation dating back to 1835 rather than as a modern local authority. UK local government would benefit from constitutional clarity as to its permanent statutory form, as exists in most countries.

<sup>15</sup> Coalition Programme for Government at [http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

<sup>16</sup> The term used in EU law and defined by the ECJ as: A body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the state, for providing a public service under the control of the state and has for that purpose special powers beyond that which result from the normal rules applicable in relations between individuals.

<sup>17</sup> HMT and Cabinet Office call for evidence on public service reform at [http://www.hm-treasury.gov.uk/consult\\_publicservice\\_reform.htm](http://www.hm-treasury.gov.uk/consult_publicservice_reform.htm)

The focus is on “greater diversity of service provision” and “new forms of accountability” While there is reference to devolving power from central to local, the words “local government” or “local council” do not feature in the document (the term “local authorities” featuring once, in a section on personalised payments).

Instead, the section on “increasing democratic accountability at local level” has a curious paragraph reading *“The White Paper will set out how we intend to move services from a culture of ‘bureaucratic accountability’ where public services look upwards to serve Whitehall and central government, to a culture of democratic accountability, where public services are accountable to those whom they serve at a local level. This can include both a new and dynamic supply side, with multiple providers from the private, public and not-for-profit sector, so that individuals can choose the service that best fits their need and hold them accountable through choice. In some areas, it can also mean the introduction of elected individuals and bodies”*. (my emphasis)

Whitehall pronouncements on public service reform have been known in the past to ignore (or simply forget?) that we already have a framework of “locally elected individuals and bodies”. In their eagerness to introduce “new forms of accountability”, it does not seem to occur to civil servants that existing councils fulfill this role, and could do it better if freed to get on with it.

Much of Big Society rhetoric harks back to the 19th century, but sometimes seems to forget the origins of local government. It may be time for a reminder that councils are themselves the product of local communities coming together to form not-for-profit corporations in our major cities, to address the social, economic and environmental evils of their day. Community-led, “bottom-up” in their creation through separate Local Acts of Parliament, energetic, innovative and celebrating local variance. What could be more Big Society?

As has always been the case, some form of local representative body will be needed in future to make the choices and judgements in circumstances where competing local interests cannot all be met. Someone will be needed to exercise leadership of “place”, bringing together a fragmented public sector to best effect for any one locality.

Amidst these multiple strands of “localism”, with a new “right to provide” and a “community right to challenge”, will some counter-balance be needed? A re-assertion of the role of local government, through codification, would assist.

How else are choices and trade-offs to be made, when differing interest groups within the Big Society cannot agree? Who is to determine between conflicting priorities? It is not clear, as yet, how the Big Society agenda will meet these timeless requirements of a “governing” role.

*What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

Were Parliament able to settle, in some permanent form, the relationship between central and local government, the consequences would be significant.

The citizen would get a better answer to the question of “who’s in charge of this or that aspect of my life”. There would be a move back towards a form of local government that meant what the label suggests—a genuine *governing* role at the local level with democratically elected representatives empowered to make the decisions that the current period of economic austerity requires.

Over time (and in the case of the devolved administrations it has taken a decade or more), public understanding of differing levels of accountability for government decisions would grow. The UK public now understand the fact that issues such as prescription charges and higher education fees are handled very differently in Scotland and Wales.

In the devolved regions, the Scottish Parliament and Welsh Assembly come across as a “continuum of government” (to use the LGA’s phrase). It is hard to conceive of either body making pronouncements about public sector reform, without reference to the role of local government. The Scotland Performs website<sup>18</sup> communicates a more coherent, citizen-friendly view of what the totality of government is doing, as compared with Whitehall’s recently published Business Plans. Local partnership working, between all parts of the public sector, working is meshed more firmly into the system.

England too needs this level of connectedness between the citizen, and local and central layers of government. Codification of the central local relationship, coupled with other measures suggested in this and other evidence to the committee, would be a step towards this.

Such measures would also take the Localism debate, as being examined by the CLG Select Committee, to a different level. Once Parliament formally accepts the principle that local councils form a constitutional layer of government, with devolved powers and responsibilities framed in broad terms (rather than as delegated and specific “functions”) the route to place-based budgets and “whole system” delivery of public services becomes that much easier.

<sup>18</sup> at <http://www.scotland.gov.uk/About/scotPerforms>

4. *Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

Yes, in my view. It is hard to see insuperable obstacles to a codified settlement with English local government which followed the model of the Scotland Act 1999. Matters “reserved” to Parliament would be defined. All matters not listed would be deemed to be devolved.

Such reform would need to be accompanied (as it was for Scotland and Wales) by restatement of the principles of Parliamentary accountability for expenditure on locally-based public services. In written and oral evidence to the CLG Select Committee on Localism, I have argued the case for the 152 upper-tier local authority areas in England to be handed a devolved single block grant, or place-based budget, covering the totality of local public expenditure as currently included within Local Spending Reports.<sup>19</sup>

The sums involved would of course be much smaller than for Scotland or Wales as a region (although not of a different order to Wales for a large county area such as Kent or Essex). The principles on which the block funding was devolved could potentially be framed in terms as admirably simple as those defined by HMT for Scotland, Wales and Northern Ireland. These read:

“Government funding for the devolved administrations” budgets is normally determined within spending reviews alongside departments of the United Kingdom and in accordance with the policies set out in this Statement. The United Kingdom Parliament votes the necessary provision to the Secretaries of State; they make payments to the devolved administrations.

The allocation of public expenditure between the services under the control of the devolved administrations is for the devolved administrations to determine.<sup>20</sup>

5. *Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

International comparisons suggest that a codified constitutional settlement is not enough on its own. Evidence already given the committee has highlighted two other factors that contribute to a successful central/local relationship:

- a shared culture of public service, with interchange of personnel and routine joint working between layers of government (with Nordic countries such as Denmark often cited as examples); and
- the existence of a permanent body which can referee the relationship and take a view where differing interpretations of a constitutional settlement become a point of friction (with examples previously provided to the committee by Roger Gough).

**In terms of constitutional settlements** in comparable countries, the LGA has previously recommended that Government should legislate along the lines of Article 118 of the Italian Constitutional Law (2001). This reflects the subsidiarity principles of the European Charter, and would mean that councils are presumed to have the powers to provide any public service not explicitly reserved as the unique responsibility of a national body in the interests of assuring uniformity of service.<sup>21</sup>

**In terms of the organisational cultures of different layers of government**, there remains a long way to go to bridge the historic UK divide between civil service and local government. Two decades of top-down centralism were only beginning to be reversed in the closing years of the previous government. Centralist arrangements which fostered adversarial relationships between local public servants and their Whitehall counterparts have only recently begun to disappear.<sup>22</sup>

There are also signs of silo centralism re-asserting itself in a number of areas. Whereas local councils and their partner agencies were making progress under the last government, in establishing a coherent “family” of local partnership bodies covering the full span of public sector activity, there is no explanation from government as to how Police and Crime Panels, Health and Wellbeing Boards, and Local Enterprise Partnerships will interrelate.

Each body looks as though it will have a different status (some planned to be “statutory” and others not). They will operate at different spatial levels, and their accountability arrangements, local and central, will remain beyond the comprehension of all but the very specialist.

<sup>19</sup> Evidence to the CLG Select Committee at <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmcomloc/writev/localism/contents.htm>

<sup>20</sup> HMT note on the UK Public Expenditure System

<sup>21</sup> *One country, two systems*, Local Government Association December 2008

<sup>22</sup> Apart from the generality of the “top-down” or “parent-child” relationship between Whitehall and local government, there are many specific examples of institutionalised relationships which have promoted adversarial behaviour. A classic was the arrangements imposed by Whitehall on local area agreements, and the related CLG Performance Reward Grant. These involved quasi-contractual negotiation over the extent to which localities had achieved “stretch” on Government targets, thereby earning Reward Grant. The arrangements led to very resource-intensive haggling over small measures of output, coupled with a variety of “gaming” behaviours as experienced under other target regimes in the NHS and elsewhere. At one stage Government Office officials were instructed not to reveal the details of their negotiating briefs, or to do anything to assist areas in achieving their targets, as this would compromise the contractual nature of the negotiations. For local government, this was a long way from the “joint endeavour” principles envisioned at the start of LAAs.

These sorts of disjointed initiative, not for the first time, will complicate life for all those at local level trying to make sense of Government policy across the piece. Local players will find a way to cope (as they always do), but these dysfunctions do not help working relationships between the centre and localities. Government Office staff, who in some regions played a very positive role in bridging this communication gap in recent years, are now disappearing from the scene.

Overall, working relationships and culture still remain a long way from the sense of “joint endeavour” and “mature dialogue” that formed a key part of the original vision for the Local Area Agreement framework.<sup>23</sup> Despite the efforts of CLG to assert the importance of place and locality across Whitehall, and to build a culture of collaboration and co-design, advances made from 2004–10 remained patchy. The Institute for Government has charted the position in more depth.<sup>24</sup>

By contrast, both the constitutional settlement and working culture in countries such as Denmark appear to be very different. Local authorities there have wide powers allowing them (for example) to deliver integrated provision of health and social care. This is coupled with a positive and well entrenched collaborative working culture, between all tiers of government. The need for more formal arrangements to encourage collaboration seems much less, as a result of this history.

**In terms of a body to referee any central/local settlement**, various options have been put forward:

The 2007 Concordat envisaged, as a modest start, that the former Central Local Partnership would monitor the operation of the agreement. The CLP ceased to meet shortly afterwards, and no such monitoring took place.

The LGA proposed in 2008 that Parliament should set up a committee charged with pre-scrutinising legislative proposals with local government implications.<sup>25</sup> Lord (Michael) Bichard also made the case for such arrangements.

A standing select committee of parliament, to oversee a constitutional settlement, was proposed by the predecessor CLG Select Committee.

6. *What is the value of existing attempts to codify the relationship between central and local government, through: the Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

As is widely acknowledged, the 2007 Concordat signed between the LGA and CLG failed to have traction.

The agreement was reached between the LGA and a single local government department. There was little sign of efforts to ensure buy-in from other government departments when the agreement was first made. There has been every sign subsequently that the rest of Whitehall pays the Concordat little heed, or is unaware of its existence.

Placing the European Charter on a statutory footing would seem a substantive and worthwhile step, provided Government was genuinely committed to its terms. This could be either in the full form adopted by the UK Government in 1999 (but largely ignored in practice). Or it could be in a form with various exclusions (as the Charter allows) but at least fully debated by Parliament and with real ownership by legislators.

Following adoption, it would still need Parliament to play an active part in successive policing of the results, or in mediating where differences of interpretation emerged.

As Roger Gough has pointed out to the committee, the stumbling block to UK statutory commitment to the Charter has always been the financial provisions, with Article 9.4 reading “*The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks*”. Until wider issues on the balance of funding are resolved, this obstacle to agreement will remain. But this Government’s commitment to review funding arrangements for local government, and to re-localise the business rate, opens up possibilities.

A more radical approach to place based budgets, with block grant allocations made to upper tier local authorities, reflecting the totality of public expenditure in the area, would also change the financial context. This would be the case whether or not such “local budgets” were accompanied by devolution of new tax-raising powers or alternative “buoyant” income streams.

7. *How would the “general power of competence” for local authorities proposed by the current Government affect the constitutional relationship between central and local government?*

A widely drawn general power of competence would have the effect of replacing the ultra vires doctrine, as the statutory framework within which local government operates. Local authorities would cease to approach local needs and challenges with the question “would we have powers to do anything about this issue?” and would instead ask themselves “what can we and our local partners do to help?”

<sup>23</sup> See ODPM prospectus for Local Area Agreements, July 2004

<sup>24</sup> *Performance Art*, Institute for Government, November 2008

<sup>25</sup> Recommendation in LGA publication *One country two systems?*, December 2008

The more progressive and ambitious local authorities have always asked the second question before the first. But the first still surfaces, and can hold things back. The doctrine of vires is a constant reminder to local government that it can act solely at the discretion of Parliament, and has no independent autonomy and no certainty of a long-term future.

Ministers have argued that local authorities have shown insufficient interest in using the existing wellbeing power.<sup>26</sup> I would suggest that research evidence on the “use” of the wellbeing power, on which such statements are based, has its limitations and that there are many reasons why true “use” is significantly under-recorded.<sup>27</sup> Statistics or percentiles of formal “use” of the power are not (in my view) a meaningful measure of the appetite across local government for taking on wider responsibilities, or for innovation.

The reality on the ground is that progressive local authorities, through joint working with health, police, and other agencies, have become involved in a far wider range of activities than 30 years ago. The legislative framework providing specific vires for such activities has always been some years behind the curve.

The way in which a new general power of competence is framed, and its relationship with the ultra vires doctrine, will therefore be critical. The committee will have the benefit of being able to see the outcome on this issue, before finalising its conclusions.

3 December 2010

### Written evidence submitted by Core Cities Group

Core Cities Group is a network of the local authorities of England’s eight largest city economies outside London: Birmingham; Bristol; Leeds; Liverpool; Manchester; Newcastle; Nottingham; and, Sheffield. These cities drive local and underpin national economies. Working in partnership, we aim to enable each City to enhance their economic performance and make them better places to live, work, visit and do business. The Core Cities Group has a track record of more than 10 years, led by the City Leaders, taking in all three major political parties. Collectively, the Core Cities primary urban areas:

- deliver 27% of the economy—more than London;
- are home to 16 million people; and
- contain 28% of the country’s highly skilled labour force.

Core Cities are critical to the delivery of increased private sector growth and jobs, as well as to the protection of the most vulnerable in society during tough financial times.

#### RESPONSE

1. *Should the relationship between central and local government be codified? Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

The devolutionary thrust of new Government policy has been welcomed by Core Cities, particularly the Local Growth White Paper and the announcements on Tax Increment Financing, long championed by our Group.

<sup>26</sup> Former Local Government Minister John Howell made a series of statements to this effect. Eric Pickles said in a speech on July 2010 “*But at the same time, I ask myself the question: why is it that only around fifteen per cent of councils have used their power to promote wellbeing? Why a measly fifteen percent?*”

<sup>27</sup> The main piece of research on use of the wellbeing power was commissioned by CLG and undertaken by INLOGOV at the University of Birmingham and is at [http://www.inlogov.bham.ac.uk/seminars/policy\\_practice/pdfs/well\\_being\\_power.pdf](http://www.inlogov.bham.ac.uk/seminars/policy_practice/pdfs/well_being_power.pdf). The study explored awareness and use of the power, through a variety of means. It acknowledges the issue of “under-recorded” use of the power, acknowledging that in some authorities studied, the approach was “*we assume now we can do things. We just get on with it*”. I would suggest as a practitioner (and former local government Monitoring Officer) that such an approach (up until the LAML case) was much more widespread than this and other research studies on use of the power has shown. This is for several reasons:

- formal use of the power, to meet the construction of the Act, requires a local authority to exhaust all other possibilities of vires, and to then take a view on the balance of economic, social, and environmental benefits to be gained from the proposed action. This is a resource-intensive and elaborate process.
- the idea that individual councils retain the legal capacity to analyse every one of their decisions, identify which legal powers provide vires and hence where the wellbeing power is needed, no longer reflects reality (if it ever did).
- for most councils, there may once have been a time when administrative good practice meant that every committee report and decision involved input from the legal department, citing the relevant legislation. Those days have long gone in many councils. Achieving such rigour requires plentiful specialist legal advice on hand, with an encyclopedic grasp of ever-changing legislation.
- Where clearly innovative activities are involved, lawyers may become involved or alternatively, risks taken. Where new activities make obvious good sense, and risks of challenge are low, issues of vires may never be flagged up or explored. Many local authorities ventured into economic development and community safety activity in the 1970s and 1980s long before the relevant legislation was on the statute book.
- the wellbeing power was launched by Government as a “power of first resort”. This naturally encouraged councils to treat it as a “comfort blanket”, reducing the need to analyse the legal basis for decisions or to identify precise vires.
- When involved, local government lawyers were more cautious, and pointed to the significant restrictions that the wellbeing power retained. The LAML judgment has now had a widespread impact in confirming this cautious view.

However, we do not see much appetite to codify the relationship with Central Government and, within the current parameters of the discussion, are not clear what added value it would bring. The issue for our cities is more one of autonomy in reality, rather than agreement on paper, that will allow us to drive public sector reform and efficiencies on the one hand, and free us up to deliver greater private sector growth and jobs on the other. This is particularly important for Core Cities in their role as economic drivers.

We have recently received news on the first wave of Local Enterprise Partnerships, including most of the Core Cities, with more to follow. Core Cities' provide the driving economic force at the centre of such partnerships, and this role needs to be recognised in future policy decisions. It is critical to reinforcing Core Cities as drivers of sub-national economic growth that they—and these partnerships—are provided with sufficient freedom to direct investment to the shared aims of creating private sector growth and jobs. This in turn will require that devolution of powers and resource (or control over resource) occurs to local government—and the combined authority in Manchester—in order to satisfy accountability and governance arrangements. This is particularly crucial in the most economically important areas.

Waiting until the relationship is codified to do this will undermine the good work already undertaken by local partnerships, and there are three priority areas for immediate action to support the delivery of economic growth, the primary aim of LEPs.

Firstly, Government needs to work closely and quickly with us to deliver the first wave of LEPs rapidly and help provide economic leadership to others. Core Cities have the capacity not only to establish LEP Boards quickly with our business partners but also provide leadership, support and advice to others. Speedy LEP implementation in city-regions will be essential to provide confidence to the business community, but this means working on implementation together and ensuring that all relevant departments across Whitehall work with us to assist front-runners and devolve to them. Our concern is that without the real ability to direct investment, LEP partners may lose confidence, which is not something we want. There is a real opportunity for change, but the moment must be grasped.

Secondly, we should work together to find the best ways of leveraging private sector investment for private sector growth. We can add value to the package of devolved funding, local economic incentives and stimulus by working with Government on creative ways of combining funding streams so that maximum leverage can be gained. For example, it is in all our interests to ensure that we have a right model of Tax Increment Financing, implemented quickly, that Business Increase Bonus and the New Homes Bonus operate in a complimentary way and that the best options are appraised for retention of business rates.

Thirdly, we want to work to strengthen our cities as economic hubs for innovation and sectoral growth. Many of the proposals and ambitions in the Local Growth White Paper can only be delivered through large urban areas. Core Cities have many of the building blocks already in place—the assets, skills and infrastructure needed. Therefore there should be an at least implicit “locational policy” about where some new initiatives will deliver most value. For example, Core Cities are natural locations for *Growth Hubs* and *Technology and Innovation Centres*, proposed in the Growth White Paper.

The critical issue is that central government respect the autonomy of local government and continue to cede responsibility to them. This is more of a priority than codifying the relationship.

*2. If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

Regardless of whether codification occurs, local government requires a greater degree of independence from the centre than that currently enjoyed. There is overwhelming evidence (eg *State of the Cities Report, 2006*) that large urban areas which have more devolved financial controls are more economically competitive, across and beyond the EU. The OECD average for locally raised finance through taxation is 55%. In the UK this is just 17%, with local authorities in direct control of only about 5% of all taxation—Council Tax. This leaves our cities less able to enhance their competitiveness, which disadvantages the country's economic recovery.

We therefore welcome the devolutionary thrust of the new Government's policies and want to work with them to ensure that we all get the greatest economic return on public investment. Our recent report “*Core Cities: Driving Recovery*” ([www.corecities.com](http://www.corecities.com)) demonstrates how our cities can deliver more private sector growth, jobs and prosperity through a more devolved approach. The difference amounts to some £33.5 billion extra GVA in Core Cities' authority areas alone, and more than 750,000 jobs, potentially contributing a significant level of alternative private sector employment.

Most powers that are required stem from the issue of a lack of local financial control. Tax Increment Financing, recently announced by the Government, is top of the list of new financing powers and mechanisms.

Because the proposed model of TIF for the UK effectively requires an element of business rate retention, our understanding is that it is being examined as part of the overall LGRR. Whilst there is a clear logic to this, it should not delay the implementation of TIF. Ministers have been clear in their announcements that TIF will happen and there is an ambition to enact it quickly. The groundwork for TIF has been done in detail and a robust model developed with Whitehall, with a number of schemes on the starting blocks in our cities, some already at Green Book standard. We understand that there is also an ambition to legislate following the LGRR by Summer 2011. However, as above, business rate retention is a complex matter and, should the outcomes of



the LGRR be protracted, we would want Government to be in a position to make a start with TIF in Summer 2011. We believe that this is achievable either—ideally—through legislation, or some other route, for example Section 31 of the Local Government Act, the Secretary of State’s grant giving powers, to at least get a first wave of schemes up and running. The recent enactment of TIF in Scotland provides a further incentive not to delay TIF for England.

Although it is the maintenance of an existing rather than new power, prudential borrowing is central to the ability of our cities to drive growth and manage public spending reductions and should not be hampered by any reduced access to the Prudential borrowing system. Doing so would appear to fly in the face of localism and severely constrain our ability to:

- support private sector growth;
- create the conditions for increased employment;
- undertake public sector transformation and reform; and
- manage public spending reductions.

Business rate retention is an area of great interest to our cities, and something that will be explored in detail as part of the Local Government Resource Review. We are in favour of retaining the benefit of the increase of business growth locally, but this is a complex area. How, for example, would councils continue to be funded where rate take did not meet budget requirements? The right model would enable greater local control and determination, and would give a boost to the democracy of major cities, allowing them to more fully exploit local economies as drivers of growth. It could also assist in the move toward a “single pot” approach to capital finance advocated by many of our cities as part of driving efficiency, reform and private sector growth. However, the wrong model could drastically worsen the prospects of even quite large economic areas.

Skills delivery and welfare reform are critical both in dealing with deprivation and in promoting future economic growth within our cities. Previous attempts to align skills and welfare investment and commissioning within functioning labour markets have been patchy and, in our view, not gone far enough. We understand the Government’s desire to promote wholesale national reform of the welfare system through a set of national drivers, but we would argue that this can only be really effective when aligned closely with skills investment and when it takes account of the individual differences and needs within different labour markets. Indeed, this argument is supported by the Government’s own recent publication, *Understanding Local Growth* (BIS and CLG, 2010). This paper argues that previous economic policy failed to fully take into account the diversity of places, focussing primarily on correcting market failures from a national perspective in order to even out economic performance across the country. The paper highlights how circumstances in different places are uniquely subject to powerful market forces, arguing that attempting to act against these forces is unrealistic and ultimately unsustainable.

There were important lessons in the Total Place initiative that we would like to see go further. In particular, we are interested in enhancing the ability of places to pool capital finance, and to use this across the whole of the public sector including transport and other infrastructure finance, to create maximum leverage in attracting private sector investment. This will in our view create the best return on public investment for a place, not just in terms of public services, but also in private sector growth and jobs.

We would also be interested in working on propositions for local authorities and their partners, potentially through the LEP arrangements, to be able to set additional taxes alongside the business community that can then be reinvested in enhancing the business base.

### *3. How, if at all, should the status of local government be entrenched, or protected from change by central government?*

Providing some long term certainty regarding any future change will be important, whilst balancing this with the ability to remain flexible to changing circumstances. Core Cities is a cross party group, and local government itself represents a wide democratic base, therefore any changes should wherever possible have broad and strong cross party agreement at the local level, as well as in the Commons and the Upper House. It would be a backwards step to institute change that lacked permanence.

### *4. What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

Local authorities are already accountable to local politicians—their elected members. Codification is unlikely on its own to do much to change these circumstances. However, our view is that an enhanced package of local powers will go a long way to increasing local democratic engagement and to cohering and securing the delivery of Local Enterprise Partnerships. Additional local financial control will create greater democratic interest, engagement and accountability at the local level simply because there is greater influence to be exercised, and the ability to make a greater difference to important local issues.

5. Does the devolution settlement provide a relevant model for a possible codification of the status of local government?

A codification could provide the opportunity for a formal framework within which local government could work and know the boundaries of their responsibilities. This could also maintain clarity in the levels of autonomy that central government allow local government. It may help codify the role of local government in regards to shaping their local area and holding central government to account if it infringes upon local government roles and responsibilities. It is uncertain at this stage whether the devolution settlement would provide a relevant model.

6. Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?

The work undertaken for the *State of the English Cities* (ODPM 2006) and the EU funded COMPETE project may provide some examples. In addition the work on the EU funded ESPON programme (led by Professor Michael Parkinson and John Moores University, Liverpool) may provide some useful examples. The underlying issue however, is that we are a heavily centralised state in England relative to our EU and North American counterparts.

7. What is the value of existing attempts to codify the relationship between central and local government, through: the Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?

As above, the central issue for Core Cities is one of gaining greater local control over the levers of economic growth. These other attempts, whilst they may have intrinsic value, have not led to the required devolution.

8. How would the “general power of competence” for local authorities proposed by the current Government affect the constitutional relationship between central and local government?

A general power of competence is seen more as a mechanism to allow local authorities to act in the interests of their places, communities and businesses than something that has at its heart a constitutional shift. The effect may in fact be the same, ie that constitutional change is implied in the power, but its aim should, in our view, be to empower local authorities, through a very permissive piece of legislation, to do anything that is not expressly forbidden by law to advantage their places and fulfil their mission. It should avoid the pitfalls of the previous too tightly drawn Well Being power, which has run into legal challenge and complication.

3 December 2010

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### Written evidence submitted by Unlock Democracy

#### ABOUT US

Unlock Democracy (incorporating Charter 88) is the UK’s leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. For more information please see [www.unlockdemocracy.org.uk](http://www.unlockdemocracy.org.uk)

#### EVIDENCE

“Local government is more than the sum of the particular services it provides. It is an essential part of English democratic government.”

*The Royal Commission on Local Government in England (the Redcliffe-Maud report), 1969*

Unlock Democracy is pleased to have the opportunity to submit evidence to the Committee on an issue that we believe goes to the heart of a functioning and vibrant democracy in the UK. Unlock Democracy is a non-governmental organisation committed to achieving a citizen-based constitutional reform settlement and a modern and balanced democracy in this country. Unlock Democracy’s constitution states that we campaign to “ensure that power is exercised as close to people as is practicable”.

Unlock Democracy believe that a written constitution is the best way to set out and entrench the powers of local and national Government. We support a constitutional convention for the UK as our preferred way forward, but we have always been open to other reforms that bring our ultimate goal forward. We believe that any moves towards codifying the relationship between central and local government could make a genuine contribution towards that goal while refreshing the quality of local democracy throughout Great Britain.

The current party consensus on “localism” is misleading. The localism currently being gifted by central government to local authorities is very limited and may ever well shift political blame for cuts in services that the government itself will make necessary through its own cuts to local government. Meanwhile, local

government is just as much a captive of the centre as it was before May, and what has been given can be taken away just as quickly as it has been given.

Central government has the power of life or death over local government. Local government has no constitutional protection against central government. Local authority finances, policies and priorities may all be dictated by central government, which could if it so wished abolish local government altogether. Indeed, there are many who seriously believe that successive governments have in reality already done so in practice. At the very least, taking the Redcliffe-Maud warning into account, it is evident that local government has become *less* than the sum of its parts—in that it lacks sufficient financial and political discretion to reflect local choice, even in the basic statutory services which are left to its care.

Our view is that the relationship between central and local government urgently needs to be codified to give local government the constitutional protection that it lacks and to guarantee its autonomy. Most comparable countries have independent local government, backed up by constitutional guarantee. The United Kingdom is a signatory to the European Charter of Local Self Government, but our governments show no respect whatever for its stipulations:

- Local authorities must have adequate financial resources of their own.
- Central government must not undermine local authority powers by administrative actions.
- Local authorities should have powers of general competence.
- Local authorities should have freedom of choice as to the way in which services are operated and in their internal organisation.
- Local authorities must be able to determine the rate of their own taxes.

These stipulations seem to Unlock Democracy to provide the substance for codified constitutional protection for local democracy in England—and for a major challenge to the false rhetoric of localism. Thus we recommend, first, that local authorities must be created in law as independent and sovereign entities in order to guarantee their autonomy. They would then be able to undertake as of right all those duties for which they are elected locally; and they would be free to do whatever is not prohibited by law, turning on its head the present injunction which prohibits them from doing things which are not expressly allowed by law. Local councils, like all other public bodies, would have to perform their duties within a legitimate inspection regime and according to equality and human rights laws.

The current state of affairs is squeezing the life out of local democracy in England. Able people no longer enter local politics in sufficient numbers to bring enterprise and diversity to its work. Local voters do not turn out in sufficient numbers in local elections to express local choice fully and to give local authorities realistic mandates for their policies, and the first-past-the-post electoral systems distorts the party choices they make.

Over the last 40 years, whatever success governments have had nationally, they have delivered neither economic nor social progress at the local level. We have seen short-term finance, continuing cuts in funding, constant interference, distortion of local priorities, a plethora of schemes and bodies to circumvent local democratic decision-making, barely understood by anyone but a new cadre of local professionals.

Virtually every democratic nation and every business has concluded that the current economic complexities are way beyond the capacities of a command economy. They speak, and deliver on, the language of decentralisation, devolution, local budget holding, participation, and team working. Yet for local government, the centre seems stuck in outdated and inefficient command politics.

It is at this point that we wish to enter a proposal for the manner in which any move towards a codified settlement should be conducted. It is not a process that can be dictated and delivered from the centre alone. Unlock Democracy believes that citizens, localities and local authorities should be the driving force behind the shift towards a meaningful localism. We have already identified what should be the substance of a new and independent local government; and we would add that local authorities should be given the power to determine their own electoral arrangements.

In the case of our large Counties and Cities they have populations that mean that in many cases they should be considered Regional rather than Local Authorities. For example Kent, has 1,394,700 people, less than 300,000 fewer than Northern Ireland, and more people than ten US states and four EU member states. Even local authorities with relatively small populations, such as Cornwall with a population of 529,500, have a greater population than Luxemburg, Tasmania and Wyoming.

In the short term, we recommend that the Committee press for the constitutional protection of local government, bringing into effect the devolution of such financial and political powers to the existing local authorities that can be managed.

In the long term, there has to be a re-adjustment of regional and local structures that brings local authorities closer to the localities for which they are responsible; and which recognises regional and local aspirations. Westminster should determine broadly what powers could be delegated, rather than Westminster deciding how large local authority areas should be, and powers they should have. We suggest that existing local authorities,

groups of authorities or citizens could propose their own structures and petition the centre. Ultimately the decisions should be put to a referendum in the area concerned.

6 December 2010

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### **Written evidence submitted by the Association of Council Secretaries and Solicitors (ACSeS)**

This response is submitted on behalf of the Association of Council Secretaries and Solicitors (ACSeS). The Association represents the heads of legal and democratic services of local authorities in England and Wales. Most ACSeS members are lawyers and many are designated by their local authorities as the statutory Monitoring Officer.

We welcome the review of the relationship between central and local government and the Committee's inquiry around codifying the relationship. Local government has become increasingly constrained by central government through legal control, financial control and in recent years by strategic control and regulatory control and statutory guidance. It feels as if central government manages the what, the when, the how and the why of local government activity, leaving little scope for local initiative. Central government has wanted to deliver state services and its means have been those of both macro and micro management. After a long history of independent pioneering of local services, Local government is now suffocating from its more recent role as an agency of the state.

We wish to make the following points in response to the questions in the Issues and Questions Paper:

#### QUESTION 1

The legal relationship between central and local government is determined by thousands of individual pieces of legislation, some of which provide for local discretion within a prescribe framework, some of which prescribe duties with varying degrees of discretion, some of which provide discretion but subject to specified requirements, some of which impose legal obligations applicable to other parties, with a host of other variables in between. Some more traditional functions remain a matter for local discretion, other local functions have become subject to a national statutory framework, and more recent functions are imposed as an agency of the state service. Central government financial provision has become detached from specific functions.

It is difficult to see how a codified relationship between central government and local government can be a legally binding arrangement when the legal relationship is already embodied in a mass of legislation.

If there is to be a wider constitutional codification, a statement on the legal position and relationship of local government with reference to each function would seem to be essential. Whilst central government continues to be paymaster for a substantial proportion of local government expenditure, further clarity is essential on the degree of control central government requires in relation to the services central funding supports.

This will take time as much of it is about untangling history.

In the absence of the finite detail, the attempts at securing a political understanding hitherto, between central and local government, have been no more than helpful wish lists.

There continues to be merit in developing a more constructive relationship as a stepping stone for legislation then to follow. A political relationship could be embodied in some sort of statutorily endorsed protocol listing a number of agreed principles. These should include:

1. Consultation—no central government decision affecting local government without involvement of local government.
2. Free flow of information.
3. A general presumption that Parliament can make decisions in the national interest that impact on local government.
4. A general presumption that local authorities have the freedom to do what they want to do in the interests of their communities (subject as necessarily in the national interest to national requirements).
5. Reflection of the principles in all legislation applicable to local government and clarity and restatement of local government legislation.

#### QUESTION 2

Under current law, local government is clearly dependant on Parliament through legislation for its existence. The independence being sought politically is the scope and clarity to make decisions at local level in all areas of activity other than those limited activities where there is a clearly determined national strategy impacting on those activities, or it is in the national interest that local decisions are subject to national criteria (eg road traffic regulations).

A power of general competence (rather than a general power of competence—there is a difference; the latter is limited) would provide a simpler legal basis for doing all the things that a LA might reasonably want to do

in a rapidly changing world. Such a power would only be meaningful if it was coupled with a mass repeal of legislation which has provided LAs with the sort of powers they have needed to this point.

#### QUESTION 3

Unless central government can demonstrate that a decision (ie legislation) is in the national interest, (meeting agreed criteria) local authorities should be entitled to presume that their structure and status may not be changed.

The logical process for challenging or defending such presumption would be the Courts. The arrangements for Welsh and Scottish devolution appear to be working on a legislative platform, and there would therefore seem to be scope for English local government to do likewise.

#### QUESTION 4

It will take time for the electorate to grasp the benefits of a restatement of the central—local relationship. Accountability should be clearer but it may be presumptuous of politicians to expect the electorate to respond enthusiastically. The local government structure remains complicated and the functions many. Clarity in the relationship will help local councillors to assume responsibility and leadership where such is enabled.

#### QUESTION 5

Welsh and Scottish arrangements have the benefit of starting from scratch and, with both the Scottish Government and Welsh Assembly and their local authorities trying to make it all work effectively, there is a greater scope for optimism and less regard to any poor relationship history. English local authorities and central government need to consider both the principles of an effective working relationship at a political level and the detailed legal relationship at the practical level.

#### QUESTION 8

Local authorities have demonstrated over the last 150 years a rich approach to innovation, generally involving seeking local act powers, or consolidation of powers to support a wide range of community infrastructure. The ultra vires rule has however been fundamental to this approach and general enabling powers have been given limited interpretation.

A power of general competence would help to substantially diminish the effect of the rule and allow for a wider approach to performance.

A general power of competence appears to be of more limited scope and will inevitably lead to some continued hesitancy.

We look forward to seeing the recommendations of the Committee.

6 December 2010

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### **Written Evidence submitted by Sir Howard Bernstein, Chief Executive, Manchester City Council and Chair of the Wider Leadership Group of the Association of Greater Manchester Authorities (AGMA)**

#### INTRODUCTORY REMARKS

Thank you for the opportunity to contribute to this important inquiry by the Committee. I would like to make some introductory remarks about central and local government relations that might be helpful in providing context and perspective before I move on to answer the Committee questions.

Part of the problem about localism and achievement of outcomes on the ground is that there is still a tension between local government, its relationship with central government and delivery. Though the Lyons Inquiry—which reported in 2007—had its remit extended to look at the form and function of local government, we still lack a powerful national analysis about the role of local government as agents of change, as shapers of places where people want to live, work and invest and as transformers of public services. That’s why at a time when we see localism given real stimulus at a national level, I think we are still witnessing national government models of delivery—for business support, the Work Programme, skills and so on—being perpetuated. These centralised models have not been very spatially focussed and therefore in my view may not be able to deliver as effective outcomes as locally designed solutions.

Further, though the idea of “place-shaping” has become more mainstream since the Lyons Inquiry, there is still no clear definition of the thresholds for devolution to places. For example, that functional economic areas are the appropriate level for spatial planning, housing, transport and labour market productivity; that local authority and neighbourhoods are the appropriate level for creating places where people want to live and spend their leisure time; and that the individual level is for exercising influence over service provision and immediate priorities. We need such an analysis if we are to address not just constitutional reform but the future shape of

local government finance—which the Government is committed to address in the Local Government Resource Review early next year. It is needed for creating the conditions for growth too.

The issue is therefore not just about powers but an acceptance of the fundamental role which good local government can and should play in providing the key integration and leadership role between all public sector agencies in an area to deliver efficient, quality public services which will deliver better outcomes. It is also the key to reducing the demand for high dependency services which is a national priority given the need for fiscal re-balancing.

*1. Should the relationship between central and local government be codified?*

*Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

Manchester City Council and the AGMA group of local authorities in Greater Manchester (GM) are enthusiasts and practical exponents of devolution. We want devolution because we feel that we are closer to our areas and communities than central government. If given more control over the levers and resources we can drive more rapid economic growth in our areas and improve quality of life in our communities.

The Manchester approach for many years has been to create wealth through private sector growth, but public sector reform—and reducing welfare dependency in particular—is the other key strand of our strategy. It is this latter aspect where constitutional reform in its broadest sense and devolution above all, is important.

We know that we need to increase economic productivity in Greater Manchester and to do this we need to be able to bring services and functions together at the level at which they can be most effective. Frequently, this means at the community or neighbourhood level where they are closest to the recipient. Using a model of integrated service delivery and integrated commissioning which we are developing, we are combining a range of central and local government services to reduce dependency. This work is taking place in GM in some of the most deprived communities in the country. We know from our early work in these city-region pilot areas that by working with our partners in the Department of Work and Pensions, Jobcentre Plus, NHS and other agencies, we can develop new pathways into work for residents that until now have existed on benefits. This is good for the residents concerned, good for our economy and good for the public purse.

Our Manchester agenda is therefore very much about reform as it is also about growth. Manchester wants ever improved relations between central and local government. In recent years through the type of work I have described we have made good headway, but there is undoubtedly more work to do.

It is in this context that I approach the question of constitutional reform: Will it help us to deliver the reform that we need to deliver improved economic and social outcomes on the ground?

By way of background the work on public service reform and growth in Greater Manchester is building upon 20 years of joint working across ten local authorities. Greater Manchester—of which the City of Manchester is the heart—forms our functional economic geography and it is to this wider sub-regional area that we are seeking greater autonomy and devolution of powers and resources. Much of what GM has achieved in recent years has been without formal legislation and without a codified constitution.

There are clearly advantages and disadvantages to legislative approaches governing the relationship between central and local government. However, whilst in the past the City Council has argued<sup>28</sup> for a new constitutional settlement to enshrine the rights of local government, I now think our recent experience would suggest that this can be done in ways that utilise existing legislation, tools and mechanisms.

For instance, AGMA is currently the only local authority group in the UK which is utilising powers under the Local Democracy, Economic Development and Construction Act 2009 to formally establish a Combined Authority to better co-ordinate transport, economic development and regeneration across the ten districts. We are also seeking greater devolution to the newly approved GM Local Enterprise Partnership (LEP) of a range of functions currently exercised by the North West Development Agency. We are very eager to ensure that our GM LEP when it begins work from 1 April next year, is given the maximum amount of devolution possible so it can drive the private sector job creation and growth to support our public sector reform on the ground.

Overall, as far as Greater Manchester is concerned we have reached a position where we are about to take responsibility for large functional areas to the GM Combined Authority. Working with other sub-regions across the North West we are also well-advanced in developing transitional arrangements for the functional responsibilities carried out by the North West Development Agency. Whilst we are still in discussion with government departments about principles and practical devolution of some of these functions, we hope it will include most if not all of what is currently delivered by the NWDA.

In the case of Greater Manchester I think it is clear that the process of devolution, which began under the previous government and continues under this one, has begun to provide the foundation for more self-reliant and autonomous local government. What is less clear now than it was in the past, is what added value a codified constitution could provide to aid a process that is already happening. Whilst existing and forthcoming

<sup>28</sup> MCC stated in our evidence to the CLG Committee on the Balance of Power: Central and Local Government in 2008: Under the current settlement, local government will always be subject to the whims of central government. A new constitutional settlement is required that enshrines the rights of local government and local democracy.

legislation in the form of the Localism Bill will, hopefully, provide for the greater devolution that we seek, the question remains whether it is necessary to go through a process of codification that may not ultimately deliver better outcomes on the ground beyond those which are already achievable.

In summary, it is my view that devolution to increase the autonomy of local government needs to continue. This is already bringing an increasing recognition of and respect for local government by central government, and greater joint working to deliver better outcomes on the ground. In this context, the merits of codifying the relationship between central and local government could possibly be outweighed by the time and effort that will be involved.

*2. If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

Whether or not codification is appropriate, there is a need to provide more powers to local government.

There are already ways that local government can provide more powers for itself through existing legislation: The Local Government and Public Involvement in Health Act 2007 allow local authorities the autonomy to establish local bye-laws without the approval of the Secretary of State. Section 239 of the Local Government Act 1972 allows local authorities to promote a Bill in Parliament. The Manchester City Council Act 2010, which received Royal Assent in April, gave the Council extra powers to control people illegally street trading in busy shopping areas. AGMA is also exploring a byelaw approach to implement a minimum unit price for alcohol across the Greater Manchester footprint. Whilst there are still many practicalities to be considered with regards to this scheme it may also help the campaign for national legislation for a minimum alcohol unit price.

On wider issues we have argued many times in the past and in our submission to the “Balance of Power” CLG Committee inquiry for greater financial autonomy including the ability to raise a higher proportion of funding locally. Many studies have shown that urban areas with greater financial autonomy have greater economic competitiveness. A 2004 study by Michael Parkinson<sup>29</sup> found that a lack of powers at the city level helps explain the poor economic performance of UK cities relative to their European counterparts. The OECD average for locally raised finance through taxation is 55%. France is very near to this at 54%, whilst the UK is well below at around 17%. The raising of finance through local taxes also brings with it stronger local accountability.

This greater financial autonomy can come in many forms and these are matters that will be considered as part of the Local Government Resource Review. For interest, with respect to Tax Increment Financing which in Greater Manchester we plan to take this forward by linking it to other funding streams to maximise the delivery of growth within GM. Rather than focussing solely on particular projects, there will be a focus on the wider area within which a range of schemes boosting economic growth and employment will be located. Taking an area-based approach will reduce the risk of job displacement and increase the prospect of increasing GDP; boosting employers’ demand for workers; reducing levels of worklessness and welfare payments. Supporting our approach to public service reform outlined earlier, this approach would not only to boost productivity across GM and encourage maximum retention of additional business rates for investment, but it will have the wider benefit to the national economy in helping to drive growth in one of the country’s key growth points.

In order to make these plans as effective as possible we need the ability to exercise control over the various investment streams to secure the maximum net impact on sustainable private sector growth. This needs to include joint powers of prudential borrowing without imposed limits; the devolution of a “capital pot” for funding of transport, housing, economic development and environment and greater ability to pool funding between different agencies to invest locally.

One issue that arises in relation to this question is that capacity and capability for greater devolution has developed at different speeds in different places. As a consequence there may be a need for differential approaches to devolution across different places and perhaps different types of authorities. In GM devolution to our Combined Authority will be enshrined in law before anywhere else in the UK. It is likely that other groups of local authorities will wish to follow this approach.

There is a strong case for advanced and differential devolution to cities which has been well set out in the Core Cities group recent report “Core Cities: Driving Recovery”<sup>30</sup> which demonstrates how England’s eight core cities—including Manchester—can deliver more private sector growth, jobs and prosperity with greater devolution from central government. This case is further elaborated in the evidence they have submitted to the Committee.

*3. How, if at all, should the status of local government be entrenched, or protected from change by central government?*

This question of entrenchment or protection is difficult because the British constitution has been based on the sovereignty of Parliament. Parliament is the supreme and final source of law and it can change the constitution by passing Acts of Parliament. A change of government often means changes to previous legislation. It has been suggested by some constitutional commentators that some Acts should have the status

<sup>29</sup> Parkinson M et al (2004) *Competitive European Cities: Where do the Core Cities stand?*, London: ODPM

<sup>30</sup> *Driving Economic Recovery: A New Partnership with a New Government. Core Cities Group 2010. www.corecities.com*

of “constitutional statutes”—such as the Human Rights Act 1998 or the European Communities Act 1972—making them more difficult, though not impossible, to change. Arguably, legislation affecting the role and functions of local government could be treated in the same way. A further development of this notion might be that constitutional statutes could only be agreed via a referendum and could only be amended or repealed via a referendum.

As discussed in Q7 below the CLG Committee recommended that the European Charter for Local Self-Government should be put on a statutory footing which could provide some protection of the status of local government. The Charter considers that public responsibilities should be exercised by the authorities closest to the citizens, a higher level being considered only when the co-ordination or discharge of duties is impossible or less efficient at the level immediately below. This begins to address the issue of appropriate spatial level that I raised in my opening remarks. The sentiments of the Charter are very much in line with the process of devolution that is currently taking place, but it lacks the definition of thresholds for appropriate functions being exercised at appropriate levels that I think would be helpful.

Though constitutional solutions are attractive there are also cultural issues that underlie the tensions between central and local government. These are often the reason why central government wishes to change the role of local government by either adding additional responsibilities or taking them away. In order to deliver the transformational change in central—local government relations that will enable local government to fully deliver the localism agenda, there needs to be a significant cultural shift in attitudes at a national level. These may happen over a period of time and may or may not be assisted by legislation.

A very simple initiative that could help address some of the cultural issues and aid understanding, would be to have some form of guidance for both the civil service and local government to work to. The type of manual that I believe Sir Gus O’Donnell has produced (but not yet published) covering relations of central government with Europe, devolved governments, peers, civil servants and Councils could be very helpful to aid understanding of the role that different tiers of government play. It could also help ensure that all government departments work to the same set of principles for devolution and that the role and value of local government is recognised. It may be particularly helpful to have such guidance once devolution from the regional tier is completed.

*4. What consequences should codification or other change in the relationship between central and local government have on the accountability of local authorities to elected local politicians, local people and central government?*

From the perspective of Greater Manchester there are strong governance arrangements already in place for AGMA which are being both widened and strengthened as we develop the Combined Authority and the GM LEP Board.

A codification or otherwise of the relationship between central and local government is unlikely to change these local arrangements which provide robust and accountable governance across GM but at the same time maintain the autonomy of local Councils and local Councillors and their accountability to their local electorates.

Leaders of the ten GM Councils sit on the AGMA Executive Board and each Council will nominate a member to sit on the GM Combined Authority. AGMA has joint Committees for Waste, Minerals, Planning, Health Scrutiny and statutory functions. It also has a series of Commissions for the Economy; Planning and Housing; Environment; Health; Public Protection; and Improvement and Efficiency. Elected members are appointed to these bodies from each of the ten Districts at the AGMA AGM.

We believe we have the most robust, democratic and accountable governance arrangements of any city-region in the UK. We believe that these arrangements should be decided upon and maintained locally. If further devolution—including financial devolution—is provided then there will be an increasing interest in and accountability of local government to the local electorate on an increasing number and range of services and functions provided.

*5. Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

Devolution to Scotland, Wales and Northern Ireland was confirmed by referendum thereby arguably giving greater democratic legitimacy. As mentioned in answer to Q3 above, consideration could be given to allowing referenda on constitutional statutes thereby encouraging greater democratic involvement. It remains however, that the devolved bodies are not sovereign and could in theory be repealed by Parliament. Whilst I do not consider that the devolution settlement needs to be replicated in England there is a need to ensure that devolution to the local level continues swiftly supported by existing and forthcoming legislation.

In relation to finance, the Scotland Bill is intended to give the Scottish Parliament more control over raising the money that it spends. Whilst Holyrood currently raises about 15% of its revenue, this could increase to 35% and allow the Scottish Government to receive a 10% share of income tax raised in Scotland. As the devolved Parliaments and Assemblies receive greater fiscal autonomy, the lack of fiscal autonomy at local level in England may become more apparent.



As outlined under Q2 above local government in general in the UK needs to increase the share of finance that is raised locally. Again these are questions to be dealt with in the Local Government Resource Review.

6. *Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

The trend in continental Europe has been to decentralise and regionalise decision-making, placing powers at the lowest level. Continental cities have responsibility for a wider range of functions which affect their economic competitiveness than do their English counterparts. Continental cities typically have more diverse forms of local revenue and more buoyant tax bases, which make them less fiscally dependent upon the national state and more proactive in their development strategies.

In France, decision-making used to be highly centralized, but in 1982 national government passed legislation to decentralize authority by giving a wide range of administrative and fiscal powers to local elected officials. In March 2003, a constitutional revision changed the legal framework towards a more decentralized system and has increased the powers of local governments. In the German system intergovernmental relations between the Federation and the Länder reflects the fact that the Länder have always been the main administrators not just of their own laws, but also of most federal and directly applicable European legislation.

Again, the direction of travel in these continental examples is what is important and which needs to be replicated in the UK.

7. *What is the value of existing attempts to codify the relationship between central and local government, through:*

- *the Central-Local Concordat?*
- *the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

The CLG Committee recommended that the European Charter should be enshrined in UK law. In this case Bills would need to be declared in compliance with the Charter and impact assessments carried out. This could help deliver greater authority for local government but may only re-inforce a devolutionary process that is already underway. Presenting this as a National Charter for Local Self Government might help re-inforce the Government's existing commitment and initiatives for devolution.

The CLG Committee found that Central-Local Concordat had made little difference to relations between central and local government. The most important changes that have happened in Greater Manchester are as a result of the devolution of powers, responsibilities and finance from national to local level and this process should continue.

8. *How would the "general power of competence" for local authorities proposed by the current Government affect the constitutional relationship between central and local government?*

This would give greater statutory basis for local government to do anything that it feels necessary not restricted by other legislation. However, it does not fundamentally alter the relationship in the way that a written constitution would. It would, however, be a key part of the devolutionary measures described in enabling the greater autonomy of local government and is therefore welcome.

6 December 2010

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### Written evidence submitted by the Mayor of London

#### INTRODUCTION

- The Mayor of London welcomes the opportunity to respond to the Committee's inquiry on the prospects for codifying the relationship between central and local government.
- The Greater London Authority (GLA) is unique in the British local government system—it is a strategic regional authority consisting of a directly-elected executive Mayor of London, Boris Johnson, and an elected 25-member London Assembly with scrutiny powers.
- The Mayor is responsible for the strategic direction of London, mainly through key strategies for transport, planning, economic development and the environment. However, London's boroughs deliver the majority of the day-to-day services that keep the capital running smoothly, such as waste collection, licencing, arts and leisure services, children's services and schools. The Mayor works closely with all of London's boroughs to deliver the priorities set out in his statutory strategies.
- One of the Mayor's key election pledges in 2008 was to build closer working relationships with London's boroughs. Two years on this has been achieved through the introduction of a London City Charter, agreed by the Mayor and London Councils, which expresses their commitment to work together as effectively as possible within the current system. Both the Mayor and London Councils have also argued that further devolution and strengthened self-government is necessary. The Mayor therefore welcomes the government's proposals to devolve more power away from Whitehall to the Mayor and the London boroughs.

- This submission consists of two parts. Firstly, it sets out the structure and objectives of developing and delivering the City Charter and secondly provides details of the Mayor's devolution proposals.

#### CITY CHARTER

- Soon after the 2008 Mayoral election, the Mayor signed a Memorandum of Understanding with the Chair of London Councils agreeing to start a process of discussion leading to the drafting of a London City Charter and the creation of a Congress of London's elected leaders. In 2009 the Mayor and London's 33 borough leaders agreed the first ever City Charter at the first Congress of Leaders. The Charter represented a new era in the working relationship between London's boroughs and City Hall and all London boroughs support the principles underpinning the Charter.
- The Charter is a voluntary agreement between London Councils and the Mayor focusing on mutual cooperation. It does not have the power to dictate to individual boroughs, London Councils or the Mayor what they should do on certain issues. It is a "live" working document that will develop as the unique system of London governance evolves. It is not a legal or quasi-statutory document, nor is it about adding an additional layer of bureaucracy. It is also not intended to be comprehensive or cover all the various ways in which the Mayor and the boroughs interact. Rather, the intention is to identify a number of key issues for Londoners where urgent action is needed by the Mayor and boroughs and where collaboration will accelerate progress.

#### CITY CHARTER ORGANISATION

- The Charter formalises the working relationships across London government by establishing a forum, the Congress of Leaders, where the Mayor and London's borough leaders can meet twice a year to discuss key issues affecting Londoners and develop ways of working together to overcome these issues.
- Between meetings of Congress, a politically-led Steering Group and an officer-led Charter Board support and progress agreed areas of work. The Charter Board brings together the most senior public officials responsible for service delivery in London and is co-chaired by the Chief Executives of the GLA and London Councils.
- All elements of the Charter are delivered using existing resources. This project is intended to make more efficient use of resources that already exist within the GLA and London boroughs, not to duplicate or add unnecessary costs.

#### PROGRESS TO DATE

- In 2009, the City Charter identified the key areas for joint action as:
  - delivering the best possible transport outcomes for London;
  - supporting economic recovery in London including tackling worklessness;
  - reducing serious youth violence in London;
  - responding to climate change in London;
  - improving police accountability and more effective commissioning;
  - improving health outcomes in London; and
  - jointly campaigning for resources for London.
- Moving forward two years, this work has evolved and the papers progressed by Charter Board and agreed at the most recent meeting of Congress on 9 November included:
  - the impact of and response to the Spending Review of London government;
  - progress on devolution proposals;
  - work to explore ways to promote infrastructure investment;
  - the development of a Carbon Reduction Group to drive forward carbon reduction activity across London;
  - joint work leading up to and following the 2011 Census;
  - a road concordat for London; and
  - improving partnership information sharing to reduce harm and crime.
- A key achievement of the most recent Congress was agreement to work together to lobby central government on the need to charge utilities companies for digging up the capital's busiest roads. Congress also agreed to adopt a Roadwork Concordat for London, and to work together on the capital's response to CSR.

## DEVOLUTION OF POWERS

- In July the Mayor published his proposals for devolution, which propose a new chapter in the devolution of Whitehall functions to London. They form part of a truly localist approach to public service delivery in which real and meaningful discretion is exercised democratically at the appropriate tier of government.
- The Mayoral model of government, with a strong Mayor and scrutinising Assembly, has been a success for London since it was created in 2000. Through democratic debate and a clear electoral mandate, it has given the city the leadership it needs in key policy areas such as transport infrastructure, policing, affordable housing, opportunities for children and young people and environmental improvements. While the Mayoralty has proved itself to be a mature, democratically legitimate institution and has substantial informal powers, outside of transport and policing, its formal powers are, however, minimal. The GLA is highly dependent on national government and the current London settlement falls well short of the city government arrangements in place in other world cities, such as New York and Tokyo.
- London's devolution settlement remains weak and there is much room for improvement, particularly in ensuring that we see decisions taken by the local communities they will affect. Following the election of the government pledging further devolution, the Mayor, London Assembly and London Councils wrote jointly to the Secretary of State for Communities and Local Government, Rt Hon Eric Pickles MP, on 23 July 2010 setting out our proposals for further devolution in London. The proposals would further strengthen the roles of the Mayor and Assembly, resulting in clearer lines of accountability for public services and investment in London, as well as significant efficiencies in service delivery.
- The key features of devolution in London, as elsewhere, should be that people can clearly identify who is responsible for what, and that the allocation of responsibilities between national, regional and local government should make sense to people; responsibility and accountability should reside at the level appropriate to the function in question. There must also be effective arrangements in place to provide transparency and accountability to the public, recognising that these are integral elements of effective public services. That is why the package of proposals includes new responsibilities for the Mayor and local authorities, and strengthened powers for the London Assembly to hold the Mayor to account.
- The Mayor therefore welcomes the government's proposals to devolve power in London, which were published on 1 December. With these new powers the Mayor will have the opportunity, along with other important changes, to streamline housing strategy, support the development of the capital's economy and deliver regeneration programmes across the city. Furthermore, it simplifies delivery of the vital regeneration activities in the east of London and out into the Thames Gateway, bolstering our ability to deliver a long-term vision for the Olympic Park and the Lower Lea Valley and secure a lasting legacy from the London Games in 2012.

## CONCLUSION

- In voluntarily signing up to the City Charter, the Mayor and London's borough leaders have demonstrated their commitment to ensuring all levels of London government work together to make London a better place for those that live and work in the capital.
- Further devolution is now, however, both possible and necessary in London. It is time to recognise the maturity, efficiency and accountability of London's unique system of self-government.

*7 December 2010*

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## **Written evidence submitted by the Local Government Information Unit (LGiU) (L&CG 17)**

### INTRODUCTION

1. The LGiU is an Award Winning Think-Tank. Our mission is to strengthen local democracy to put citizens in control of their own lives, communities and local services. We work with local councils and other public services providers, along with a wider network of public, private and third sector organisations. Through information, innovation and influencing public debate, we help address policy challenges such as demographic, environmental and economic change, improving healthcare and reforming the criminal justice system. We convene the national Children's Services Network and have launched two social enterprises Local Energy Ltd and the Centre for Public Service Partnerships. LGiU welcomes the opportunity to submit written evidence to the Committee, and would value the opportunity to expand on the issues we have raised in oral evidence.

2. LGiU welcomes the Committee's Inquiry, which comes at an important point in evolution of the relationship between central and local government. Some important steps have been taken towards empowering local communities, but governance in Britain remains among the most over-centralised in the world. LGiU has welcomed the moves in accountability from the centre to community partnerships and away from constraining targets, but believes more is needed. A fundamental shift is needed in the balance of power from Whitehall to local communities. At present, decisions about services and public spending priorities are taken too far from

the people who will be affected by them, and who want to influence them. Yet challenges for communities at a time of scarce resources, societal and environmental pressures can be best managed at local level. It is urgent that communities, neighbourhoods and citizens are engaged on issues that affect them, and strong responsive councils should be the framework for achieving this.

*Should the relationship between central and local government be codified?*

3. LGiU believes that the ability of locally elected representatives to make democratic decisions and to represent and support the participation of people locally should be protected within the constitutional framework. The chequered history of local government over the last fifty years shows how the relationship between central and local government has been subject to the widely varying views on the role and responsibilities of local government on the part of central government. We support a broad statutory statement of the role and responsibilities of local government in order to:

- Create the foundation for a positive and sustainable partnership between central and local government by providing clarity and mutual recognition.
- To provide a coherent framework, necessary as the complexity of multi-level government expands.
- To underpin further devolutionary measures.
- To bring balance to the framework incorporating the three spheres of central, local government, and the citizen, confirming that the primary accountability of local authorities is to local electorates.
- To energise local government by providing authority for the responsibilities which will be handed down in the Localism Bill.

*Should codification of the relationship between central and local government be considered in the context of a wider constitutional codification?*

4. The 1998 Devolution Acts have set the UK on a course of constitutional renewal unseen since the passage of the 1911 House of Lords Act. This and the Coalition Government's emphasis on political reform have opened up the debate for further constitutional change and the LGiU believes that this should include consideration of the place of local government in the constitution.

*If codification is appropriate, what degree of independence from central government and what powers should local government be given?*

5. The Coalition Government has set out new powers for local councils in the Decentralisation and Localism Bill. Through extra borrowing powers, the removal of ring-fencing and the general power of competence, the Government have devolved power to councils and this is to be welcomed.

6. The LGiU believes that democracy is strongest and the state is most effective when it takes action at the appropriate level, and in a proportionate way. In most areas of activity by the state there is an important role for both central and local government.

7. Codification of the role of local government should recognise the local democratic mandate, the leadership role of local government and of councillors in the world of local governance, and include:

- (a) A statement of the purpose of local government, for example:
  - (i) to promote the economic, social and environmental well-being of their areas; and
  - (ii) to enable and promote democratic understanding and participation in communities and neighbourhoods.
- (b) A statement improving local accountability by recognising and protecting the roles and responsibilities of elected representatives.
- (c) A commitment by government to consult and involve local government on all matters affecting its responsibilities.
- (d) A statement that administrative arrangements for ensuring local authorities comply with their responsibilities should be proportionate and serve a clearly defined purpose, and that any intervention by central government should be proportionate and with the aim of supporting improvement.
- (e) A commitment that local authorities be able to control and exercise discretion over their financial resources, so enabling them to tailor expenditure to local needs and priorities.
- (f) Provisions strengthening arrangements to ensure that central government expectations are fully funded.

8. Specifically on finance, the LGiU produced a paper on the future of local government finance (Paying for it, attached) in which we support local taxation as one of the cornerstone foundations of local democracy. Without the ability to raise funds locally, local government is entirely financially dependent on national government which undermines the ability to act upon local views and needs. Without local taxation we arguably lose local government, to be left with only local administration. People want to know how their local taxes had been set, what they provided, and who was accountable for the level of tax and the services. For all the very welcome localist rhetoric of the new government, until local government wins its financial freedom it will

not truly be free. Strong local democracy is about meeting community needs through listening and leading to weigh competing interests and priorities. Resources are critical to this. The national political debate at the last General Election was dominated by the tax and spend plans of the different parties. Tax and spend must become fully a part of the local political debate, or our local democracy will remain profoundly flawed.

*How, if at all, should the status of local government be entrenched, or protected from change by central government?*

9. LGiU firmly believes that local government is part of the elected, accountable state and as such should be protected within a constitutional framework. At present local government is a creature of statute, subject to the political priorities of central government. The principles of subsidiarity and local self-government that inform the balance of power between central and local government that are embodied in the European Charter of Local Self Governance should be given formal effect in UK law. This would need to balance the various obligations and recognise the overall responsibilities of local authorities and their interaction with citizens and central government in one place.

10. Parliament should have an oversight role in respect of any new constitutional settlement or codification.

*Does the devolution settlement provide a relevant model for a possible codification of the status of local government?*

11. The Scottish Concordat between the Devolved administration and Scottish local government sets out a relationship based on “mutual respect and partnership”. The Concordat is an active consideration throughout policy making in Scotland, acknowledging that while the Scottish Government must set the over-arching outcomes of policy, it pledges to stand back from micro-managing service delivery.

12. The Scottish example also provides a good example of the pitfalls of a Concordat with complaints from Scottish authorities that the deal is not binding on individual councils, only being signed by the Convention of Scottish Local Authorities (COSLA) and the First Minister.

13. The demarcation lines set out in the 1998 Scottish, Welsh and Northern Irish Devolution Acts provide a much sounder basis for an on-going constitutional arrangement. Lines of funding, roles, and responsibilities between the administrations and Westminster are clearly set in law and cannot be reversed on the whim of the Westminster Parliament. This has enabled the devolved regions to move forward with confidence in their responsibilities with the knowledge that these will not be removed.

*Are there examples of constitutional settlements between central and local government in other countries that are relevant to an appropriate model for the UK?*

14. The Australian constitutional settlement provides a good model. The Danish and Swedish models are also helpful to consider.

*What is the value of existing attempts to codify the relationship between central and local government, through: the Central-Local Concordat or the European Charter of Local Self-Government? Should this Charter be placed on a statutory footing?*

15. The LGiU has long argued that the principles of the Charter should be incorporated into the UK constitution.

16. The European Charter of Local Self-Government provides us with a current statutory basis to entrench the roles and responsibilities of local government.

17. The following issues must be addressed in order to comply with the European Charter:

- A statement of the purpose of local government, for example:
  - to promote the economic, social and environmental well-being of their areas; and
  - to enable and promote democratic understanding and participation in communities and neighbourhoods.
- A statement improving local accountability by recognising and protecting the roles and responsibilities of elected representatives.
- A commitment to a formal concordat between central and local government.
- A commitment by government to consult and involve local government on all matters affecting its responsibilities.
- A statement that administrative arrangements for ensuring local authorities comply with their responsibilities should be proportionate and serve a clearly defined purpose, and that any intervention by central government should be proportionate and with the aim of supporting improvement.
- A commitment that local authorities be able to control and exercise discretion over their financial resources, so enabling them to tailor expenditure to local needs and priorities.

- Provisions strengthening arrangements to ensure that central government expectations are fully funded.

#### Central-Local Concordat

18. There has been a profound failure of the central-local concordat to function in any significant way, as was made clear from evidence to the CLG committee inquiry into the Balance of Power in 2008. Evidence from other central government departments including the Department of Work and Pensions and the Department of Health indicated that they had little or no knowledge of the Concordat. In practice the Concordat was one between the Local Government Association and the Department for Communities and Local Government, having little meaning in other parts of Whitehall or wider understanding and support in localities.

19. LGIU believes that a renewed concordat would have to be a contract with the whole of Government in order for it to have any weight. The previous concordat was essentially an extension of regular meetings between the Local Government Association and CLG, something that was not inclusive to local government or its wider partners. The negotiations for a renewed Concordat should be transparent and accountable to parliament. Those with a stake in local government should be allowed to contribute in a consultative phase. Accountability could be achieved either through increased powers to the CLG Committee, or through a Joint Committee of both Houses of Parliament, tasked to scrutinise legislation to ensure that takes account of local government.

20. A set of principles incorporated into a statutory framework should have a clear set of objectives and provide:

- (a) **Clarity in three spheres:** among politicians locally and nationally; among civil servants in departments responsible for services that have an impact on localities; in the courts, as a guide to the interpretation of legislation.
- (b) **Sustainable partnership:** in the form of a concordat giving practical effect to the partnership and providing a positive culture among both national and local politicians, civil servants and officers.
- (c) **Strengthened Parliamentary oversight:** with the submission of annual reports from government to the Joint Committee, enabling the Committee to monitor the operation of the concordat and of the central-local partnership. Other options include pre-legislative scrutiny for the implications for local government of Public Bills, assessing the appropriate degree of subsidiarity in the allocation of responsibilities and level of decisions, and the funding of mandates.
- (d) **Continuity:** because careful parliamentary and sectoral consideration would be needed before it was amended in the future; the framework will be stronger if the principles are based on a consensus when they are agreed.

7 December 2010

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#### Written evidence submitted by Mr Clive Betts MP

Thank you for the invitation to submit evidence to the Political and Constitutional Reform Committee's inquiry into the prospects for codifying the relationship between central and local government. This response will largely draw on the work in the previous Parliament of the Communities and Local Government Committee—a Committee of which I was then a member and am now Chair.

#### CLG COMMITTEE'S INQUIRY INTO THE BALANCE OF POWER

1. In 2008–09 the Communities and Local Government Committee conducted an inquiry into the balance of power between central and local government. Between June 2008 and January 2009 we took evidence from local authorities, think tanks, academics, Ministers from the Home Office and the Department of Health, among others, and undertook a visit to Denmark and Sweden to assist us in setting the English system in its wider European context. Our report was published in May 2009.<sup>31</sup>

2. Our principal conclusion was that there was a need for substantial change in the balance of power between central and local government because power in England remained too heavily centralised to be efficient or effective. We argued that local government should be given the autonomy necessary to apply local solutions in their areas, to innovate and to shape their communities, and that the current balance of power was not conducive to this. Local authorities remained subject to invasive central government scrutiny and interference, and the Committee noted the lesson from English history that, whilst the balance of power has been subject to pendulum swings, the predominant trend, particularly since the second world war, has been for central government to increase its powers and responsibilities at the expense of local government. [...] we question whether enough has been done to counterbalance these historic centralising tendencies.<sup>32</sup>

<sup>31</sup> Communities and Local Government Committee, Sixth Report of Session 2008–09, *The Balance of Power: central and local government*, HC 33-I

<sup>32</sup> CLG Committee, *The Balance of Power*, summary

3. The Committee pointed out that the relationship between central and local government in England deviates from the European norm in the level of constitutional protection afforded local government, but also in the level of financial autonomy and the level of central government intervention that routinely occurs. We concluded that “all serve to tilt the balance of power towards the centre”.<sup>33</sup>

4. We also concluded that the shift in the balance of power that we desired to see should be given a degree of permanency, to insulate local government from all-too-frequent changes in policy at national level.<sup>34</sup> Consideration was given to different ways of achieving this. A “constitutional” solution was viewed by some as an important lever for embedding such changes; clarity, stability and the ability to resist central government encroachment on local turf were the main benefits identified. A number of witnesses to the inquiry called, for example, for the Central-Local Concordat to be put on a statutory basis.<sup>35</sup> Some witnesses, however, favoured a more immediate, tangible transfer of powers, and other possible levers of change were proposed; a change in the Westminster and Whitehall-dominated British political culture was cited by many, and others argued that only substantial reform to the financing of local government could achieve a durable shift in responsibility and power.

5. The Committee concluded that, at the very least, the Concordat and the 1985 European Charter of Local Self-Government “ought to be guiding government departments’ relationships with local government far more obviously than has been the case thus far”. There was, we felt, obvious potential for a constitutional settlement to provide impetus to and sustain a substantial shift in the balance of power, and we therefore recommended that the European Charter be put on a statutory footing.<sup>36</sup> To ensure that this had practical effect on government policymaking and legislation, we recommended that Government Ministers be required to declare the compliance of all domestic legislation with the Charter and to include consideration of this aspect within the impact assessment of Bills. The Committee went on to recommend that a Parliamentary joint committee be established to monitor compliance with the Charter as well as scrutinising the general state of the balance of power between central and local government.<sup>37</sup>

6. The Committee also urged the Government to deliver on its promises of “earned autonomy”: devolving more powers to those local authorities that have proved their capacity to deploy them.<sup>38</sup> This approach underpinned the contract-like arrangements between central and local government in Local Public Service Agreements and Local Area Agreements, and some provisions of the Sustainable Communities Act 2007. “Earned autonomy”, however, is highly conditional on central government’s assessment of a council’s capabilities and the powers it should have. Although the Committee did not investigate this option in our report, it is my personal view that a system of “offered autonomy” should be investigated as an alternative. This would entail a central government offer to all local areas of all the powers that could be devolved, with local authorities able to choose which they wanted to exercise. The transfer of powers in this way could be subject to a local referendum, which would introduce some much-needed permanency into the arrangement. It would also take account of varying local circumstances, but according to local rather than central views.

#### THE GOVERNMENT RESPONSES TO THE BALANCE OF POWER REPORT

7. The Government published a response to most of the report’s conclusions and recommendations in September 2009.<sup>39</sup> It responded to the outstanding recommendations in February 2010, taking into account the CLG consultation on *Strengthening Local Democracy* that took place between July and December 2009.<sup>40</sup>

8. The Committee’s recommendations on putting the Charter on a statutory footing and monitoring compliance were not accepted by the Government. The final response reflected on the results of the CLG consultation exercise, which the Government characterised as very varied, “with some respondents keen to legislate and others who felt this was too rigid. Some favoured the approach taken by the European Charter and others a more tailored set of rules either as a stand alone document or as part of a written constitution”. The Government committed only to “continue to give close consideration to this issue to ensure that the role of local government in the development of any broader written constitution is examined as appropriate”.<sup>41</sup> The Government stated that there was merit in exploring further the idea of a joint select committee to examine how the work of central government impacts on the ability of local government to fulfil its role, but argued this should not be limited to compliance with the European Charter, and did not make any commitment to taking the idea forward.<sup>42</sup> In a letter to the Chair of the Committee, the Government asserted the compatibility of the body of existing domestic legislation with the Charter, arguing that this demonstrated that enshrining the principle of local self-government in written law or a constitution would be redundant.<sup>43</sup>

<sup>33</sup> CLG Committee, *The Balance of Power*, para 38

<sup>34</sup> CLG Committee, *The Balance of Power*, para 149

<sup>35</sup> CLG Committee, *The Balance of Power*, para 129

<sup>36</sup> CLG Committee, *The Balance of Power*, para 134

<sup>37</sup> CLG Committee, *The Balance of Power*, para 138–142

<sup>38</sup> CLG Committee, *The Balance of Power*, para 66

<sup>39</sup> CLG, Government Response to the CLG Committee report into the balance of power, Cm 7712, September 2009

<sup>40</sup> CLG, *Final government response to the select committee report into the balance of power*, Cm 7801, February 2010

<sup>41</sup> CLG, *Final government response*, p.7

<sup>42</sup> CLG, *Final government response*, pp.7–8

<sup>43</sup> Secretary of State to Chair, 2 March 2009, published in CLG, *Government Response to the CLG Committee report into the balance of power*, Cm 7712, September 2009

9. In our report we supported the subsidiarity principle, which would ensure that decisions which primarily affect one area to a significantly greater extent than others should be taken within that area. The Committee recommended that the principle underpin a new hierarchy of decision-making which would place on a statutory footing the rights of a local community to determine a great deal more of what should or should not occur within their locality, and how the full range of public services are delivered in their area. The Committee also recorded its sympathy with the case for giving local authorities a power of general competence, and recommended it be introduced if it were to be demonstrated that the current “well-being” powers fall short of that power.<sup>44</sup> With regard to specific new powers for local government, the Committee argued that local policing and health care services were insufficiently accountable to their local populations, and recommended moving towards a model in which local authorities would commission these services. We commented that “So long as two such important local services—arguably the most important for most local people—remain outside its scope, the full benefits of an empowered, autonomous local government cannot be realised”.<sup>45</sup>

10. The Government’s final response to our inquiry reported that:

the Strengthening Local Democracy consultation revealed that whilst there was an appetite amongst respondents for a power of general competence, the perceived benefits of this were seen to be around the broader relationship between central and local government. We do not consider that this issue should be addressed through the extension of powers. This is particularly as it is considered that action taken by local authorities that were held to be outside their powers in the recent court case on the development of insurance mutuals [...] would not be rendered lawful by a general power of competence. In fact, government would question whether, once the inevitable prudential restrictions are applied, such a power would look very different to the current power of well-being. [...] The well-being power remains as a power of first resort for councils acting in relation to the social, economic and environmental well-being of their areas.<sup>46</sup>

11. Despite the then Government’s rejection of the Committee’s conclusions on these matters, I believe that the recommendations continue to have merit. In particular, the proposal to put the European Charter on a statutory footing, and to establish a joint committee to monitor compliance, is a relatively straightforward measure which could nonetheless have a far-reaching and lasting impact. Its strengths lie in its application to domestic legislation issuing from all Government Departments, not just Communities and Local Government, and the fact that the mechanism of a joint committee is a tried and trusted one. Incorporation of the European Charter into UK law ought to be an uncontroversial matter if, as the previous Government asserted to us, current legislation and Government actions are already in compliance.

#### THE LOCALISM INQUIRY

12. In the new Parliament, the CLG Committee continues to consider issues of relevance to the question of the relationship between central and local government. The Committee announced an inquiry into the Government’s plans for localism and decentralisation of public services in July 2010, with a deadline for written evidence on 1 October. To date we have received written memoranda from more than 100 organisations representing many different sectors, illustrating the wide interest that exists in this topic. The specific terms of reference to which people were invited to respond were as follows:

- The extent to which decentralisation leads to more effective public service delivery; and what the limits are, or should be, of localism;
- The lessons for decentralisation from Total Place, and the potential to build on the work done under that initiative, particularly through place-based budgeting;
- The role of local government in a decentralised model of local public service delivery, and the extent to which localism can and should extend to other local agents;
- The action which will be necessary on the part of Whitehall departments to achieve effective decentralised public service delivery;
- The impact of decentralisation on the achievement of savings in the cost of local public services and the effective targeting of cuts to those services;
- What, if any, arrangements for the oversight of local authority performance will be necessary to ensure effective local public service delivery;
- How effective and appropriate accountability can be achieved for expenditure on the delivery of local services, especially for that voted by Parliament rather than raised locally.

13. These terms of reference concentrate on the practicalities of achieving more decentralised public service delivery, including the impact of a more “localist” system on public spending, inter-agency working and accountability. One of the major planks of our inquiry is investigating what the Government means by “localism”, whether this chimes with the interpretations of other stakeholders, and how the roles of those stakeholders might change in a more decentralised system. As with our previous inquiry, we have found at least as many respondents keen to emphasise the cultural and political factors in the relationships between

<sup>44</sup> CLG Committee, *The Balance of Power*, para 65

<sup>45</sup> CLG Committee, *The Balance of Power*, para 77

<sup>46</sup> CLG, *Final government response*, p.6



central and local as those who seek solutions that might be termed “constitutional”. However, some respondents have indicated that they believe durable, structural change in the political system in England will be necessary to achieve such changes. In particular, submissions from several local authorities have stated their belief that a constitutional change is imperative. Barnsley Council, for example, argues that:

Localism can only work with the right local governance system and with the security of legal underpinning. The first and foremost principle is that there needs to be a constitutional settlement. If there is to be meaningful progress with this question then a settlement enshrined in law needs to happen. Without this, localism will continue to be buffeted by the winds of political preference, of changes to and within governments, in a permanent state of flux, which means that this question will be revisited every five years or so. A constitutional settlement would provide mutuality of understanding for each of the major participants; promote confidence and continuity, without the threat that powers could be withdrawn or transferred at the behest of a future government. It would also help the media and public better understand the distinction between central and local government responsibilities.<sup>47</sup>

14. An alternative legislative remedy is proposed by the New Local Government Network, which recommends a new “duty to devolve”:

Government departments should regularly assess whether their functions have been devolved to the lowest and most appropriate spatial level. If a function has not followed the principles of subsidiarity in this way, central Government should be under a legislative duty to devolve that function in line with specified criteria.<sup>48</sup>

15. The proposed power of general competence is also cited approvingly in some of the written evidence. However, it is important also to note that many more written submissions do not mention the need for a constitutional settlement or legislative innovation, so although it is a live issue it is not necessarily central to discussion of localism from all perspectives. One of our witnesses in oral evidence, Henry Peterson, a local government consultant and former local authority deputy chief executive, explicitly cited devolution to the Welsh Assembly and the Scottish Parliament as a model for budgetary devolution to large English local authorities, with those authorities being given responsibility for health and police as well as existing local government services, and complete discretion over how to spend those funds. However this is not necessarily tied to a constitutional change, but could be a development of the idea of “place-based budgets”, whereby discretion on how to use existing expenditure across the whole range of public services would be devolved to local level.<sup>49</sup> Professors George Jones and John Stewart, however, expressed the view that such discretion had to be accompanied by the ability for local authorities to raise funds themselves rather than relying on grants from central government.<sup>50</sup>

16. Furthermore, not all respondents to our inquiry have interpreted “localism” as primarily something which will be enacted through local government, emphasising instead the potential of neighbourhoods, communities and individuals to exercise more influence and get involved in delivering services themselves.

17. The Committee’s inquiry into Localism is continuing to take oral evidence into January and February 2011, and we expect to report in the spring. We have not taken a view on any of the issues raised in the inquiry—including whether or not a constitutional settlement is a prerequisite of “localism”—but will continue to consider the question and put it to our witnesses. I look forward to reading the conclusions of the Political and Constitutional Reform Committee and sharing thoughts about these issues with you as our inquiries progress.

16 December 2010

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### Written evidence submitted by Professor Chris Himsworth, University of Edinburgh

#### A. INTRODUCTION

1. I am the Professor of Administrative Law at the University of Edinburgh and also the UK member of the Group of Independent Experts which has a responsibility for advising on the European Charter of Local Self-Government (“the Charter”) for the Congress of Local and Regional Authorities of Europe, an organ of the Council of Europe. On this occasion, I write in an entirely personal capacity to offer a few comments largely directed towards the Committee’s Question 7 which asks about the value of codifying the relationship between central and local government and whether, to achieve that, the Charter should be placed on a statutory footing. My principal purpose in intervening is to draw attention to some of the issues to be confronted in placing the Charter “on a statutory footing” or, as this process has been described elsewhere in evidence submitted to the Committee, giving the Charter a “statutory basis”, “enshrining” it in UK law, giving it a “constitutional status” or “incorporating it into the UK constitution”. Such proposals raise difficult questions in a UK constitutional context, with, at some points, that complexity heightened by the introduction of devolution under the Acts of 1998. Even if the Committee’s focus were to be entirely concentrated on the position in England, legislation

<sup>47</sup> Memorandum from Barnsley Council, para 1

<sup>48</sup> Memorandum from New Local Government Network, para 4.8

<sup>49</sup> Uncorrected transcript of evidence taken on 15 November 2010, qq 54, 61

<sup>50</sup> Uncorrected transcript of evidence taken on 15 November 2010, q 54

on the Charter would, at the very least, have to take into account its devolutionary impact. In section B, I mention some of the perceived attractions of the heightening of the legal or constitutional status of the Charter. In section C, I sketch some of the problems to be confronted. In section D, I offer some concluding thoughts. Throughout, my tendency is to point to legal and technical aspects rather than to add further to the general political debate in this area.

## B. THE PERCEIVED ATTRACTIONS

2. For the purposes, therefore, of this paper, I shall assume that, as a part, at least, of a project to strengthen the position of local government, the Charter's status might usefully be enhanced. Currently the Charter has the status of an international treaty whose terms, in consequence of the United Kingdom's ratification in 1998, the UK has an obligation to uphold. Although the Charter offers the opportunity (Article 12) to states, on ratification, to limit the extent of their commitment to its substantive terms, the United Kingdom did not take advantage of that facility<sup>51</sup>. The Charter (rather like the ECHR) does not itself insist on its being given any particular legal status within ratifying states<sup>52</sup>. That status depends (a) upon the application of the general law of ratifying states as to the status of international treaties, and (b) measures deliberately taken to "incorporate" the Charter into the constitution or the law. As a "dualistic" state, the United Kingdom's legal systems do not automatically recognise the terms of international treaties as a source of law. Lacking a written constitution and the will so far to incorporate the Charter into statute, the Charter does not have that status at present. UK courts do not recognise it as a source of law—in contrast with many other European states. Courts in many states (on the "monistic" model) do give the Charter an automatic status as a source of law and many too—especially those in central and eastern Europe—have, in effect, adopted provisions of the Charter into their constitutions or into statutes. Among western European states, France gives an automatic status to the Charter, as an international treaty, and has also incorporated Charter-inspired language into its constitution.

3. Two further points on the current legal status of the Charter in the UK. One is that the Charter does itself require (Article 2) that the "principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution". The assumption in the United Kingdom (and some other countries) is that such recognition is implicitly made in the statute law which creates local authorities and determines the conditions under which they operate. It has, since ratification, been the claim of UK governments that all Charter terms are honoured in existing legislation. Secondly, the lack of formal recognition of the Charter as a source of law by UK courts does not mean that no account can be taken of it. It may be assumed (as, for instance, with the ECHR in the years before the Human Rights Act 1998) that the courts can, in circumstances of ambiguity in statutory interpretation, use the Charter as an interpretative aid, although in perhaps the only case in which the Charter has been directly invoked, it was given pretty short shrift<sup>53</sup>.

4. Against this background of weak formal recognition, the case for enhancement is readily made by those who would strengthen the position of local government. The Charter will, in any event, retain its binding status in international law and the United Kingdom will remain subject to the monitoring process by the Congress of Local and Regional Authorities<sup>54</sup>—there is no Charter equivalent to the European Court of Human Rights—and the Charter will remain available, as in the recent national debates, as a source of reference in the political process. But the attractions of a more directly legally enforceable status appear undeniable. The Charter offers terms to which the United Kingdom is already committed and it, therefore, seems (rather like the ECHR before it) to be a rather obvious source of an (off-the-peg) legal code. It offers the possibility of avoiding devising a home-grown set of prescriptions.

## C. SOME DIFFICULTIES

5. It seems to me that those who may, in principle, be charitably disposed towards the strengthening of local government and local authority rights in general probably have three inter-related problems in mind when they consider Charter incorporation in the United Kingdom. In large measure, these arguments would apply equally to other non-Charter-related projects to adopt a code.

6. In the first place, there is, in a UK context, the well-recognised problem of "entrenchment"—as identified in the Committee's Question 3. The absence of a written constitution with a "higher law" status denies us the otherwise obvious route to incorporation by constitutional amendment. Equally, the United Kingdom's reliance instead on the retention of a legislatively supreme Parliament largely denies a capacity for the achievement of legislation with "entrenched" status. Although a different status was achieved for the European Communities Act 1972, the case for asserting an enhanced status for any other legislation is profoundly weaker<sup>55</sup>. That, however, is a difficulty uniquely associated with the status of the UK Parliament itself. In respect of the devolved territories of the United Kingdom, the UK Parliament could readily "entrench" legislative provisions against amendment by the devolved legislature.

<sup>51</sup> But, under Art 13, it avoided Charter application in Northern Ireland.

<sup>52</sup> Although Art 11 does require that local authorities have a right of recourse to a judicial remedy to secure "respect for such principles of local self-government as are enshrined in the constitution or domestic legislation".

<sup>53</sup> See *Shrewsbury and Atcham BC v Secretary of State for Communities and Local Government* [2008] 3 All ER 548.

<sup>54</sup> See, in relation to the UK, Congress Recommendation 49 (1998).

<sup>55</sup> Despite the efforts of Laws LJ to extend the notion of "constitutional statutes" more broadly in *Thoburn v Sunderland City Council* [2002] 4 All ER 146.

7. Secondly, there is a question of legislative technique. In the United Kingdom, as opposed to many other states, we have no tradition of general declaratory legislation. Statutes are a vehicle for promulgating rules—although sometimes these rules may be in quite general terms and may require bodies to observe principles in the exercise of their powers. Statutes rarely promulgate general principles. Nor do they lay down principles according to which other statutes should be interpreted. A simple enactment of the Charter would be a strange beast in the UK statute book.

8. Thirdly, and closely related, is the general reluctance in UK practice to confer broad interpretative powers on the judiciary. It is well-known that the terms of the Charter are quite general at many points and often hedged about with qualifying language such as “within the limits of the law” and “normally”. Of course, any legislative language is vulnerable to judicial interpretation and the relatively general language of some EU provision and the terminology of the ECHR has produced a need for judges to take on a broader interpretative role but a traditional antipathy to these developments (especially as applied in a politically fraught area such as central-local relations) is widely retained.

#### D. SOME CONCLUDING THOUGHTS

9. If this note has had a rather cautious (and some may say rather pessimistic) tone to it, that has been deliberate. There are no obvious or easy routes to placing the Charter “on a statutory footing” and especially with some degree of permanence in a UK context. On the other hand, were there a will to do so, in circumstances short of the general adoption of a written constitution for the United Kingdom, it should not be regarded as beyond the limits of the constitutional imagination<sup>56</sup> to achieve something in this field.

10. The Human Rights Act has been mentioned. That provides a recent and innovative model for the “incorporation” of an international treaty whose terminology is as general in its terms as that of the Charter. It is recognised as an Act of the UK Parliament which, in some respects, squared the circle of ensuring that administrative acts but also past and future legislation should be read subject to its terms and yet also preserving the legislative supremacy of Parliament. On the other hand, that Act sought to protect the rights of individuals rather than the much more problematic rights of local authorities; it invoked the jurisprudence of the European Court of Human Rights to assist its interpretation; and it was launched after a long period of anguished deliberation about how best to incorporate the Convention and with the manifesto support of an incoming government. These are not conditions easily replicated for the Charter. And, on the more technical front, much thought would be required before it could be decided how many of the core features of the Human Rights Act could satisfactorily be transposed into Charter legislation. It is not, however, at all inconceivable that, perhaps without the legislative “incompatibility” aspects of the Human Rights Act, such a model appropriate for transposition could be devised, with, at least, the effect of establishing bench marks for administrative action. There would be a need for the combination of a serious re-evaluation of the case for a “statutory footing”; a reconsideration of the more traditional objections outlined in C above; and a review of the options technically available.

17 December 2010

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### Written evidence submitted by Dr Bill Moyes, Institute for Government

#### RESPONSES TO THE SUPPLEMENTARY QUESTIONS POSED BY THE COMMITTEE

1. *Professor Tony Travers told us that “blurred accountability suits both central and local government”. Do you agree?*

— *If so, would codification help to clarify where accountability lies?*

It may well suit local and national politicians for responsibility, and therefore accountability, to be ill-defined and therefore unclear, at least in facing a short term crisis. In these circumstances, the users of services, the general public, the news media and Parliament will all find it difficult to know whom to call to account in cases of failure of services. It’s then possible for different parties to escape transparency, blame each other and themselves to escape censure.

However, blurred accountability is seldom in the public interest, nor is it in the longer term interest of politicians committed to the decentralisation of power.

The absence of clear accountability affects the public interest in particular in cases of failure. In circumstances where the users of services have no (or no realistic) alternative provider of that service, there needs to be effective oversight and the possibility of effective intervention to remedy (or prevent) serious failure—financial or quality. To be effective, such oversight and intervention require clarity about responsibility and accountability. This can rest with senior managers, local or national politicians or regulators. Different mechanisms are appropriate for different services.

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<sup>56</sup> We live in imaginative times. The draft “Cabinet Manual” was published two days ago. Perhaps unsurprisingly, however, in its chapter on Relations with the Devolved Administrations and local government, no reference is made to the Charter. Nor, it seems, even less surprisingly, is there a reference to the Charter in the Localism Bill or its explanatory notes published yesterday.

Where accountability is unambiguously allocated and its scope clearly-defined, and where this is understood and accepted by the key stakeholders of a public service—users, the public, the media, Parliament and local politicians—the person who is accountable is likely to:

- (1) Define what constitutes unacceptable performance—financial or quality.
- (2) Monitor actual performance against these criteria.
- (3) Be prepared to intervene to remedy persistent and unacceptable failures.
- (4) Ensure intervention is effective.

The absence of unambiguous accountability increases the risk of political accountability for the performance of a public service returning, by default, to the top of the political tree. For some services, this may mean central government Ministers being held accountable for decisions beyond their control, and a consequent undermining of decentralising intent.

Codification would have real value if it secured a sufficiently precise allocation of accountability, and a sufficiently clear definition of the scope of accountability, to produce the outcomes described above. Codification therefore has to be detailed and its terms have to be appropriate to each service. In particular, codification needs to include explicit consideration of the circumstances in which central government retains the right to step in and direct local provision. If codification is couched in general or ambiguous terms, it will not help the citizen to be clear about how and when to hold which politicians and senior public officials to account. If it does not do this, is it of much real value?

*2. If there were to be greater clarity about the responsibilities of local government, how would you limit the extent of Ministerial accountability in these areas?*

Accountability has to be unambiguous, and it has to be accompanied by the ability to intervene in order to remedy deficiencies.

Ministers must always be accountable for the statutory frameworks they create through legislation. If the statutory architecture for a particular service is clearly deficient, it is the responsibility of Ministers to propose legislation to remedy that. They are therefore accountable for their decisions on how and when to put remedies in place. That accountability cannot rest elsewhere.

Where local government is responsible for delivering a specific service, they must be wholly accountable for their actions or inactions. National and local government cannot sensibly be accountable simultaneously for the same thing. Nor should Ministers be called to account for actions determined and taken wholly at local level where alternative democratic mechanisms apply.

National government allocates the proceeds of national taxation and is therefore accountable for those allocation decisions. Local authorities are accountable for their spending decisions and for the service performance they secure.

This delineation of accountabilities could be defined in legislation, to put the matter beyond doubt. Where Ministers seek to retain a degree of accountability for the operational performance of services, this will lead to requirements on the local level to provide information to the national level, and ultimately to Ministerial intervention. Local government is then at risk of operating effectively as an agent of government.

There may well be circumstances—child protection is an example where this argument has been made in the past—where it is appropriate for Ministers to have statutory powers to step in where the performance of local government is proving unacceptable. These powers need to be clearly specified in law, as do the circumstances in which they should be used. And when they are used, accountability passes from the local to the national level. Ministers would be accountable for the decision to use their powers to step in and for the action subsequently taken.

*3. In what circumstances, if any, should a Minister be able to intervene in local services to protect the citizen?*

In cases where persistent underperformance causes, or threatens, serious harm to individuals or groups of service users, and no other agency (eg a regulator) has the necessary power to intervene to remedy or prevent the failure.

*4. How should a local authority be called to account for serious mismanagement, if central intervention is to be avoided? Are periodic local elections enough?*

— *Are mechanisms needed at a local level to resolve complaints about the organisation and management of local services?*

— *Do decentralised services require decentralised forms of democratic scrutiny?*

Periodic local elections cannot, on their own, produce effective accountability for service failure. They are more effective in cases of persistent under-performance.

Accountability needs to happen as near as possible in time to the identification of the service failure, and ideally the process of accountability should be part of the remediation of the failure. A calling to account also

needs to involve intervention to create the conditions for the failure to be remedied. This might involve any or all of:

- (1) replacing senior service managers or councillors or non-executive directors of the service concerned;
- (2) developing of an effective plan of action to remedy the failing service, with regular monitoring of progress against plan;
- (3) appointing of expert advisers; and
- (4) transferring responsibility for the service to a different organisation or entity.

Parliament may have a role to play in calling a failing organisation to account, through the appropriate select committee.

The more decentralised a service is the more useful are decentralised forms of scrutiny. Remote scrutiny can be bureaucratic, slow and poorly-informed. But decentralised scrutiny need not always be by local government. Other local mechanisms, such as the governors of foundation trusts, may be created with the powers to intervene in defined circumstances. An independent regulator (eg OFSTED) may be the most appropriate mechanism for some services.

A local complaints mechanism, perhaps building on the Ombudsman service, will help to ensure that serious complaints do not end up being referred by constituency MPs to Ministers for want of an alternative. Where complaints are serious, or arise frequently, it is very hard for Ministers to avoid becoming involved. Yet, doing so undermines local accountability.

6. [To Bill Moyes] *Are there parallels from your experience of the relationship between central government and the NHS for the central-local government relationship and the prospects for successful devolution of power?*

Yes, there are lessons to learn from the experience of foundation trusts.

In summary they are:

- (1) build a political consensus;
- (2) make clear in legislation what Ministers are accountable for, what they are not accountable for and which other bodies (eg commissioners, regulators) are accountable and for what;
- (3) build local capability to organise and manage services and to call service providers to account; don't assume it will simply emerge;
- (4) work out in advance how a really major crisis (like Mid-Staffordshire Hospital) will be managed; and
- (5) re-think how and when Parliament should call service providers to account, where Ministers are not accountable.

Ministers wanted to specify what the NHS should deliver for the public—in the early 2000s the priority was faster access to services—but not to be involved in determining how services should be organised and delivered. Ministers wanted to be accountable for the outcome but not for the operational management of services. So, they created foundation trusts as autonomous organisations. Ministers removed from the legislation their existing powers of direction over NHS Trusts and most of their other powers. Foundation trusts are accountable to:

- (1) Parliament (the CEO is an accounting officer); each foundation trust lays its annual report before Parliament.
- (2) An independent regulator (Monitor) and an inspector of service quality (the Care Quality Commission), which licenses operators to sell their services to the NHS.
- (3) Their governors (elected by the membership, and with powers to appoint or remove the non-executive directors of the hospital, receive the auditor's report etc).
- (4) The commissioners of their services for delivering the requirements of their contract.

But foundation trusts are not accountable to Ministers.

What was not put in place, in my view, was the political consensus to underpin this statutory framework. Nor did Ministers make clear that their accountability to Parliament would be for the commissioning of health services, not for their provision. As a consequence many MPs were not prepared to accept that foundation trusts were not accountable to the Secretary of State, and continued to behave as if they were. The regulators and inspectors were not seen by many backbenchers as the right body to refer serious complaints, despite having draconian powers of intervention. Successive Secretaries of State were increasingly prepared to intervene, despite the clear terms of the statutory framework. As a result the intended redefinition of accountability was not achieved in practice.

The Health Select Committee did not attempt to call to account the regulator or foundation trust boards. I believe that in future select committees need to give greater priority to calling to account intermediary bodies such as service regulators.

Governors were not given the training they require to call to account the boards of foundation trusts. As a result local accountability was very patchy and often ineffective.

Many financial and service crises were managed by the foundation trust regulator (Monitor), but Ministers and MPs were not clear about how to handle a major service crisis (Mid-Staffordshire) when it happened. The legal framework had got ahead of public understanding and expectations, which remained that Ministers were accountable.

Despite these failings, the service performance of foundation trusts has been very strong—generally better than non-foundation trusts. Removing Ministers from operation control has produce better and more responsive services.

7 January 2011

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#### **Written evidence submitted by Councillor John Faulkner, High Peak Borough Council**

1. I think there should be a fresh start in the relationship between Central Government and Local Government.

2. One of the problems has been that policy is handed down for local implementation without local buy in or enthusiasm for what is to be done. Things should be done locally with little or no strings where possible. Local responsibility and accountability should be established. More priorities should be decided locally. There will be national priorities which need delivering locally but Councils will need to be incentivised to achieve these, eg new house building.

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#### **Written evidence submitted by Mark Ryan, Coventry University**

1. My name is Mark Ryan and I am a Senior Lecturer in Constitutional and Administrative Law at Coventry University and I have a particular interest in constitutional reform. My submission, however, is made in my own personal capacity and indicates my personal observations on the prospect of the codification of central-local government relations. It in no way reflects the views of my employers (Coventry University).

2. Question 1: The relationship between central and local government should be codified, however, this should ideally take place in a much broader constitutional context (ie as an integral part of a formal codified constitution). Constitutional reform should, after all, be undertaken with a grand overall strategic vision in mind, rather than as piecemeal and isolated elements of reform. It is rather unfortunate that the latter approach has characterised constitutional reform in this country.

3. Question 2: Local government should be empowered and given more independence from central government than exists at present. It is clear that the constitutional arrangements of the United Kingdom are far too centralised with excessive power being concentrated in central government to the detriment of its local counterpart. In particular, local government needs more financial autonomy and less intervention/supervision from the centre. Furthermore, it should enjoy more freedom to make delegated legislation—as in the final analysis, any legislative measure which is *ultra vires* or an abuse of power is subject to judicial review in the courts. The point must be made, however, that any form of codification *must* include a rebalancing of power between central and local government, otherwise the codification would merely reflect the existing imbalance of power.

4. Question 3: In the United Kingdom local government currently lacks “constitutional status” as it is effectively at the mercy of central government (albeit operating through the conduit of Parliament, which of course, typically it dominates). In contrast, in other countries the constitutional principle of local government is given special constitutional protection by being enshrined in a formal codified constitutional document. The traditional view in the United Kingdom is of course that the legislative supremacy of Parliament prevents the legal entrenchment of legislation. Nevertheless, if central-local government relations were explicitly embedded in primary legislation, it could be argued that such a measure would be deemed to have “constitutional status” (in line with the—albeit *obiter*—formulation of LJ Laws in *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), para 62) and therefore *not* be subject to implied repeal. In any event, any Act of Parliament which set out the agreed framework of relations between central and local government would be politically entrenched and so ring-fenced from subsequent repeal at the behest of central government. In these circumstances, in a political and morally constitutionally sense, it would no doubt prove difficult to alter central-local government relations in a way which downgraded the position of the latter.

5. Question 4: Any codification of central–local government relations which enhanced the powers and responsibilities of local government undoubtedly would reinvigorate local government and inject it with both dynamism and a new found confidence. In short, enhancing the powers of local government would make it much less constitutionally, politically and legally inhibited than at present. This in turn would increase public participation and interest in matters of local authorities, thereby leading to greater political and electoral accountability of this tier of government. The following cautionary point, however, has to be made in this context as one of the legal consequences of codifying central-local government relations in statutory form may

be to result in “juridifying” relations between them. In brief, the process of “juridification” involves the courts being used to police the boundaries between the respective powers and responsibilities of the two tiers of government.

6. Question 5: The devolution of power to Scotland, Wales and Northern Ireland demonstrates that once decentralisation of power has taken root, it is difficult politically to reverse. In addition, these models serve to show that devolution is not a static event; rather it is a rolling process whereby further powers and responsibilities can be periodically rolled out and devolved. The lesson for local government may be, therefore, that the codification of central-local government relations would not represent (necessarily) the high watermark of local government powers—as built into any formal codified agreement could be the possibility of further powers being decentralised to local government at a later date.

7. Question 6: It is arguable that in practice given the United Kingdom’s peculiar (almost unique) constitutional arrangements, comparisons with specific aspects of codified formal constitutions in other countries may prove to be of somewhat limited value.

8. Question 8: A general power of competence as detailed in the 2011 Localism Bill is to be welcomed. This form of empowerment should energise local government which undoubtedly would act in a more proactive manner for the benefit of the local community. In addition, from a legal and constitutional perspective it would involve an interesting shift from local authorities acting rather prescriptively on the basis of narrowly conferred legal authority, to acting in a much more proactive and liberating fashion (providing that no positive law had been breached). It may be the case, however, that this could lead to tension with central government which may try to assert even more supervision over the actions of local authorities. In addition, whether this general power of competence would result in more court actions being taken against local authorities by individuals would remain to be seen.

January 2011

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### Written evidence submitted by London Councils

#### INTRODUCTION

1. Following the oral evidence session with Mayor Jules Pipe in December, London Councils welcomes the opportunity to provide further evidence, in particular on what might need to be codified and how codification might be achieved.

2. As a joint committee of all of the London boroughs, London Councils is interested in how codification can achieve practical change in terms of the relationship between central and local government. Writing things down does not help local government if it simply reproduces much of the current arrangements. The Council of Europe’s European Charter of Local Self-Government signed by the previous Government contains a number of potentially significant provisions and was supposed to commit all Departments. It has not, however, been incorporated into law and there has been very limited progress on many aspects of its provisions. It can hardly be said to figure prominently in the policy development process.

3. Incrementally, there is an argument that simply having a clearer and more stable framework would offer a defensive bulwark against what councils see as encroachments by central Government. London Councils, however, considers that codification needs to be more ambitious. It should develop a sense of the role of local government. It should also achieve practical and substantive change by tying national and local Government into a set of expectations which have some teeth and from which a broader cultural shift can develop.

4. So in addition to *what* might need to be codified and *how* it might be done, the third leg of an effective proposition is *where* responsibility rests for holding central and local government to account for acting in accordance with a codified statement of the status and role of local government.

5. Accordingly, this evidence is arranged in three brief sections:

- (a) *Clarifying* what is to be codified and why—covering both greater constitutional autonomy and associated powers and a set of expectations or default settings reflecting these principles.
- (b) *Embedding* a statement of principles through statute with associated provisions to prevent departure from it without good cause and to allow proper scrutiny which can be enforced through Parliamentary mechanisms.
- (c) *Entrenching* codification through new Parliamentary arrangements which would be responsible for developing the statement of principles and then for providing oversight on behalf of Parliament as a whole.

6. Working through the implications of such a shift will require wider change in culture, relationships and behaviour and might fruitfully be the subject of further discussions and potentially some more formal agreement between central and local government. That issue is not, however, considered further in this evidence.

*What needs to be codified—clarifying the status and role of local government*

7. Codification should *not* start by setting out specific functional responsibilities—these have changed and will change again and a line by line account based on specific responsibilities would likely degenerate into tedious trench warfare. Such codification is also alien to most British politicians and should be recognised as such.

8. What it could do, however, is to establish:

- the broad status of local government and the general expectations about its role within a wider system;
- an expectation that local government is the default option for activity below national level (whilst allowing for Government to determine other arrangements where there is a good case); and
- an expectation that local government is funded commensurately to fulfil its role.

9. One of the necessary conditions for being able to operate in this way is to deal with the problems that English local government has always had in respect of *ultra vires* activity. In principle a power of general competence could remove that concern and more clearly allow authorities to move onto new ground. However, the general power proposed by the Government falls well short of what is needed. This is partly because of restrictions which are on the face of the Localism Bill. But it is particularly telling that the operation of the power is still, under the provisions of the Bill, to be heavily regulated by national government. Whilst the Secretary of State is able to continue to intervene in all sorts of activity that councils should simply be able to get on with, the general competence that is needed is still far from being achieved.

10. What is needed now is much clearer recognition that local government has the locus to take responsibility for governing at local level and that there is an expectation, shared with national government, that it should do so and that this requires a change in the way in which national government has operated in the past. Some of the principles in the existing Central Local Concordat are useful here, particularly the acceptance that local government has a democratic mandate just like central government and that this should accord it a different status from other bodies at sub-national level. Indeed the thrust of this evidence is that national and local need to be seen as two elements of a single wider democratic system in England within which they both have a role and through which power can be devolved.

11. In our view, an expression of the status and role of local government should start from the following principles:

- (a) a general presumption that those elected to represent an area should be able to do what is needed for the interests of the area and should be trusted to operate with the fullest possible discretion
- (b) decisions should be made at lowest possible *democratic* level, closest to the people who will be affected by the decision.

12. In terms of detail, we would then expect a statement of principles to cover the following:

- establish the status of local authorities as autonomous and locally accountable institutions of government (building on the two principles set out above) with a presumption that they will do what is needed in the interests of their communities;
- express the role of councils not in terms of specific functions but in promoting and safeguarding the interests of their area;
- an expectation that local government should be the first option for exercising any new sub-national responsibilities (there could also be a duty to devolve);
- recognition of the role and responsibilities of councillors to make decisions and to govern in the interests of their areas;
- setting out community leadership and powers in relation to other public bodies at local level;
- assuming self organisation in terms of decision making, management and delegation;
- resources commensurate to role and function (going beyond the “new burdens” doctrine) which come in large part from sources over which local authorities should be able to exercise a considerable degree of control (in terms of being able to determine the rate of local taxes and charges) and which are buoyant in character; and
- establishing that regulatory and other supervisory action by central government should be proportionate to the specific purposes concerned.

*How can codification be achieved?*

13. We have referred to a statement of principles by which we mean a statement setting out the worked through version of the elements set out above.

14. To date attempts at writing such statements have either been imported from external sources (ie Europe) or developed between the Executive and representatives of local government. We think a new approach is needed and that a new joint committee of both Houses which we propose in the following section should take



on responsibility for the development of this statement drawing on the existing documents and the many good drafts that have been developed by academics and think tanks. London Councils would be happy to expand on the sketch set out above as a contribution to this process. This would give clear effect to the provisions in the European Charter that the principles of local self-government should be recognised in domestic legislation.

15. On this basis, the statement of principles would be developed by Parliament as a whole to set out the basis of the “constitutional” relationship between central and local government in England (given that the devolution settlements in the other parts of the United Kingdom would continue to apply). The Executive would then bring the statement into force through the normal legislative route.

16. A Bill including the statement as a schedule should also make provision for:

- (a) a requirement for Government to act in accordance with the provisions of the statement. This would establish a new expectation applicable to all new major policy, funding and legislative arrangements and any departure would require explanation;
- (b) a requirement for all new primary legislation to have a “statement of compatibility” with the terms of the central-local statement (analogous in some ways with the statements required in relation to compliance with the Human Rights Act) which would be signed off by the relevant Minister; and
- (c) a requirement to involve local government in the development of government action or proposals which would affect its status and role as set out in the statement of principles.

17. In combination these provisions could significantly shift the rules of the game in respect of major decisions which impact on local government. The arrangements described in the next section would provide the necessary oversight to give them teeth.

#### ENTRENCHING: PARLIAMENTARY OVERSIGHT

18. In its report on the balance of power, the Communities and Local Government Committee in the previous Parliament set out a number of proposals which in the view of London Councils can be built upon to provide effective oversight.

19. The crucial element in providing for Parliamentary oversight is the establishment of a new Joint Committee of both Houses which would take on a number of roles in relation to the new statement and would act as its guardian. This should start from the basis that the statement expresses the inter-relationship between the central and local elements of the wider democratic system in England. That focus on the wider democratic system is fundamental. Parliament, as the ultimate guarantor of the sovereignty of the people, would be the right institution to take on such a constitutional function.

20. This new Standing Local and National Democracy Committee would, inter alia:

- draw up the statement of principles (as described above);
- issue specific reports on significant policy issues and proposals that affect matters covered by the statement of principles;
- Consider legislation which it considered might have a bearing on the statement of principles;
- interrogate cases where the Executive appears to be in breach or potential breach of the statement and the requirements set out above and be able to require an explanation from Ministers; and
- report annually on the overall state of central local relations considering the impact of legislative and other changes.

21. The Committee would also act as a lock on the statement of principles. As a creature of statute the statement would be open to amendment. However, with the establishment of the Committee and its role in the development of the statement, there would be a clear expectation that there should be full deliberation by the Committee before any significant change is made to these fundamental principles. This should act as a significant brake.

22. That brake could be given considerably greater formality by adopting provisions modelled on those being developed for the Fixed Term Parliaments Bill. Given that the statement of principles would have been developed by a committee of both Houses, the Bill putting the statement into statute could also require that a two thirds majority in both Houses would be required in order to amend it. This would be a substantive entrenching of the status and role of local government which accords it a status which is as close to constitutional as the system of Parliamentary sovereignty permits.

23. In the centenary of the Parliament Act a further constitutional safeguard might be appropriate. Section 2 of the Act could be amended to permit the House of Lords to reject legislation sent from the House of Commons more than two times in specific circumstances. These circumstances would only be triggered when the Standing Local and National Democracy Committee, having scrutinised legislation before Parliament concluded, by a two thirds majority, that the legislation would significantly damage the statement of principles.

## MOVING FORWARD

24. Progress could be made quickly were arrangements along these lines to be proposed by this Committee and accepted by the government and Parliament.

25. The crucial first step would be the establishment of the Standing Local and National Democracy Committee which should aim to become a central feature of deliberations about the wider democratic settlement in England. There are many members of both Houses who could bring their experience to bear on these questions including eminent former civil servants, judges, former local government leaders, former ministers and constitutional experts.

26. The work initiated by the new Committee on the statement of principles would provide an initial focus to generate momentum and could be accompanied by a commitment from the Executive to legislate at the appropriate time.

27. The Committee could then start to develop a wider work programme reflecting the current business of the Houses and the policy developments underway in Government.

## CONCLUSION

28. Parliamentary select committees have on a number of occasions identified the need for or possible benefits of embedding some form of wider constitutional settlement covering central and local government but Government has always backed off. The issues do not, however, go away.

29. We have set out how incorporation of a statement of principles developed by Parliament and tailored to the specific conditions and requirements of central-local relations in England could be achieved. In our view there is an opportunity now to make the status and role of local government in England clear once and for all as part of a new more localist settlement and that it is for Parliament, not just the government, to make it happen and to provide the necessary oversight to give it teeth.

February 2011

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**Written evidence submitted by Stephen Hughes, Chief Executive, Birmingham City Council, Sir Howard Bernstein, Chief Executive, Manchester City Council and Andrea Hill, Chief Executive, Suffolk County Council**

## INTRODUCTION

Following evidence given to your committee last year, you asked us to forward our suggestions for the coverage of a “code” setting out the relationship between central and local government. This note summarises those ideas and also addresses the issue of how the code should be implemented.

We have not repeated here the arguments about why some form of codification is necessary. We note that the Localism Bill committee has already taken further evidence on this and that it has been raised by Barbara Keeley MP in the 5th sitting of the committee and we have reflected that in our suggestions. However, it is not clear whether the idea of codification will be included as an amendment to the Bill.

We are also conscious that many of the barriers to a localism which empowers local government are political and cultural. There needs to be a sea-change in the attitude of central government towards the role and importance of local government and this can only be achieved over a period of time. Initiatives such as codification and amendments to the Cabinet Manual however can assist and speed the process of change.

## OUR OBJECTIVES

Our intention in making these proposals is to help fill some of the gaps in the approach to localism reflected in the Localism Bill and other government policies to date. We believe there is a danger that aspects of the Bill weaken local political leadership and accountability rather than strengthen it with powers handed directly to people rather than lower levels of government, or retained with the Secretary of State. We believe that localism can only operate effectively if there is strong local government and strong communities working together with central government. Codification of the central/local relationship is now necessary so that there is a clear understanding of:

- *Role of Local Government*—The role of councils in shaping places where people want to live, work and invest where local government is empowered to carry out this community leadership role and is held to account locally for its decisions and success.
- *Finance*—Increased autonomy for local government in how it is financed through various sources of tax and income and also for increased influence on central government spending within an area (through Community Budgets or otherwise) consistent with the “place-shaping” role. This is an issue that we are addressing through the City Finance Commission with Westminster City Council and which will of course be taken forward in the Resource Review.

- *Central—Local Relations*—where central and local government are clear about their respective roles and where central and local government work together in an integrated way to deliver effective outcomes for local communities.

Ultimately our concern is to see a profound cultural change across central and local government and the civil service. This cannot be directly legislated for and will require strong political leadership at all levels. We believe that a codification of the relationship between central and local government could have a dramatic affect on setting the “terms of debate” in which this culture can be developed.

#### CULTURAL CHANGE

Those working in the civil service need to be judged on their commitment to localism if the institutional barriers to change are to be removed. Recruitment and development and leadership will also be key issues to address. Local Government is not a programme or project (a structure for implementing government policies) but a focus for political leadership in its own right and this requires a fundamentally different concept of government which is not based on the notion of Whitehall finding solutions to “whole problems”.

One useful step would be an extensive re-drafting of the Cabinet Office manual for the civil service being produced by the Cabinet Secretary. At present this includes only 2 pages on the role of local government. We are submitting suggestions in the consultation on this for how this could be strengthened to better explain the role and importance of local government and potentially the “code” could be included as an Appendix to the manual when finalised. The manual could we think form the basis for civil service leadership and staff training and could provide the basis for further work with opinion makers on how to build a shift in cultural attitudes within central government.

#### “PLACE-SHAPING” AND PUBLIC SPENDING

Local authorities need to be recognised as agents of change—shapers of places and first among equals with other partners in aligning programmes and commissioning local services. This is the aim of the community budgeting process. This needs to provide the foundation for the new financing mechanisms and other aspects of localism. There is a need for more local autonomy in funding but there is also a need for central and local funding to be better co-ordinated at the local level. This means government departments giving up some of their control over spending and delivery of national programmes as well as greater autonomy for the local.

Many of the barriers to collaboration are created by the relationship between local and central government and by the role of different central departments. Despite its democratic mandate, local government is a weaker partner in relation to other public services such as health, police and DWP which look to central government for direction rather than to local government for co-ordination. Partners are often unable to act due to differences between local and national priorities.

#### A PRAGMATIC APPROACH TO CODIFICATION

There is little attraction in any top-heavy legislation which would create an artificial framework that could end up perpetuating rigidity in the relationship. This could create difficulties in reacting to changed circumstances and unwittingly create new barriers to a sensible partnership between centre and localities. We accept that the United Kingdom does not have a written constitution and that it remains a unitary rather than federal state (notwithstanding devolution to Scotland and Wales). On the other hand any codification must go much further than the Concordat and make a tangible difference that can be related to outcomes that matter to citizens. There must also be some effective mechanism to ensure that the code is adhered to.

Therefore the code should be a statutory one, but probably not a “constitutional bill” as proposed by some. One approach would be to pass legislation along the lines of the Child Poverty Act and the Climate Change Act which place a duty on the Secretary of State to ensure that targets (or in this case the code itself) are met. This would place a strong onus on any future government to adhere to the code or be seen to be a centralising administration if it were repealed. This could be supported by a “local government commission” that would oversee the implementation of the code and provide other support and/or a joint Parliamentary committee. There should be a requirement in the code for any measures relating to a change in the powers and duties of local government or its finance system to be referred to the committee and/or the commission. The commission would also publish an annual assessment of localism and the relationship between central and local government.

In principle this could be added as a clause to the Localism Bill, with the code as a separate document.

#### THE COVERAGE OF THE CODE

*The role of local government.* We do not want to see a lengthy definition in detail of the functions and responsibilities of local government. This would be extremely inflexible (and make further localisation difficult) as well as being against the spirit of localism—as the Redcliffe-Maud Report pointed out in 1969 “Local government is more than the sum of the particular services it provides. It is an essential part of English democratic government”. Instead the code should seek to define the overall role of local government and recognise its local mandate. However the provisions in the code need to be clear enough to ensure that government departments co-operate, for example with local co-ordination of spending.

As we pointed out in written evidence to the committee, the important thing is a code that *supports practical action* on the ground. Much of this can be about using (and protecting) existing or planned legislation. This includes the Localism Bill but also examples like the power to make local bye-laws granted by the 2007 Act.

We feel that the purpose of local government should be stated in the Code in terms of:

1. *Promoting the well-being of communities and citizens*

Local government represents and promotes the economic, social and environmental well-being of its communities and citizens. It will utilise the General Power of Competence and other mechanisms to ensure that community needs are met. Central government should respect and support local government in the exercise of the Power.

2. *Shaping places so that they are attractive places to live, work and visit*

Local government have a key role in “place-shaping” where local authorities and partners use their influence, powers, creativity and abilities to create attractive, prosperous and safe places where the economy grows and people want to live, work and do business.

3. *Promoting economic growth and prosperity*

Every place should have an identity and an economic purpose. Increasingly local authorities and private-sector led Local Enterprise Partnerships have a key role in promoting economic development and productivity in their areas.

4. *Promoting local democracy including the role of councillors*

Local government is the local democratic representative body for the local community. It provides community leadership and champions a vision for the local area and works with others to ensure it is delivered.

5. *Co-ordinating spending and the delivery of services at the local level*

Local government provides local services to meet local needs. Increasingly it will work with others delivering services across its area to ensure that community needs are met effectively. It will also lead the co-ordination of local spending across its area to ensure that community well-being is promoted.

6. *Citizen engagement*

Local government will work with communities to increase the levels of participation and engagement in local decisions to promote community well-being.

The code needs to place a requirement on government to enhance the ability of councils to lead the co-ordination of local spending through community budgeting or similar exercises, whether it is supported by local taxation or comes from a government department. However, to define these budgets and the mechanisms too closely would limit flexibility and future options.

Related to this is the power to co-ordinate the various capital funding streams that government still operates as a single pot and a joint power of prudential borrowing (enabling flexibility between agencies and councils).

The other key element of this section is the General Power of Competence (already being legislated for). However the version of this in the Localism Bill, as many commentators have said, could do with being far less restrictive and subject to ministerial interference.

Finance. If the code is to have any significance then it must give greater autonomy to local government in terms of its control of finance. Unless local government has more responsibility for how it raises its own income—through taxes, charges and economic activity, then it will forever remain the poor relation of central government and local democracy will continue to matter less to people. We would argue that Parliament should consider including the following in the code:

- A requirement to take measures to increase the proportion of local government funding raised locally (clearly not by just cutting grants!) over time.
- A requirement not to reduce the range of taxes available to councils (we would argue for new options such as bed taxes, sales tax, tourist tax etc as part of the LGRR but clearly there cannot be legislation that requires an ongoing extension of these) to protect their right to levy these in the future.
- Genuine abolition of council tax capping.
- Protection of the right to raise business rates locally to prevent re-imposition of any centralised system following changes developed in the LGRR. Any proposals to change redistribution systems would of course also be covered by legislation and require a referral to the joint committee and/or commission.

*Relationships and processes.* The code would need to set out some key aspects of the relationship between Government, Parliament and councils, for example the role of MPs in representing their constituents and how this relates to the role of councillors and councils. As Roger Gough suggests in his evidence to the select committee the emphasis has moved on to local government wanting a “seat at the table” and this is reflected in the suggested Joint Committee of Parliament, with local government attendance, to oversee central-local relations and possibly vet any proposed legislation to assess its implications for the relationship and report to Parliament. There are also suggestions that guidance should prevent ministers having to answer questions that are the responsibility of a local council.

#### OTHER ISSUES

There are many other initiatives necessary to support the implementation of the code: This could include greater recruitment of staff from local government into central government and increased transfer of staff between the civil service and local government to encourage greater understanding and “permeability”. Associated training through the civil service national leadership programme and staff training courses would also be helpful.

There is an important question of whether the whole of local government should be treated equally under this code or whether there is a case for recognising diversity and the different scale and importance of tiers and councils. Core cities has certainly argued that the cities should be in the vanguard of developing new powers and this is echoed in other submissions to the select committee. This suggests that there might be scope for linking powers to the 12 cities having elected mayor referenda, though there are arguments against this approach.

We suggest that the answer to this may lie in the heritage of British local government with the pre-1974 distinctions such as county boroughs and cities providing for a diversity of powers and roles as appropriate to the locality. Such an approach might also allow for new hybrid forms of local government to develop, for example in the response to the need to share services whilst maintaining local democratic representation. Further consideration should be given to how this diversity could be allowed for within the code.

Taking this idea further, we believe that government should also consider other modern and historical models for the governance of cities and principalities, such as the status of the Isle of Man, the Channel Islands, Monaco, San Marino etc. We can also find inspiration in the great renaissance city states of Italy, as cities become more and more critical nodes in the global economic system. Whatever ideas we focus on, the key aim must be to support innovation and greater autonomy in our great cities.

March 2011

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### Written evidence submitted by Professor Colin Copus, De Montfort University

#### INTRODUCTION

1. The Committee set out nine principles to be expanded upon and to form the basis of a draft code governing the relationships between central and local government. The draft code could then be the basis for a wider consultation and discussion under the auspices of the Select Committee. The nine principles flow throughout the draft code in section two and are developed in the clauses within each article. The Committee also asked for an assessment of the issues involved in implementing the principles through a code of central and local government relationships.

2. The first section of the paper sets out a rationale for the construction of a code of intergovernmental relationships and the rationale for each article contained within the draft code; the second section presents the draft code. The Third section assesses the feasibility and practicality of such a code. The paper concludes by drawing out the main issues that the Committee may want to consider in the development and decisions about the adoption of a code of intergovernmental relationships.

#### SECTION ONE: RATIONALE FOR CODIFICATION

3. The draft code is based on an assumption that it is required to re-establish and strengthen the position of local government within the constitution and to provide a degree of protection for local government and its citizens from centralisation and over-regulation. If codification is to produce a balanced working relationship between central and local government it must explicitly recognise the value of local government and formally establish the degree of its political and governing autonomy. Without those underpinning assumptions a code is likely to see local government as little more than a means of providing or overseeing the provision of public services and consequently diminish its politically representative features.

#### *Article Rationale*

4. A *preamble* is required to set out a broad framework within which the articles sit and to set the context for operationalising the code by stressing the underlying localist philosophy on which it is based.

5. *Article One* is required to emphasise the independence and autonomy of local government and to secure the code as an agreement between the entire centre and the localities. It is designed to ensure that all central government departments work with local government through a shared set of practices. Constitutional protection for the code is required to prevent it being amended or abolished.

6. *Article Two* is required to achieve an agreed definition, between central and local government of the role, purpose, nature and constitutional status of local government and to emphasise that local government accountability is primarily to citizens. It asserts councils as governing and politically representative institutions.

7. *Article Three* establishes a consultative working relationship between central and local government based on a mutual acceptance of the broad remit of local government responsibilities.

8. *Article Four* is required to ensure a negotiated and mutually agreeable process of constructing a framework for ensuring service delivery quality.

9. *Article Five* establishes the territorial autonomy of local government and that council boundaries are to be agreed by councils and their citizens. Without territorial integrity and autonomy council boundaries can be re-organised for the benefit of central government and the national parties' ideological concerns.

10. *Article Six* is required to operationalise the freedom of councils and local citizens to decide the internal political decision-making arrangements of the council and the voting systems for local elections to suit local circumstances. The article recognises that central government is not required to decide how councils will be elected or how they will make decisions once they have been elected.

11. *Article Seven* recognises that local autonomy and independence is strongly related to financial freedoms, but also that financial responsibility and rectitude comes with a clear link of accountability to local citizens. Alignment is required between central and local government financial processes to add certainty and consistency to financial planning.

12. *Article Eight* is required to set out the broad parameters within which councils can co-operate with each other and with other bodies so that there is clarity and recognition of councils' rights to act in ways that they think beneficial to their areas.

13. *Article Nine* provides for local referendum to be the responsibility of the Electoral Commission. Such independence enhances the probity of and confidence in, the referendum process.

14. *Article Ten* by enabling local government to take legal action in any circumstances that might threaten the autonomy of a council serves to provide additional protection to local government independence from external control or interference.

15. The next section sets out a draft codification of relationships between central and local government.

## SECTION TWO: A DRAFT CODE OF INTER-GOVERNMENTAL RELATIONSHIPS IN ENGLAND

### *Preamble*

Through this code Parliament establishes free and independent local councils in England accountable to local citizens. They shall enjoy independence in both powers and finance and be entitled to do all that is required at local level, within the law, to secure and improve the well-being of their citizens and communities. Parliament makes plain that local government has comparable—not subordinate—status to central government and that its rights and duties shall enjoy equal protection of the law.

### *Article One*

1. The fundamental rights and duties of local councils herein are defined protected and entrenched. They may only be changed by the consent of Parliament as authorised firstly by an elected joint committee of both Houses, to include local government ex-officio representation and then by the approval of both Houses of Parliament as prescribed in the amendment to the 1911 Parliament Act [enabling the second chamber to reject changes to the fundamental freedoms of local governance].

2. Councils, local government representative bodies, all ministers, government departments, MPs, civil servants, courts of law and all public agencies interacting with local government are bound by the articles within this agreement and will act in accordance with these articles.

3. All of the provisions of the code are subject to the law. The individual rights of citizens are not affected by this code and citizens may seek judicial review against any injustice or infringement of rights as now. Councils and government can seek legal adjudication should it be felt that a council, councils or central government are not acting in accordance with the code.

### *Article Two: Local Autonomy and Local Self-Government.*

1. Councils' accountability is to local citizens.

2. Councils shall operate within the rule of law and with regard and respect to human rights legislation.

3. Councils are autonomous, democratically elected bodies which independently decide upon, administer and regulate the public affairs of and deal with all matters of concern within their boundaries which are not dealt with or attended to by other governmental bodies.

4. Councils operate within a framework of an irrevocable power of general competence with a full legal personality. Powers rest with councils, acting in accordance with the national legal framework, to issue regulations, by-laws and other legally binding acts on matters affecting the affairs and interests of their area.

*Article Three: Scope of Local Government*

1. The powers and responsibilities of councils shall after due consultation be prescribed by statute subject to safeguards in Article 1.1.

2. Councils have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence or assigned to any other authority or body.

3. Councils are to be consulted, early within the policy and decision-making processes, by any public or private sector body that is developing policy or that is proposing to spend public or private resources, which will affect any council and its communities.

*Article Four: Inter-Governmental Activities*

1. Central and local government together can create inspection regimes to set and maintain service standards.

*Article Five: Territorial Autonomy*

1. The boundaries of local authorities are an issue for councils and their citizens. Any proposals for boundary changes must be conducted with the involvement of the Local Government Boundary Commission for England and within the law.

*Article Six: Council Governmental Systems*

1. Local citizens through their councils have autonomy to choose their internal political decision-making systems (including, whether to adopt a directly elected mayor and cabinet, cabinet and leader, committee system, or some other political decision-making arrangement) Changes to political decision-making systems must first be subject to a binding local referendum.

2. Councils must review their political decision-making system every eight years and produce a publicly available "Political Governance" report setting out the effectiveness of the system and if appropriate considering alternative approaches.

3. Councils or local citizens can adopt any electoral system for use in council elections, after consultation and a binding referendum.

*Article Seven: Local Government Financial Integrity*

1. Local councils shall be financially independent of central government.

2. Local citizens through their councils may raise additional sources of income in their localities in any way they wish [subject to the rule of law and human rights legislation] if they gain the consent of their electorates through a binding referendum or local propositions.

3. The division of income tax between the central and local government shall be agreed annually, with no less than one half of income tax being retained in the localities to pay for an agreed reallocation of locally based services.

4. The process of equalisation, ensuring fairness in distribution to local councils with different needs, will continue. It shall be undertaken by an independent body of which half its members shall be representatives of local councils.

5. Councils shall be able to raise any loans which their credit rating allows and will be exclusively responsible for repayment. For the purpose of borrowing for capital investment, councils shall have access to the national capital market at their own discretion. All councils shall operate an annual balanced budget so that all outgoings, including interest repayments on borrowings, shall not exceed income.

6. Central government will not cap, or in any way limit, councils' taxation powers. Central government must consult with councils on how it will distribute and allocate government funding to pursue its own policy objectives. Local government autonomy must not be undermined in any way by the operation of any financial or partnership mechanisms.

7. The same financial transparency standards will apply to local and central government, alike. Government funding to councils is to be based on a rolling three year budget cycle to coincide with the comprehensive spending review process. Once the three year medium term budget planning process has been agreed and announced no significant changes in funding levels will be made by central government.

*Article Eight: Councils Right to Co-operate and Associate*

1. Councils as independent legal entities are entitled, in any undertaking, to co-operate in any way with other councils, public and private bodies, any voluntary, charity or third-sector organisation, or with any financial, commercial or private enterprise.

2. Councils are able to belong to any association for the protection and promotion of their common interests and to belong to an international association of any sort. Councils are entitled to co-operate with councils in other countries for any matter.

*Article Nine: Local Referendum*

1. The administration, oversight and management of any local referendum process, from receipt of petitions to the organising and conducting of referendum, are to be the responsibility of the Electoral Commission.

*Article Ten: Legal Protection of Local Government*

1. Councils have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the power of general competence and any other principles of local self-government or individual rights enshrined in law or contained within the code or evident in Human Rights legislation.

*Section Three: The Practicalities of Codification*

The section is set out in two parts to ease consideration of the issues involved. The first part examines the key issues (identified as italicised sub-section headings below) involved in codifying the relationship between central and local government and the implications arising. It does this by using the draft code in section two developed from the nine principles the committee articulated which have been collapsed where they consider similar issues, such as finance. The first part of this section considers the following issues: securing agreement to the principle of codification; central and local government policy consultation; council boundaries; local electoral systems and internal council political decision-making systems; local government financial freedom; quality of services; and, local government independence and autonomy.

The second part of this section makes a brief assessment of each article of the draft code in section two.

1. Assessment of Broad Principles

*Securing agreement* of central government to the very principle of a codification of the relationship with local government has two key dimensions:

1. Central government accepting a permanent change to the current constitutional settlement between the centre and the localities.
2. Ensuring that agreement to a code and abiding to its conditions extends across government, that it is not restricted to the DCLG alone and that it is adhered to by ministers and civil servants.

Given the last Labour Government's policies of devolution to Northern Ireland, Scotland and Wales and given the current government's localism agenda and the Localism Bill, particularly section one's "general power of competence", common ground should exist across the parties, for establishing a framework for the independence and autonomy of local government. Past governments, however, including the last government, have implemented policies which expressed little patience for local government autonomy and have viewed councils as a mechanism for little more than implementing central government policy. Currently however, each of main political parties appears to support greater autonomy for local government, so the time is right to develop and consult on a draft code. The feasibility of a code stands or falls on two aspects: first, Parliament and government re-balancing the constitutional relationship and doing so on a permanent basis; and, second, local government being willing to use new found freedoms.

A code itself does not alter the fundamentals of the constitution; making that code constitutionally secure does however, create a re-balance to a more localist orientation in the governing system.

Government would not be able to change the structure, nature, functions or purpose of local government, without the due process necessary to respect the independence of local government including undertaking negotiations. Any change negotiated would require (under Article 1.1) a legislative process different to that normally employed. While this may create frustration for government and slow down its own policy implementation, it would also mean less legislation, wider consent and more localised decision-making. Parliament has become accustomed, very quickly, to constitutional change brought on by devolution to Northern Ireland, Scotland and Wales and what that means for Parliamentary and governing processes. If viewed in the same devolutionary and evolutionary way a codification of central-local relationships would soon establish itself as the standard operating procedure.

A failing of the current concordat is that it has not been taken up across government departments and across ministers as the means by which intergovernmental relations are to be conducted. The concordat's focus on the service role of councils has served to sideline the political, democratic and representative contributions made by local government. Experience has shown that production of a code alone is insufficient to change working



practices and that a change of attitudes across central government is required to successfully operationalise any code.

Independent central and local government would need to devise effective arrangements to work together in partnership. Developing a forum for *policy consultation* between local and central government means a shift from a top-down, control relationship to a negotiated, consensual style. Such a relationship between the centre and local government exists in other governmental systems, both unitary and federal (Goldsmith and Page, 2010). Central government already consults and negotiates with local government and creating a forum would sharpen the focus of existing processes and enable more detailed consideration of policy development concerning local government. A negotiating forum may however, slow down policy decisions, delay the implementation of government policy and frustrate government intentions across a range of policy areas. Genuine consultation and negotiation comes with the expectation of compromise and concession and that would be an expectation on all parties to the process. As a consequence delay may be off-set by better policy decisions and policy outcomes.

Control of *council boundaries* resting with councils and local citizens rather than with central government, exemplifies local autonomy and independence. Devolving to councils and citizens, working with the Local Government Boundary Commission for England, the power to set and change boundaries, to amalgamate (in whole or in part) or to disaggregate councils, is easily achievable. Moreover, it avoids the danger of council boundaries being manipulated for national party political reasons; or for reasons that suit the needs of the central government machine.

There are examples across the globe where decisions about council boundaries rest with citizens and councils and there are no practical difficulties in switching to a system of local boundary control, which would remove the need for the expensive bidding process that has been seen in some past reorganisations (Chisholm and Leach, 2008). A question arises as to whether council boundaries should be something that citizens alone should control, rather than giving councils a say in the matter as councils will tend to want to maintain or extend existing boundaries.

Central government will, of course, have a view on proposed boundary changes and on the overall coherence of the structure of local government and will be able to express that view during any consultation process.

*Local electoral systems and internal council political decision-making systems* need not be the same across the country. Indeed, since the Local Government Act 2000, some choice in internal political decision-making systems has existed. Moreover, the Localism Bill widens that choice by making the committee system open to all councils. The implications of councils being able to adopt different internal decision-making systems fall on the councils concerned; although, government inquiries have explored the way councils make decisions in an attempt to speed-up and add clarity and accountability to the process and this will still be a central government concern (HMSO, 1967, HMSO, 1986).

If council decision-making is perceived to be slow then there is an impact on central government as local people look to it for a solution to be developed and imposed. In this case government continues to be the arbiter of local matters at a detailed level. Encouraging independent councils to develop local political decision-making processes, with local people, rather than government legislating across the entire local government system could lead to more refined processes developing. By devolving responsibility to councils and local people to set council political decision-making arrangements, central government will be faced with a possible array of systems when it comes to negotiating with councils. But, local decision-making forms would be the choice of local people rather than designed for the convenience of Whitehall.

The consequences of local electors choosing different electoral systems would again fall mainly on the councils concerned. Those council areas choosing a more proportionate electoral system are likely to have a wider range of parties and non-partisan groups represented on the council and would be more likely to be governed by some form of coalition, than those choosing to employ the first-past-the-post system; those areas retaining the current voting system for local elections are more likely to have a clearer one party outcome and governance. Central government will, of course, have a view on the matter and will be able to express that view during any consultation process, while the choice of electoral system should rest with the locality rather than Whitehall.

Securing *Local government financial freedom* is necessary to operationalising any of the nine principles and the draft code in section two. Central government control of local finances, both the source of finance and the way in which it is used by councils, would need to be fundamentally changed to give councils greater financial freedom (Layfield, 1976, Foster, *et al*, 1980).

Securing local government financial freedom from the centre is made difficult by: the role that local government expenditure has in the macroeconomic and fiscal policy fields; the control governments, of all parties, have been able to exert over local finances for national economic and political reasons; and, the current government's deficit reduction policy. Again, these issues are not insurmountable but rely on the formation of a different mind-set in the relationship between the centre and the localities when it comes to financial matters, rather than relying on an evolution of policy to secure change (John, 1999).

The Layfield Commission (1976) and the Lyons Review (Lyons, 2007) examined local government finance set within the wider context of the purpose of local government and central-local government relationships.

Lyons was restrained in the reforms suggested, but the practical implementation of alternatives such as local income tax is not the issue, here. It is in local financial matters that we often see the conflation of local and national government in the public mind. Overall council expenditure and council tax levels are national issues and debated in the national media and thus government is required to have a view on their reasonableness. But, government holding and expressing a view about council financial decisions need not mean having control of them to ensure accountability; adding clarity to the system would enhance local financial accountability.

The current system of financing local government would be greatly simplified and accountability sharpened as a result of local people having freedom to endorse, or not, council access to diverse and buoyant sources of finance and to set their own taxation levels. With complete financial freedom given to local people however, central government would no longer be able to safeguard communities from excessive increase in local taxation, high levels of local expenditure or other financial adventures by individual councils. But, if local electors continue to grant a mandate for such financial policies by re-electing controlling groups who pursue them, the choice is either for local citizens to be the arbiters of local affairs or for central government by claiming a national mandate (Wolman and Goldsmith, 1992). There are no practicalities only political choices involved here.

Financial freedom for local government is not an all or nothing choice. Structures created for negotiation and agreement between the centre and the localities over the financing of local government, financial equalisation, and the level and nature of grant support, can replace a top-down approach without the centre relinquishing all control or involvement (Goldsmith and Page, 2010). Enhanced financial freedom would provide stimulus for re-energising local political parties, local civic society and civic debate around local choices and value for money. Yet, there is a need for central government to provide funding in emergencies such as natural disasters or, if for some reason, a local authority's finances broke down entirely.

The *quality of high-profile services* provided or overseen by local government are an issue of national debate. Major policy areas, such as education and housing, will always provoke central government interest and concern for involvement beyond inspection and freedom for local government needs to be seen and set in this context. A balance must be drawn between services which can be left to local decisions reflecting local sensitivities and circumstances so as to recognise local differences and diversity; and, those areas in which government will negotiate with councils about service standards, while avoiding any centralising tendencies which the provision of public services generate and which has been long noted (Toulmin-Smith, 1851).

The solution to the nationalising pressures of national expectations of service standards is to be found in the construction of fora where central and local government can spread best practice and negotiate and agree service standards and inspection regimes in a broad sense. Negotiation and agreement avoids the need for heavy-handed inspection regimes—which have served to undermine local autonomy and the democratic mandate granted to a council (See, Leach 2010). Moreover, it avoids the need for central government to impose required service standards and thus treat local government as a means of implementing government policy.

*Local government independence and autonomy from central government* and changing the directional flow of accountability from the centre to local citizens are factors inherent in the nine principles and are reflected throughout the code in section two. If local government is to have autonomy from the centre it must have the freedom to be able to undertake any action. The feasibility of achieving local government autonomy rest on the same considerations as those required for securing agreement to codification in the first place: re-balancing the constitutional relationship between central and local government; and, acceptance across government of a new working relationship. To ensure the continual effectiveness of a code it must be adhered to throughout the life of any government which is easier at the outset of a new government but becomes more difficult as time passes and governments become closer to the Whitehall machine.

The constitutional relationship required to secure local autonomy is something that has been achieved in federal and unitary states. Yet, there has been a recent trend across Europe for central government, in states which have constitutionally guaranteed local government freedom, to find ways of increasing control over local government (Goldsmith and Page, 2010). Again, the Localism Bill's "general power of competence" nudges in the direction of autonomy—although the Bill does contain around 140 reserve powers for the Secretary of State, which indicates that local government autonomy will not be a direct outcome of the Bill, alone.

## 2. Brief Assessment of articles in the draft code

*Article One:* There is no reason why this article could not be implemented. A difficulty might occur around the issue of local government representation on the hopefully rare occasions when the joint committee proposed in the article, is convened. While Parliament might not accept non-MPs being full members of a Parliamentary committee, the local government representatives could be non-voting members, or hold their membership *ex-officio*.

*Article Two:* For the purpose of drafting a code general competence and local government autonomy are not fully articulated and these concepts would have to be defined in any consultation on the code undertaken by the select committee to avoid confusion. Indeed, general competence and local government autonomy are usually limited in constitutional settlements and are not left unrestrained. It is also necessary to set out elsewhere the distribution of functions and responsibilities between the levels of government and how

disagreements can be resolved. Would the Supreme Court, or some other body, for example, be the final arbiter in any dispute?

Care would be needed in defining “local citizens”, either employing the current formulation for compiling the electoral register; or, a more extensive view of “local citizenship” based on proximity to, but not residency within, a council area.

*Article Three:* Sets some limits on the autonomy of local government to that contained in article two. The scope and extent of the powers within article three and the nature of local government and community power over economic development would need to be agreed and defined in other documentation. It would rest on the agreed distribution of functions and responsibilities between levels of government. A *de minimis* rule may need to apply when it comes to this article.

*Article Four:* There are no practical problems as to why this can not be achieved and implemented, quickly. But, it is likely that central government would want to have primacy in the process—again, the question of allocation of functions and responsibilities between levels and agencies would be required.

*Article Five:* There is no reason why this can not be achieved. The question of the allocation of functions and responsibilities may be an issue in boundary setting, but, given that under article eight councils would be able to co-operate with each other in the provision of services, then boundaries are no longer linked to issues of service management and efficiency. The accountability of joint-provision would need to be ensured and mechanisms needed to enable voters to cast a judgment on jointly provided services.

*Article Six:* There are no difficulties in implementing article six. The article requires straight-forward devolution of power over electoral systems and political decision-making arrangements to councils and citizens. Too frequent changes however, should be avoided and maybe there is a need to place a time limit on change—such as two electoral cycles—eight years.

*Article Seven:*

Clause 1: The concept of local government financial independence needs to be carefully defined and agreed, otherwise as a statement of principle it could become meaningless and easily ignored, unless otherwise set out in law.

Clause 2: The use of referendum provides for a specific democratic mandate for taxation and revenue raising policy. But, councils must be prepared to have their proposals overturned and thus have developed, through consultation, alternative plans.

Clause 3: Rests on the assumption that an agreement has been reached about the re-allocation of local services and the division of income tax. Such agreement is not impossible, but, would require detailed negotiations between central and local government and devolution of functions and power from the centre.

Clause 4: Rests on the assumption that existing rules will be agreed for equalisation and the mechanism for allocation will continue. It would also mean that central and local government was unable to unilaterally change the processes once they had been agreed and therefore they would both need government to accept this limitation.

Clause 5: The clause has implications for the PSBR and is something that the Treasury would need to be closely involved in and is likely to strongly oppose, given its on-going and long-standing reluctance to see any local government financial reform. It is possible that linking loans to council credit ratings would be limiting for councils if resource bases were not equalised and thus poorer areas would suffer from their low credit rating, while more affluent areas may not need to borrow. On the other hand, prudent competent councils would be recognised by a revived local government bond market of the sort that has existed in the UK and that currently exists in the USA and elsewhere. The need to balance budgets would have to include the right to maintain reserves.

Clause Six: Easily implementable but rests on government’s willingness to devolve final decision-making power on local taxation to local government. Financial and Partnership mechanisms imply a limitation to local autonomy by their very existence, so they would have to be voluntary and councils entering into partnerships do so without the expectation of government funding, so that those choosing not to operate in that way were not financially penalised.

Clause Seven: Difficulties may arise with this provision unless there are comparable disciplines on central government. Problems could arise from a general election and a change of government mid-Parliamentary or mid-budgetary cycle; or, if a severe financial crises emerges; or, an event requiring immediate and large-scale financial commitment, such as an overseas military operation. These can be overcome by the agreement of a set of “emergency provisions” that would allow central government to respond to mid-financial term emergencies.

*Article Eight:* The broad powers suggested here would have to be only for purposes which were legal and carried out within the legal framework setting out council powers.

*Article Nine:* Included to ensure probity in the referendum process and would require the allocation of the responsibilities and functions necessary to the Electoral Commission. Cost implications of the increased use of referendum would emerge, but linking them to the electoral cycle could reduce that cost.

*Article Ten:* The power for local government contained here would be under the rule of law which could result in legal challenge to abuses by central government action, policy and proposals and as with all issues covered by UK law could involve judicial review at Supreme Court or at the European level.

## CONCLUSIONS

There are no real technical or practical reasons why the nine principles articulated by the committee or the draft code that is set out in section two, can not be operationalised. The feasibility of codifying the relationship between central government and English local government rests not so much on practical and technical concerns. Rather, the feasibility of codification rests on political and ideological grounds and on the willingness of the centre to accommodate a new constitutional settlement for local government which acknowledges for it a political, representative and governing purpose. Moreover, codifying the relationship between central and local government would sit well with the government's localism and the Big Society agenda. It would underpin these policies by reducing centralisation and by providing the ground on which councils and communities could experiment with local initiatives that reflected local priorities.

The general implications of codification would be:

- Freeing local people to make many more decisions effecting their lives at a local level.
- A shift to a more negotiated set of relationships between central and local government.
- Enhancement of the constitutional status of local government.
- A freeing of central government from the detailed control of local government.
- Improvements to the clarity of the financial relationships between central and local government.
- Other documents would be required to fully elaborate how the code would be operationalised, to set definitions and agree areas of responsibility.
- Possible delays because of the time needed to build a consensus for central government in the development and implementation of policy and legislation as it impacts on local government.
- Limitations on the central executive machine to use a Parliamentary majority in regard to local government policies, which would reflect similar limitations resulting from devolution to Northern Ireland, Scotland and Wales.
- At a time of national financial constraint the costs associated with creating a new settlement between local and central government and of the consultation process may be seen to be prohibitive.
- Considerable cultural change will be required to ensure that all central government ministries were aware of and adhered to the code in all activities and to recognise that a constitutional rebalancing had occurred as a result of the codification of the relationship between central and local government.
- Mechanisms for dealing with disagreement between central and local government about the code and breaches of it would have to be decided upon by agreed structures.
- As now, court action either involving the Supreme Court or at the European level would ensure the rule of law.
- Greater freedoms for local people to make choices could result in wide diversity in the quality, type and nature of public services chosen:
  - Involvement and education of public and media around the choices available would be essential.
  - Strengthened localism could stimulate a revival of civic culture and activity and encourage local parties to forge greater links with local civil society.
  - The conflation, in the minds of the public and the media, of local and national politics and government may lead to central government suffering at the polls for local government failings or *vice versa*. But, a clear understanding of the roles of councils and governments could lead to them being elected on their own record and merits.
- Enhanced financial freedom for councils would impact on central government economic and fiscal policy.
- Robust mechanisms would be required for financial equalisation and central financial assistance in the event of local emergencies.
- If local electors are to judge local issues central Government would find it difficult, if not impossible, to intervene where individual councils acted in ways that generate public concern or outrage, or are unnecessarily bureaucratic and meddlesome. Court action, as we see currently with central government, may be the only redress for citizens and the cost may be prohibitive and it would be necessary to ensure this was not repeated by local government.

The key to successfully implementing codification of inter-governmental relationships is the centre's willingness to permanently devolve political and governmental power to councils. Given that intention, the negative implications of codification can be overcome through the creation of safeguards and by negotiation

and compromise. The forging of a new relationship between central and local government must go hand-in-hand with forging a new relationship between citizens, councils and councillors. The principle of codification and the draft code contained in this report, provide the basis for forging those new sets of relationships and a framework within which they can be explored.

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February 2011

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### Written evidence submitted by London Councils

#### OVERVIEW

1. London Councils recognises that the work of the Political and Constitutional Reform Committee offers the potential for a radical reconstitution of the relationship between central and local government.

2. Establishing and codifying a set of principles that acknowledge the constitutional legitimacy of elected local government and provide for its financial and operational autonomy would create a significant opportunity to reverse the drift towards centralisation seen over the last thirty years.

3. However, producing a written statement that simply sets out the status quo is unlikely to encourage local authorities to act with ambition or address the demonstrable tendency of central government towards command and control. It is also vital that new provision will have appropriate teeth to ensure confidence in the new approach.

4. With the Localism Bill currently making its way through the Commons and with the Department for Communities and Local Government's recent review of the statutory duties placed on local authorities, London boroughs are conscious of the potential benefits of real devolution and of the extent to which these benefits might now be secured.

5. At the same time, they are also aware that Government remains cautious, apparently reluctant to trust local authorities to simply get on with the job and deliver for their communities.

6. Set out below are our thoughts on the essential principles of a draft code and our initial reactions to the document circulated by the Committee. Broadly speaking, we feel this code represents a sound basis for future work and reflects many of the points given as oral evidence at recent meetings of the Political and Constitutional Reform Committee. In particular, the proposed financial independence of local government comes as welcome recognition that a mature and sustainable relationship between central and local government is contingent on local financial autonomy.

7. We would be happy to develop these proposals further and discuss our ideas at a date convenient.

ESSENTIAL COMPONENTS OF A DRAFT CODE

8. In considering recent prospects for greater devolution and our overall approach to localism, London Councils is guided by the following:

- (i) A general presumption that those elected by an area are best placed to do what is needed for the interests of that area and that central government should allow local democratic institutions to operate with the fullest possible discretion.
- (ii) A firm belief that decisions should be made at the lowest possible democratic level, closest to the people who will be affected by the decision. Local government should be the first option to be considered for functions or activities that need to be organised below the national or regional level.

9. On this basis, we believe the following are essential principles of any code governing the relationship between central and local government:

- (i) Local authorities are autonomous and locally accountable institutions of government responsible for enabling the wellbeing of their local communities.
- (ii) As such, local authorities should be given powers and resources commensurate with this role and function. They should be able to exercise a considerable degree of control over public expenditure in their area, possess the ability to set the parameters of local taxation and raise income through any mechanism deemed acceptable to their local electorate.
- (iii) Local councillors are elected to make decisions and to govern in the interests of their area. It follows, that they have a clear role in the leadership of their communities and other public bodies operating locally and that they should be afforded the freedom to self-determine arrangements for decision-making, management and delegation.
- (iv) Given these principles there should be a general presumption against defining the role and function of local authorities through statute. Statutory duties should be restricted to specific, high profile areas, where it is generally accepted that central Government has a specific interest or those instances where there is an identified high risk to individuals.
- (v) Central government should ensure that the monitoring and regulation of local government is concomitant with these principles and aimed simply at ensuring compliance with the law.

10. With these in mind, our views on the proposed articles of the draft code are as follows:

- *Preamble*: we strongly support the principle of local authority independence in both powers and finance and the statement that local government is of comparable not subordinate status to central government.
- *Article One*: we welcome the proposed entrenchment of the fundamental rights and duties of local government through amendment to the Parliament Act and the establishment of a joint committee of both Houses to scrutinise and protect these principles. In addition, we would propose that all new primary legislation would require to have a “statement of compatibility” with the proposed Code and that the joint committee monitor and report annually on the extent to which these principles are being adopted.
- *Article Two*: given elected local government’s constitutional legitimacy, we propose that there should be a presumption in favour of local authorities leading the activities of public bodies within their areas.
- *Article Three*: we believe that an important general principle is that local authorities should be free to act on their own initiative so as to enable the well being of their local communities. As such, it is central Government’s responsibility to demonstrate that additional duties enforced by statute are both necessary and appropriately considered.
- *Article Four*: we propose that an inspection regime is necessarily light-touch and that service standards are defined and monitored at the local level.
- *Article Five*: whilst recognising the role of the Local Government Boundary Commission for England and the rule of law, we would stress that the boundaries of local authorities are primarily an issue for councils and their citizens and that insofar as is practicable local communities should be entitled to autonomy in this area.
- *Article Six*: we welcome provision for local authorities to be able to act with autonomy in regard to local political decision-making systems and recognise the desirability of formal consultation through local referenda before changes are made. However, we would propose that any timetable for review is a decision best made locally rather than codified nationally.

- *Article Seven:* we strongly support the principle that local councils should be financially independent of central government and the proposal that local authorities should be able to raise additional sources of income, subject to agreement with their electorates. Local government financial autonomy is the cornerstone of real local devolution and is a fundamental component of putting local authorities on a comparable rather than subordinate standing with national government. In addition, we propose that central government should ensure that the resources of local government are commensurate with the duties and functions required of it and that local authorities should be able to exercise greater control over all public expenditure within their areas.
- *Article Eight:* we support this principle, local authorities should be free to form associations and co-operate in any way with other public, voluntary or private organisations.
- *Article Nine:* we recognise and accept the role and authority of the Electoral Commission in the oversight of local referenda.
- *Article Ten:* we support the principle that local authorities should have recourse to judicial remedy in order to secure free exercise of their powers.

## CONCLUSION

11. London Councils is keen to explore the potential for codifying the relationship between central and local government as a mechanism for delivering a tangible increase in local authority autonomy and independence.

12. To date, the work of the Constitutional and Political Reform Committee represents a determined effort to grapple with a challenging and far-reaching agenda. Insofar as London Councils might support this laudable and potentially radical activity we would be happy discuss further the proposals contained in the circulated document and explore the opportunities and appetite that exists across London boroughs for progressing this work.

April 2011

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### Written evidence submitted by Andrea Hill, Chief Executive, Suffolk County Council

1. Please find below an Article-by-Article critique of the proposed Draft Code for Central and Local Government Relations. We have not discussed the overall implications of the code as these are addressed perfectly well at the end of the draft document itself. However, our general comments are:

- This is very radical document and it is highly unlikely that any government would ever sign up to it. As it stands, if it is to progress further, both local and central government would no doubt identify elements on which they would or would not be prepared to give (potentially quite a lot of) ground, the upshot of which would be lengthy consultation and a compromise that may satisfy no-one. At this stage, a re-draft, based on comments received, would be more preferable.
- In its current form, the code contains some contradictions that clearly would need to be ironed out. Also, in some areas it assumes an “as is” scenario and in others not, but not in a way that consistently ties up with the government’s current policy proposals.
- Although the code is meant to govern relationships between central and local government, in defining the role of the latter it sometimes strays too far into relationships between local authorities and other local partners.
- There is clearly a great deal of work to be done on the detail that would need to lay behind the code, both shaping it and being shaped by it. This may include a good deal of primary legislation, unless the code was introduced as a Bill in its own right, with appropriate consequential amendments. But this could be another reason why government would back away from it—too difficult to do.
- Clearly, successful implementation of the code would rely very heavily on cultural change across central and local government. But everyone appears recognises this.

*Article 1: To emphasise the independence and autonomy of local government and to secure the code as an agreement between central and local government*

2. We would not take issue with any of the provisions of this article as they serve to set the purpose and legislative context of the code. In our earlier submission we suggested a role for a “local government commission” to oversee implementation of the code (though perhaps alongside the proposed Joint Committee) and in the event of the code being taken forward this option should be explored further.

Article 2: *To agree a definition of the role, purpose, nature and constitutional status of local government; and to emphasise its accountability to people*

3. Again, as they stand, we would not have a problem with any of these provisions, though perhaps referring to the *role* of local government, as opposed to its scope, would be better. The clauses avoid a lengthy definition of local authorities' functions and responsibilities and stress their local mandate, both as suggested in our written evidence. However, we also previously stressed that the code should be clear enough to secure cross-departmental co-ordination of central government's relationship with local government and better co-ordination of central and local funding, and therefore this draft may need more detail on the role of local government, along the lines originally suggested, ie:

- Promoting the well-being of communities and citizens;
- Shaping places so that they are attractive places to live, work and visit;
- Promoting economic growth and prosperity;
- Promoting local democracy and the role of councillors;
- Co-ordinating spending and the delivery of services at the local level; and
- Increasing levels of participation and engagement.

4. Noting the reference to the General Power of Competence, we continue to support this but also continue to argue it should be less restrictive and less subject to ministerial interference.

Article 3: *To establish a consultative working relationship between central and local government based on a mutual acceptance of the broad remit of local government responsibilities*

5. *Clauses 1 and 2*: These serve to underline other provisions within the code and we have no further comment on them.

6. *Clause 3*: This is very important and in practice will be a fulcrum of the central/local relationship. The government already consults widely, just not with any real cogency and, as perhaps local government would argue, without any real sense that consultation will make that much difference. Codification has the potential to change that.

7. However, the explanatory notes are right to draw attention to the likelihood that a more formal central/local negotiation process will slow-down decision-making, delay implementation and frustrate government intentions and we could well understand why any government, when faced with this prospect, would back away and perhaps cite its own democratic mandate as the basis to pursue its policies. Nevertheless, we welcome the opportunity to give central/local consultation a greater coherence and sharper focus, and share the code's belief that it will improve policy-making and generate better policy outcomes.

8. Our only concern here is with the scale and scope implied by the wording of Clause 3. As it stands, this appears to suggest that *any* public or private sector organisation should consult with local authorities, and does not adequately explain what is meant by "policy" or "expenditure" that may have an "effect" on a council or its communities. Such a requirement could be well understood in the context of strategic matters (be they, for example, national, regional or countywide) but we do not believe it is a matter for the code to bind small local-level organisations to a particular duty in respect of matters that may be really quite minor. We would also like to draw attention to the fact that in Suffolk, as an example of a two-tier area, consultation could be with up to 8 local authorities and more if towns and parishes were to be involved.

9. Therefore, we would like to stress that local level consultation and co-operation should be a local matter, though the code could strengthen this by quite legitimately referring to local authorities' role in seeking to co-ordinate the development of policy and organisations' expenditure in their area.

Article 4: *To ensure that central and local government can work together to create inspection regimes to set and maintain service standards*

10. Where inspection and the maintenance of standards is a matter for central government then a codified requirement to work in collaboration with local government will help ensure regimes are efficient and effective and do not impose unnecessary burdens. However, the code should not prevent local authorities from having the freedom to design and implement local regimes where they are required to meet local needs and circumstances.

11. Furthermore, although we broadly support this Article as it stands, we believe it would be worth considering its expansion to take in the totality of central/local co-operation.

Article 5: *To establish the territorial autonomy of local government and that local authority boundaries and are a matter for councils and their citizens*

12. We believe the code's explanatory notes are right when they say that local control of boundaries "... exemplifies local autonomy and independence." There is no need for central government involvement in Periodic Electoral Reviews and other forms of re-organisation; and perhaps, short of final sign-off, there is no need for the involvement of the Local Government Boundary Commission either, though we accept there are



arguments as to why it should be involved, for matters of probity and transparency. Either way, the shift to such an approach could be easily achieved.

13. In considering whether local authority boundaries should be a matter for local people *alone* to determine, we would argue that local authorities should still be able to initiate proposals, even if their final acceptance depended on public approval. However, it should be noted that in two-tier areas, such as Suffolk, boundary reviews can be doubly expensive and time-consuming, given the need to consider each tier separately. If decisions on local authority boundaries were to become a local matter, we would expect there to be provision to allow for cross-tier reviews where required or practicable.

*Article 6: To establish the freedom of local authorities and local people to decide their own political decision-making arrangements and local voting systems*

14. These clauses and the explanatory notes complement and expand on comments made in our previous submission ie that any code should allow for differentiation in practice at a local level and for new forms of local government and governance to develop, appropriate to local needs and circumstances, and beyond those allowed by the *Local Government Act 2000/Localism Bill*. This is particularly pertinent in the context of Suffolk's current strategic policy direction. Any arguments that the development of a multiplicity of local government forms would somehow inconvenience central government are largely specious.

15. Again, there is no need for central government control of these matters. Instead, we would agree with the suggestion that changes should be subject to local referenda and an authority's regular review of its decision-making structures and processes. The suggestion of every eight years seems about right.

16. As regards changes to electoral systems, we would have no objection in principle but in two-tier areas, where electors may cast votes for two or even three councils at the same time, there should perhaps be an expectation that local authorities would look to adopt a common standard of voting.

*Article 7: To recognise the financial freedom concomitant with political autonomy, to clearly link that freedom with local accountability and to align central and local government financial processes*

17. *Clause 1:* This recognises that without financial independence local government will be the poor relation and unable to assert its political autonomy. The proposed reforms to the likes of Business Rates for example, in the Local Government Resource Review, are a step in the right direction but, if they come to pass, we would expect codification to prevent the re-imposition of any centralised regime without consent.

18. *Clause 2:* We would support in principle the power to raise additional income by any means subject to local consent, but in two-tier areas such as Suffolk, care would have to be taken to avoid an unnecessary complication of levies across the tiers and the extension of double taxation. The latter is already an issue here and though not significant at the moment it may become more so if local communities are charged for services they take on themselves, a key feature of the council's current policy direction. Given these points, and given also that the government has recognised there are particular issues to resolve around retention of Business Rates in two-tier areas, we would perhaps expect such areas to develop a more collaborative approach to local taxation etc.

19. *Clause 3:* If our interpretation is correct, this suggests that at least 50% of income tax is retained at a local level. If so, it is at odds with Clause 4's proposal that equalisation should be maintained, even if the intention is that the proportion of tax retained is in fact passed to and re-allocated by the independent body Clause 4 goes on to refer to. It may also run contrary to Clause 7, which is couched in terms of a three-year budget cycle and does not allow for any significant changes by central government.

20. *Clause 4:* Please see our comments on Clause 3, above. Also, given that this clause "Rests on the assumption that existing rules will be agreed for equalisation..." it appears to propose retaining a system that does not work well. Although we would accept it is always difficult to assess fairness in this respect, the current system is supposed to be needs driven whereas in reality the damping mechanism ensures resources are distributed less on need and more on historic grant patterns. So, wealthy areas can receive damping grant and more needy areas can lose out. A distribution mechanism based on fairness and need will always create winners and losers but it is how these are dealt with that will determine the acceptability to the wider council population.

21. *Clause 5:* This seems to allow local authorities to not only borrow for capital purposes but also for revenue, so long as they can afford the payments. As this is not allowed at present, we would welcome the greater freedom, though cautiously given its potential to make local authorities less stable in the future, as past borrowing can cause financial difficulty later on. Also, the explanatory notes are right to draw attention to the implications for PSBR and the possibility that linking loans to credit ratings may be limiting for poorer areas with lower ratings and thus less scope to borrow. So again, there would be equalisation issues to consider. There may also need to be credit rating "protections" for prudent authorities who may otherwise suffer from any who fail to manage their borrowing effectively.

22. *Clause 6:* The suggestion that central government should not limit or cap local authorities' powers of taxation chimes with our argument for genuine abolition of Council Tax capping, and also underlines the

proposal that local authorities should have much wider tax-raising powers, subject to local consent. The suggestion that central government must consult with local government on its distribution and allocation of funding would be covered by Article 3 but there is no harm re-emphasising it here, although the notion of central distribution and allocation runs contrary to Clause 1's provision that "Local councils shall be financially independent of central government."

23. *Clause 7:* We would welcome funding based on a rolling three-year budget cycle to coincide with the CSR process, and of course the fact that once the medium term process has been agreed the government could make no significant changes in funding. We also agree with the suggestion in the explanatory notes that a set of emergency provisions would need to be agreed to allow for mid-cycle financial emergencies or a change in government.

24. However, as already referred to above, it is not clear how this would square with Clause 3, which talks of an *annual* allocation process; and again it appears to contradict Clause 1's assertion of financial independence.

25. Finally, overall, we would like to stress the important role of financial freedom in re-invigorating local democracy.

*Article 8: To set the parameters for and establish clarity on the extent to which local authorities can co-operate with each other and with other bodies*

26. As co-operation and collaboration both within the public sector and across other sectors becomes increasingly important, any provision that serves to strengthen and clarify this would be welcomed. It may also serve as a useful adjunct to the General Power of Competence. Presumably, it would need to apply equally to co-operation and collaboration sought or initiated by bodies other than local authorities.

*Article 9: To provide for local referendums to be the responsibility of the Electoral Commission*

27. We would accept the argument that such independence would improve public confidence in the referendum process, though the extent to which referenda are or are not binding would still be the key factor. But we would question whether it would be practical to expect the Commission to oversee all referenda, including any initiated under the *Localism Bill* such as for Neighbourhood Planning etc.

28. The draft code suggests that linking local referenda to electoral cycles would help reduce costs but in two-tier areas where different authorities operate on different cycles, with some electing only every four years, this would be impractical. And in general, the financial burden of referenda should not be under-estimated.

*Article 10: To allow local authorities to take legal action in defence of their autonomy*

29. We would welcome the additional protection this afforded in the context of clarifying that local authorities would have recourse to the courts in the event of any breach of the code. Presumably the same option would be open to the government.

*December 2010*

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## Written evidence submitted by The Centre for Public Scrutiny (CfPS)

### INTRODUCTION

1. The Centre for Public Scrutiny (CfPS) welcomes this inquiry and the draft code prepared by Professor Colin Copus as an important contribution to the debate about whether power, responsibility and accountability should lie more at local than at national level. We believe that mechanisms to secure effective public scrutiny should be viewed as central to all debates about this rebalancing of power. If there is to be a codification of the relationship between central and local government, it should make clear not only where the power lies to take decisions on particular issues, but also how those who will wield that power will be scrutinised and held to account in a meaningful and constructive way—whether at local or national level. These principles have informed our comments below on the draft Code.

### ABOUT CfPS

2. The Centre for Public Scrutiny is widely regarded as the leading national voice for public scrutiny and accountability. We are an independent charity which aims to:

- enhance understanding of what scrutiny and accountability mean, why they matter and how they can benefit everyone, including decision-makers;
- provide space for decision-makers, scrutineers and other stakeholders to share ideas and learn together;
- highlight what works well and encourage people to try it in their area; and
- provide evidence-based and relevant guidance that gives people the tools to approach their role with confidence.

3. We promote policy and provide wide ranging practical support. We work across government (for example with the Department of Health, Communities and Local Government, Home Office, Department of Work and Pensions), with the Local Government Group and with stakeholders across primary and acute healthcare, regulators, in parliament and with academics and other think tanks. We have supported councils, NHS bodies, police authorities, universities, Local Involvement Networks and others individually and collectively through our comprehensive published guidance, on-line tools, events and network of expert advisors.

4. In summary, our mission is to promote better scrutiny to achieve greater accountability, transparency and involvement. We believe that better scrutiny means better government, because someone who makes a decision should not be the only one to review or challenge it.

#### SUMMARY OF OUR COMMENTS ON THE DRAFT CODE

- We welcome the principle of codification;
- The European Charter of Local Self-Government should form a more explicit basis for the code;
- There should be more emphasis on the accountability of government (local and central, but particularly local) to citizens; and
- The article on regulation should emphasise the important principles of local self-regulation and improvement.

#### COMMENTS ON THE DRAFT CODE

##### 1. *We welcome the principle of codification*

1.1 We welcome the general approach towards the draft code prepared by Professor Colin Copus, and in particular the proposal that in principle there should be a codification of the central-local relationship. The Committee's determination to tackle this long-standing issue is to be welcomed.

1.2 We believe that a strong code would add clarity and transparency to the relationship between central and local government. In other words, central governments could be scrutinised and held to account against a public commitment to localism articulated in quite specific terms. It would also militate against the general trend for political parties to be generally localist in opposition but specifically centralist once they enter government. We think that this would be in tune with the thrust of the coalition's Programme for Government and its commitments to transparency.

1.3 However, we do believe, as stated in our original evidence and in our oral evidence to the Committee, that codification of the status quo is not to be welcomed. After a sustained period of central accretion of powers, the balance needs to be re-tipped back towards the local level. The Coalition government has expressed its commitment to achieving greater decentralisation and localism, but until this is achieved, codification must be wary of entrenching a position that is out-of-balance.

##### 2. *More emphasis on the European Charter of Local Self-Government*

2.1 Our main query about the code as currently drafted is to ask why the European Charter of Local Self-Government was not used more explicitly as the basis for the draft code. It contains the broadest and most universally accepted set of principles around local self-government and would seem to provide the strongest basis for any codification exercise. Since these principles have been accepted (in spirit if not in law) by successive governments to varying degrees, but the imbalance of power between central and local government has been maintained and even extended further towards the centre, it could be argued that only by putting it on a statutory footing in a code such as the one suggested here, will the principles become meaningful and enforceable.

2.2 For example, the European Charter of Local Self-Government at Article 4 states that: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen." This is the strongest possible statement of the principle of localism, since it does not prescribe what public responsibilities are, and in fact they could be extremely limited, with more power and responsibility left with individuals, as the current government has argued. But where there are public responsibilities, they should be exercised by democratic bodies closest to—and therefore more accountable to—citizens acting either individually or collectively. Incorporating a statement such as this would strengthen Article Two as currently drafted, for example.

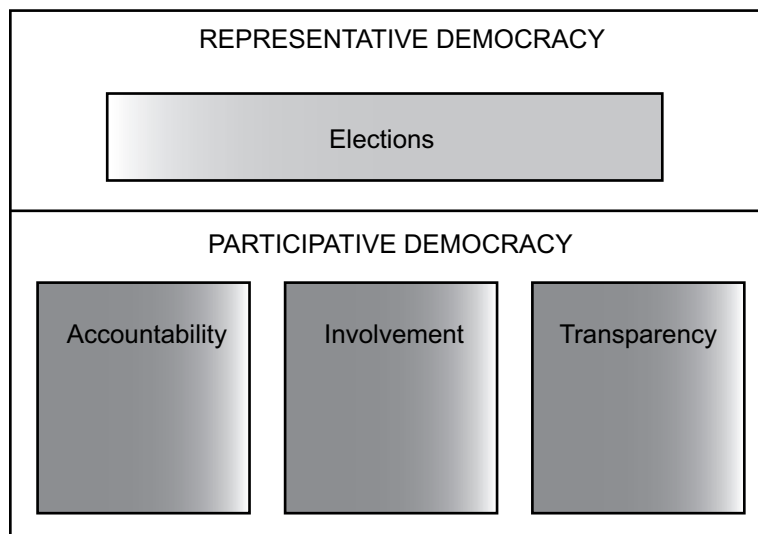
2.3 Article Three of the draft code provides for a "general power of competence" for local government. However, this would not, as currently drafted, prevent central government potentially interfering to an unwarranted degree in matters properly left to local discretion, since it only gives councils "discretion to exercise their initiative with regard to any matter which is not excluded from their competence of assigned to any other authority or body". We argued in our initial evidence that to avoid the potential for undermining the principle behind the "general power of competence", it should be underpinned by a "presumption of subsidiarity"—that decisions are made at the most local level appropriate to the nature and scale of the decision. Without such an underpinning presumption, there is no clear basis on which to exclude matters from local authority competence, other than the whim of central government.

3. *More emphasis on accountability of government to citizens*

3.1 We feel that codification of the relationship between central and local government should be clearly based on principles about the relationship of all governmental bodies to citizens, and in particular their accountability to citizens. One of the basic arguments in favour of codification is that it will protect local government, which is important because democratic local government is the layer of government closest to the citizen and is therefore more accountable. Codification therefore has at its heart issues of governance and the relationship with citizens.

3.2 We would therefore argue that the current draft code could say more about how councils will be accountable to their citizens, in return for the freedoms and protection from central government conferred on them by codification. One example of this would be at draft Article Six on Council Governmental Systems. Rather than talking simply about different systems and structures, this article could set out some clear principles of scrutiny, transparency, accountability and involvement, which councils could be expected to meet using whatever system of governance is appropriate locally. We like the idea of a regular review and a publicly available Governance report as suggested, but feel that the code is a good place to set out some common principles which are important to us as a democracy, against which citizens could test their local system and evaluate the public report.

3.3 Our 2010 research, *Accountability Works*, which we submitted with our initial response to this inquiry, set out how the principles of accountability, transparency and involvement are the three pillars which support both representative democracy (enshrined in our system of local elections) and participative democracy, as illustrated below. The code could incorporate these (or similar) principles and councils would be expected to demonstrate how they are meeting them in their systems of governance.



4. *The balance between central and local self-regulation and improvement*

4.1 As autonomous, locally elected and accountable bodies, local councils are primarily responsible for their own performance and improvement. Local scrutiny by democratically elected representatives, free to challenge those responsible for spending public money and delivering services, and able to draw on a range of sources of evidence, should be emphasised in the code as the first and most important level of regulation and performance management for local authorities. Any central regime should be light touch and exist as a backstop for situations where local scrutiny and self-regulation either is ineffective or has identified serious problems that require external intervention.

4.2 Article 4 in the draft code should therefore make reference to this presumption of local self-regulation playing the primary role in service improvement and ensuring value for money in the expenditure of public money, with central regulation focused on services for the most vulnerable.

4.3 It may also be appropriate to enshrine in the code a reference to the emerging audit regime. If there is—as currently proposed—to be a more competitive market in the provision of audit services, with authorities free to appoint their own auditors and determine the scope of local audit, it would provide an appropriate safeguard for the expenditure of public money to set out an expectation that local audit will meet certain standards, for example in the Code of Audit Practice. This issue emphasises again the importance of not enshrining the status quo but rather of focusing on the key principles that should underpin a mature and balanced central-local relationship.

5. We would be happy to develop any of these points further or to work with the Committee as it takes this important task forward. The Committee is to be congratulated on pursuing a resolution to this tricky issue with clarity and determination.

April 2011

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**Written evidence submitted by Professor George Jones and Professor John Stewart**

**A CONSTITUTIONAL SETTLEMENT**

1. We have advocated a constitutional settlement governing relationships between central and local government before three recent parliamentary committee inquiries. The UK has no written constitution where such a settlement could be inserted, setting out the principles that should govern the role of local government and its relations with central government. We have advocated a quasi-constitutional statute.

2. A statute commands attention in central government departments, and if necessary in the courts, but more is required to ensure the principles are applied. A unit at the heart of central government—possibly the cabinet office—should monitor whether the principles are being embodied in government policies and oversee whether actions taken by departments are consistent with them. Even more important is a joint committee of both Houses of Parliament to monitor the application of the principles, reporting both annually to Parliament on the relationship between central and local government and on specific proposals, judging them against the requirements of the statute. Similar proposals were put forward by the CLG Select Committee in its 2009 report on *The Balance of Power: Central and Local Government*.

3. These proposals would give recognition to the constitutional position of local government as an elected institution. It would provide a guide for central and local government and a measuring rod against which government proposals and actions could be assessed. Despite previous statements by both Conservative and Labour Governments of the importance of local government and the need for decentralisation, the last three decades have seen continuing centralization. It has happened step-by-step as departments have put forward proposals, each being promoted on its departmental merits without consideration of the cumulative impact of all the changes on local government. The central-local relationship has been changed gradually without any decision to do so or even awareness of the scale of the change. The proposals made above could ensure that central government in its policy-making respects the constitutional position of local government and its role in the system of government.

4. The Localism Bill gives a new importance to these issues. The Government has stated its commitment to localism and decentralization, but the Bill does not recognize that the main obstacles to localism are rooted in the attitudes and practices of central government departments. The panoply of regulations and prescriptions are there because central government has little respect for local government and knows no other way of working than through command and control.

5. We have devised a formal statement in the form of a Code as a basis for a constitutional settlement that could be included in legislation. As a constitutional statement it does not set out the present position, but the position necessary to ensure the principles of localism are secured and the full potential of local government realized. It should be promoted by local government.

6. The Code draws on the framework of the European Charter of Local Self-Government, but goes beyond it. The proposed Code is set out as a basis for discussion. We would be interested in comments and suggested improvements as well as how MPs can be persuaded to support it.

*Article 1—Concept of Local Government*

1. The primary role of local government, exercised by local elected councils, is the government of local communities, enabling their well-being.

2. Local government needs the powers and resources under their own responsibility to carry out that primary role.

5. The primary accountability of local authorities for the exercise of their responsibilities is to their local citizens.

*Article 2—Scope of Local Government*

1. The basic duties and powers of local authorities shall be prescribed by statute.

2. Local authorities will be responsible for developing the involvement and empowerment of their communities and citizens in public affairs.

3. Local authorities shall have full discretion to exercise their initiative on any matter not assigned by statute to any other public authority.

4. Public responsibilities shall be exercised by those authorities closest to the citizen.

5. Local authorities shall provide leadership to public bodies in its area who will be accountable to local people through the local authorities.

6. Powers given to local authorities shall be full and exclusive. They may not be undermined or limited by any central or other authority.

7. Local authorities shall be consulted in due time in the planning and decision-making processes of central government for all matters which concern them directly.

*Article 3—Protection of Local Authority Boundaries*

1. Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned.

*Article 4—Appropriate Management Structures of Local Authorities*

1. Local authorities shall be able to determine their own internal management and political structures.

2. The conditions of service of local government employees shall ensure the recruitment of high-quality staff on the basis of merit and competence and adequate training opportunities, remuneration and career prospects shall be provided.

*Article 5—Conditions under which Councillor Responsibilities are Exercised*

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred and remuneration for their role and responsibilities.

*Article 6—External supervision of Local Authorities' Activities*

1. Any external supervision of the activities of local authorities shall aim only at ensuring compliance with the law.

2. External inspection and assessment should be initiated by and reported to local authorities and their citizens.

*Article 7—Financial Resources of Local Authorities*

1. Local authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their statutory powers.

2. Local authorities' financial resources shall be commensurate with the responsibilities.

3. All the financial resources of local authorities shall derive from local taxes and charges over which they shall have the power to determine the rate. The only exceptions should be grants designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burdens they must support.

4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace with the cost of carrying out their tasks.

5. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market.

*Article 8—Legal Protection of Local Self-Government*

1. Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the principles of local government.

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**Written evidence submitted by Baroness Eaton DBE DL, Chairman, Local Government Association**

1. Thank you for your letter of 23 March and for inviting me to give oral evidence to the Political and Constitutional Reform Committee earlier this year.

2. I read the draft code of inter-governmental relationships in England that you sent, written by Professor Colin Copus, with great interest. As you will recall, during my oral evidence to the Committee I expressed the local government sector's scepticism that creating a code of practice constitutes the best way forward in delineating the relationship between central and local government. This stems from years of experience with policies, such as the Central Local Concordat, which were created in good faith but failed to deliver on their promise.

3. This new draft code is an extensive and far-reaching document, and one which seeks to bring a fundamental change in the way in which central and local government do business with each other. It is

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immensely gratifying that the Political and Constitutional Reform Committee is wrestling with some of the thorny problems that have been at the heart of the debate on the central/local relationship, including local financial autonomy, and increased local accountability to residents, rather than to Whitehall. These are issues that the LGA has long campaigned on, and there is much food for thought in this interesting document.

4. There is also much that the Local Government Association fundamentally agrees with. The theme of Article Two is absolutely central to the LGA's thinking on the localism agenda. We agree that councils are accountable first and foremost to their residents. We have argued that if the Government both stops issuing micro-managing guidance and regulation to councils and eradicates some of the most pointless and bureaucratic regulations from previous legislation, we will see a marketplace of ideas open up within the sector, and beyond, disseminating best practice and offering peer support. Micromanaged localism is no localism at all.

5. We support the General Power of Competence clauses in the Localism Bill. We have long stated that a clear, robust General Power of Competence for councils is absolutely key to supporting their role as local government, not simply administrators of central government policies. We are adamant that this, alongside a strong push to simplify and remove restrictions and unnecessary guidance from existing statute, is critical to giving councils the confidence to act ambitiously without fear of legal redress and ending the perceived "dependency culture", with local authorities feeling forced to always be looking to Whitehall for guidance and direction.

6. Article 3 recommends that councils are "consulted, early within the policy-making processes, by any public or private sector body that is developing policy" affecting the councillor residents. This reflects one of the LGA's main points in our 2008 paper *One Country, Two Systems*, in which we suggested that "Parliament should set up a committee charged with pre-scrutinising legislative proposals with local government implications and should involve local government leadership in this". This reform, we argue, must be part of a package of significant reforms that would place local governance at the centre of national debate.

7. Article 6 would have citizens ultimately responsible for the type of local governance in their areas. The LGA agrees with this, and has been lobbying for a change to the current draft of the Localism Bill to prevent Central Government from forcing an elected mayoral model onto an area, then subjecting that change to a confirmatory referendum. The change should only come once the local desire for that change has been articulated, not before. We welcome proposals to allow councils to return to the Committee system if that is the model deemed most suitable in the local area, as the ability to choose is one of the central tenets of true localism.

8. The central theme of Article 7 is the financial independence of councils. Increased financial autonomy goes hand-in-hand with any true localist agenda, and we have continually argued that it is a serious problem that councils continue to be financially dependent on central government. In conjunction with the current Local Government Resources Review, the LGA is currently consulting with our members on this issue. We have long argued for the re localisation of business rates, which will link the prosperity of local businesses with the finances of councils. This is only part of a package of measures we are considering which would ensure that the resources available to each council keep pace with the costs it incurs in providing services and put in place a practical transition between the current system and new one. I will ensure you are kept up-to-date with how this consultation develops.

9. We also agree that it is not the Government's business to cap the finances of councils, in any way. This controlling mentality is fundamentally at odds with the brand of localism espoused by Ministers and it is one we have been fighting within the Localism Bill, which suggests powers for central government to dictate what constitutes an "excessive" level of council tax and to cap councils' borrowing to invest in social housing. It is important that the Government realises the centralising nature of these policies and abandons them.

10. So there is a great deal in the draft code which chimes with the work that the Local Government Association, on behalf of its member councils, has been undertaking. I would reiterate my concerns, though, that placing undue emphasis on a code of conduct has historically proved unwise, and point to the significant amount of legislative change needed to take forward the reforms suggested in this draft. However, the work of the Political and Constitutional Reform Committee will be instrumental in taking these arguments forward, and it is extremely important that, in the current climate especially, these issues are publicly discussed and debated. I, and the LGA, look forward to assisting in any way we can with this work in the future.

### Written evidence submitted by Sir Howard Bernstein

1. This attempt at a draft code is a welcome attempt at a very difficult task. To produce a code for local government which is very diverse in terms of types and tiers of authority is not easy. It is also difficult to draft a code in language which succeeds in bringing local and central government closer together without arriving at a document that appears too radical in one respect or another and in which the courts will end up being the arbiter of any disputes.

2. In places the draft code is likely to be too radical to be acceptable to central government at the present time. With some redrafting based on the comments below it may be possible to have a code that both central and local government can more easily sign up to. This would be a preferable option than a code that would require considerable lobbying to get agreement to.

3. In general terms the code focuses too much on local autonomy (and is fairly radical in this respect) and should perhaps emphasise more strongly central—local relations. By establishing mechanisms for improving the relationship there will hopefully be a consequential change in cultural attitudes in the civil service. This was an issue that was highlighted by many as a barrier in evidence presented to the Committee.

4. Whilst maintaining aspects of the draft code that seek to protect local government from central government control, ideally the code should help engender greater trust between local and central government; councillors and MPs; civil servants and local government officers so that the tiers begin to function more harmoniously together to serve local citizens and communities.

#### SECTION TWO: A DRAFT CODE OF INTER-GOVERNMENTAL RELATIONSHIPS IN ENGLAND

##### *Preamble*

Suggest amended wording to emphasise joint working for well-being **and** local autonomy : ...*Through this code Parliament confirms the importance of local government in the governance of England. It has equivalent status to central government in the role that it plays in improving the well-being of citizens and communities and both tiers will work together to achieve this . Local government shall enjoy increasing independence in both powers and finance and be able to do all that is required at local level to secure and improve the well-being of citizens and communities. Central government will assist and enable local government in this task.*

##### *Article One: Needs a Title suggest—Status of the Code*

Whilst correctly setting out the legal basis for the code it may be helpful to emphasise that the code represents a *consensual agreement between central and local government*. Clause 3 suggests that the code may be subject to judicial review however this could be seen as a failure in implementation of the code.

##### *Article Two: Local Autonomy and Local Self-Government*

1. Councils' accountability is to local citizens. Suggest add "*and local communities*"; and
4. *should be "General Power of Competence"*.

*Article Three: Scope of Local Government.* A better title may be *Role of Local Government* as the rationale is to develop mutual acceptance of the broad remit of local government responsibilities.

Insert a new Clause 1 to emphasise the place-shaping and community leadership role. *Local authorities provide many essential services but moreover contribute to community wellbeing by co-ordinating services within their areas. They also provide leadership to identify and tackle shared priorities for places. Central and local government will work increasingly closely together to ensure that services are delivered efficiently and effectively, places are shaped and community needs are met.*

With respect to defining the extent and scope of powers in other documentation allied to the code, we provided in a joint written submission with Birmingham and Suffolk the following suggestions as to what the "role" of local government could encompass:

##### 1. Promoting the well-being of communities and citizens

Local government represents and promotes the economic, social and environmental well-being of its communities and citizens. It will utilise the General Power of Competence and other mechanisms to ensure that community needs are met. Central government should respect and support local government in the exercise of the Power.

##### 2. Shaping places so that they are attractive places to live, work and visit

Local government have a key role in "place-shaping" where local authorities and partners use their influence, powers, creativity and abilities to create attractive, prosperous and safe places where the economy grows and people want to live, work and do business.



### 3. Promoting economic growth and prosperity

Every place should have an identity and an economic purpose. Increasingly local authorities and private-sector led Local Enterprise Partnerships have a key role in promoting economic development and productivity in their areas.

### 4. Promoting local democracy including the role of councillors

Local government is the local democratic representative body for the local community. It provides community leadership and champions a vision for the local area and works with others to ensure it is delivered.

### 5. Co-ordinating spending and the delivery of services at the local level

Local government provides local services to meet local needs. Increasingly it will work with others delivering services across its area to ensure that community needs are met effectively. It will also lead the co-ordination of local spending across its area to ensure that community well-being is promoted

### 6. Citizen engagement

Local government will work with communities to increase the levels of participation and engagement in local decisions to promote community well-being.

3. This clause may be unworkable in practice. Current wording suggests that councils are to be consulted “by any public or private sector body that is developing policy or that is proposing spending to spend public or private resources, which will affect any council and its communities.” It may be best to say something similar to the role suggested in point 5 above ie that that “*Councils have a legitimate interest in the well-being of their communities and will seek to co-ordinate policy and spending by organisations across their Council areas and between adjoining council areas*”.

*Article Four: Inter-Governmental Activities* (suggest this is re-titled—*Central—Local Government relations* and identifies mechanisms whereby central and local government will co-operate in all areas rather than just maintaining and inspecting standards).

1. *(new) Central government is represented in local constituencies by Members of Parliament and local government is represented by local Councillors. The respective roles and responsibilities of each tier of government will be respected whilst ensuring that local well-being is enhanced through co-operation, integration of services and activities and dialogue between tiers and elected representatives.*
2. *(new) Central and local government relations will be fostered through relationships established at the local level between Councils and government departments and agencies. At the national level local government representative bodies and government departments will maintain a dialogue through a central—local forum and a local government commission.*
3. *(new) A Joint Committee of Parliament, with local government attendance will oversee central-local relations and report to Parliament on progress and issues.*
4. *(new) Where a central government department or agency has an impact on well-being of the community in the local authority area the local authority shall be entitled to engage in dialogue with that department or agency about the activity and spending in the local authority area.*

### *Article Five: Territorial Autonomy*

The boundaries of local authorities are (suggest insert) primarily an issue for councils and their citizens. Add—Any proposals for administrative or electoral reviews of boundaries will come primarily from local councils.

### *Article Six: Council Governmental Systems*

1. Changes to local political decision-making (suggest insert) *must be suggested by local government and not central government.* Delete final sentence, local referenda can be costly and time-consuming and may not be necessary.

### *Article Seven: Local Government Financial Integrity*

The key factor in this section is to ensure it is consistent with the inputs being made by local government to the Local Government Resource Review (LGRR). Some of the clauses in this section are contradictory.

1. This point echoes the direction of travel of cities input to the LGRR, but at this stage only business rates and community budgets are covered in the LGRR terms of reference. These alone would not deliver independence. Suggest a change to: *Local Councils will increasingly be self-sufficient in local financing or will raise an increasing proportion of finance locally.* Clause 1 and point 7 appear contradictory: 1 asks for financial independence and 7 asks for three year rolling budgets.

2. Agree with the need for new income streams but this clause seeks blanket ability for anything that is democratically approved locally. The Core Cities submission to LGRR (and the City Finance Commission) are likely to table ideas for broader powers with respect to bed taxes, land value taxes and the like and will suggest Councils decide whether to use them or not.
3. The division of income tax is an example of the type of approach taken elsewhere in the world (including Scotland as outlined in the Scotland Bill) and may be a long term aspiration for England but is unlikely to come out of the LGRR. There are two aspects to the income tax question, one is a division of national income tax and the second is the institution of a local income tax. In both respects places such as Manchester would not be better off because income tax accrues to areas where people live and not where they work. As Manchester draws its workforce from a very wide catchment area and has high levels of deprivation and worklessness in its resident population it is likely to be areas outside of Manchester that would benefit and not the city itself.
4. The business rate retention modelling work being done as part of Core Cities input to the LGRR is looking at ways to balance incentivisation with equalisation. The two are inherently conflicting principles and therefore the key is getting a balance. A number of mechanisms could be used to seek to achieve this balance by “taxing” growth so that a cushion for relative need can be provided. Whatever is recommended by the LGRR need to be reflected here.
5. Council’s have prudential borrowing powers and the ability to use these effectively going forward should be retained. External borrowing could be attractive, but each authority would need the powers to be able to manage this effectively. A default by one authority could potentially be disastrous for debt pricing across the sector. Balanced annual budgets may not be the right thing in the long term—it depends on what risks local authorities are taking. For example, much of the macro economic risk is currently carried by central government—if this was transferred to local government (as implied by financial independence) local authorities would need greater flexibilities to manage such risk. In this respect it could be argued that this element of clause 5 is contradictory to point 1.
6. The second element (distribution of central government funding) appears to be contradictory to financial independence proposed under point 1.
7. As per point 1.

There is a need to add into this section the ability of local councils to co-ordinate all government spending in their area through mechanisms such as Community Budgets.

*Article Eight: Councils Right to Co-operate and Associate*

No objections. It may be worth referencing the General Power of Competence and also the Duty to Cooperate contained in the Localism Bill.

*Article Nine: Local referendum*

No comments.

*Article Ten: Legal Protection of Local Government*

The same comments as made under Article One apply.

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**Written evidence submitted by Professor Tony Travers**

1. The draft *Code of Inter-Governmental Relationships in England* outlines a possible, semi-constitutional, codification of the relationship between central and local government. There is no doubt that the long-term drift of power from local to central government in Britain/England has led to a degree of centralisation which suggests the need for a radical overhaul of the basis for the respective positions within the constitution of central and local government. Councils, after all, are a part of the checks and balances that operate within the British constitutional arrangements.

2. It will inevitably be difficult to move from the loose governmental arrangements that have evolved in Britain towards a more formal, written, basis for constitutional relationships. Any attempt to describe a long-term balance of powers between two or more institutions of government will be seen as challenging to the existing, widely-understood, arrangements. There will be concerns that freedoms and flexibilities will be lost. British politicians, schooled within a system that has no written constitution, will be suspicious of any formalisation.

3. But the degree of centralisation within England is such that many political thinkers, both right and left, are now making proposals for radical “localism”. There is an acceptance that Britain/England has become one of the most centrally-controlled of all Western democracies and that something must change. Shifting power downwards to councils and/or local communities is increasingly a mainstream political view.

4. But before anything much can be achieved, it will be necessary to re-set the constitutional balance between central and local government and also to promote new arrangements to preserve the rights and powers of local democratic institutions. The proposed *Code of Inter-Governmental Relationships in England* would provide the basis for a new settlement. Inevitably there would be disagreements about the precise contents and wording of such an important quasi-constitutional document. Moreover, it would require Parliament to acquiesce to a number of changes to its operations and procedures. The government and Opposition parties would need to agree that new conventions could be adopted.

5. But the draft code would be a helpful starting-point. Parliament, the government, the Opposition and local government would have to work together on final version of such a document and the procedures needed to allow it to work effectively. However, without such a starting-point there can be no progress towards the desperately-needed constitutional re-balancing of Britain.

April 2011

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### Written evidence submitted by Professor Tony Travers

#### DRAFT CODE OF INTER-GOVERNMENTAL RELATIONSHIPS IN ENGLAND

##### PREAMBLE

Through this code Parliament ~~recognises~~ establishes free and independent local councils in England accountable to local citizens. They shall enjoy independence in both powers and finance, and be entitled to do all that is required at local level, within the law, to secure and improve the well-being of its citizens and communities. Parliament makes plain that within its sphere of competence local government has ~~co-equal~~comparable—not subordinate—status to central government and that its rights and duties shall enjoy equal protection ~~in~~of the law.

##### Article One

1. The fundamental rights and duties of local councils herein are defined protected and entrenched. They may only be changed by the consent of Parliament as authorised ~~firstly~~ by an elected joint committee of both Houses, ~~to include local government ex-officio representation~~, and then by the approval of both houses of Parliament as proscribed in the amendment to the 1911 Parliament Act [enabling the second chamber to reject changes to the fundamental freedoms of local governance].

2. Councils, local government representative bodies, all ministers, government departments, MPs, civil servants, courts of law and all public agencies interacting with local government are bound by the articles within this agreement and will act in accordance with these articles.

3. All of the provisions of the code are subject to the law. The individual rights of citizens are not affected by this code and citizens may seek judicial review against any injustice or infringement of rights as now. Councils and government can seek legal adjudication should it be felt that a council, councils or central government are not acting with accordance the code.

##### Article Two: Local Autonomy and Local Self-Government.

1. Councils' accountability is to local citizens.

2. Councils shall operate within the rule of law and with regard and respect to human rights legislation.

3. Councils are autonomous, democratically elected bodies which independently decide upon, administer and regulate the public affairs of, and deal with, all matters of concern within their boundaries which are not dealt with or attended to by other governmental bodies.

4. Councils operate within a framework of an irrevocable power of general competence with a full legal personality. Powers rest with councils, acting in accordance with the national legal framework, to ~~issue regulations, by laws and other legally binding acts~~ pass local legislation on matters affecting the affairs and interests of their area.

##### Article Three: Scope of Local Government

1. The powers and responsibilities of councils shall after due consultation be prescribed by statute subject to safeguards in Article 1.1.

2. Councils have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence or assigned to any other authority or body.

3. Councils are to be consulted, early within the policy and decision-making processes, by ~~any public or private sector body that is developing policy or that~~ the government if it is proposing reform which ~~to spend public or private resources, which~~ will affect or effect any council and its communities.

*Article Four: Inter-Governmental Activities*

1. Central and local government acting jointly shall be allowed to together ~~can~~ create inspection regimes to set and maintain service standards.

*Article Five: Territorial Autonomy*

1. The boundaries of local authorities are an issue for councils and their citizens. Any proposals for and boundary changes must be conducted with the involvement of the Local Government Boundary Commission for England and within the law and subject to a local referendum in the area concerned.

*Article Six: Council Governmental Systems*

1. Local citizens through their councils have autonomy to choose their internal political decision-making systems (including, whether to adopt a directly elected mayor and cabinet, cabinet and leader, committee system, or some other political decision-making arrangement) Changes to political decision-making systems must first be subject to a binding local referendum.

2. Councils must review their political decision-making system every eight years and produce a publicly available "Political Governance" report setting out the effectiveness of the system and if appropriate considering alternative approaches.

3. Councils or local citizens can adopt any electoral system for use in council elections, after consultation and a binding referendum.

*Article Seven: Local Government Financial Integrity*

1. Local Councils shall be financially independent of central government.

2. Local citizens through their Councils may raise additional sources of income in their localities in any way they wish [subject to the rule of law and human rights legislation] if they gain the consent of their electorates through a binding referendum or local proposition.

3. Local government shall be given a guaranteed annual share of the yield of income tax. This share shall be increased as and when service provision responsibilities are transferred from central to local government~~The division of income tax between the central and local government shall be agreed annually, with no less than one half of income tax being retained in the localities to pay for an agreed reallocation of locally based services. so that councils are always able to benefit from the growth in buoyant tax resources available to the State as a whole.~~

4. ~~The process of equalisation ensuring fairness as between in distribution to local councils with different needs will continue~~ it shall be undertaken by an independent body of which half of the members of which shall be appointed by its members shall be central government and half by local government representatives of local councils.

5. Councils shall be able to raise any loans which their credit rating allows and will be exclusively responsible for repayment. For the purpose of borrowing for capital investment, councils shall have access to the national capital market at their own discretion. All councils shall operate an annual balanced budget so that all outgoings, including interest repayments on borrowings, shall not exceed income.

6. ~~Central government will not cap, or in anyway limit, councils' taxation powers. Central government must consult with councils on how it will distribute and allocate government funding to pursue its own policy objectives which use local government as an agent. Local government autonomy must not be undermined in any way by the operation of any financial or partnership mechanisms.~~

7.6.

87. The same financial transparency standards will apply to local and central government, alike. Government funding to councils is to be based on a rolling three year budget cycle to coincide with the comprehensive spending review process. Once the three year medium term budget planning process has been agreed and announced no significant changes in funding levels will be made by central government.

*Article Eight: Councils Right to Co-operate and Associate*

1. Councils as independent legal entities are entitled, in any undertaking, to co-operate in any way with other councils, public and private bodies, any voluntary, charity or third-sector organisation, or with any financial, commercial or private enterprise.

2. Councils are able to belong to any association for the protection and promotion of their common interests and to belong to an international association of any sort. Councils are entitled to co-operate with councils in other countries for any matter.

*Article Nine: Local Referendum*

1. The administration, oversight and management of any local referendum process, from receipt of petitions from citizens to the organising and conducting of referendum, are to be the responsibility of an independent national “local referendum commission” created for the purpose. [Don’t see why].

*Article Ten: Legal Protection of Local Government*

1. Councils have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the power of general competence and any other principles of local self-government or individual rights enshrined in law or contained within the code or evident in Human Rights legislation.

**Written evidence submitted by Cllr Roger Gough, Kent County Council**

1. My starting point is that codification is desirable if can be an effective means of reducing central government’s capacity to change the rules of the game unilaterally. At the very least, it should be made considerably harder for government to do so.

2. Declaratory elements of any code have both advantages and limitations. Thus the Preamble of the draft code sets out important and desirable principles (which are also set out on page 1 of the report in the “Rationale for Codification”), emphasising local government’s independent mandate and accountability to its citizens and thus countering tendencies to see local government as a delivery arm of the centre. However, it is worth remembering that the 2007 Concordat included such principles without having any discernible effect on central government behaviour.

3. The critical elements for achieving change are (i) giving local government a seat at the table on matters which affect it, and (ii) creating some machinery that limits central government’s discretion in making unilateral changes.

4. The proposal in Article One (1) for a Joint Committee of the Houses, with local government representation, to review and approve (or not) legislation that affected local government helps achieve both these aims and I strongly support it.

5. I support the proposal, also in Article One (1) for the use of an amended Parliament Act to protect the freedoms of local government. If for any reason the Political and Constitutional Reform Committee were not willing to recommend this, it should at the very least support strong pre-legislative scrutiny (with the proposed Joint Committee playing a key role) as recommended by Lord Bichard in his evidence session with the Committee.

6. I support the proposals in Articles Five and Six, especially with respect to territorial autonomy. There is a case for emphasising here the role of local citizens, perhaps proposing that a mechanism (which would not need to be defined within the Code) should be developed for petitioning for changes.

7. One item which is missing from the draft is a statement of local government’s leadership role with respect to public services in its area. This was referred to in the Concordat. It is also referred to by George Jones and John Stewart in the draft code that they set out in *The MJ* of 10 March. A clause to this general effect should, I believe, be included in the Code.

8. Such a statement is an important element in ensuring that the Code does not simply freeze and ratify our current over-centralisation. Robust proposals on finance are essential for the same purpose.

9. I am in broad agreement with the draft’s proposals on finance, but have reservations about some of the detailed provisions. Article Seven (1) is, as the Report’s own commentary indicates (p. 12), potentially meaningless as a statement of principle. Arguably it will inevitably be undercut by any equalisation measures.

10. The three criteria set out in the evidence session with Tony Travers and Sir Simon Jenkins (some of which are mentioned in the Code) help give a more robust definition: freedom to tax (ie no capping), 50% or more self-financing and diversity of taxes available to local government.

11. The first of these is self-explanatory and set out in Article Seven (6) of the draft code. The second should be set out as a general principle (ie a high level of self-financing), though I am sceptical of setting out a percentage in the Code itself, not least because of issues of definition of the denominator (for example, as I pointed out in my evidence session to the Committee, it is questionable how far one should view the Delegated Schools Grant as part of upper tier authorities’ spending; if this is removed, the self-financing ratio for an authority like Kent goes up from less than a third to around two-thirds). A detailed review of this issue should perhaps be part of the mandate for the Joint Committee.

12. The Code should make explicit reference to buoyancy and diversity of funding. At the least, it could build on the wording of Article 9 (4) of the European Charter—financial systems “shall be of a sufficiently diversified and buoyant nature to enable them [ie local authorities] to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.” I am in favour of assignment of some element of income taxes, but believe that the proportions mentioned in Article Seven (3) are too prescriptive for the

purposes of the Code. At the same time, I believe that the draft should make some reference to ensuring that local authorities have income sources linked to business development in their areas, ie supporting in general terms some relocation of the business rate.

13. I strongly support the proposals in the draft for an independent body with council representation to oversee equalisation (Article Seven (4)) and for borrowing powers (Article Seven (5)).

14. I agree with much of Article Seven (7), but believe that a three year lock-in of funding, even when there is a change of government, is unrealistic. The assessment (p. 13) acknowledges this to some degree, speaking of some form of “emergency provisions”. I think this needs to be more explicit, but at the same time the Code could be stronger in leaning against changes to in-year funding, which is much less defensible

15. I am in broad agreement with those Articles in the Code on which I have made no comment.

May 2011

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#### **Written evidence submitted by Lord Bichard**

1. As I said in my evidence to the Committee I do believe that there would be advantage in codifying the relationship between Central and local government. Such a code could clarify the terms of the relationship and bring a degree of stability which has been lacking in the recent past. That would be to the benefit of both the centre and local government and I therefore feel uneasy that this draft code takes as its starting point providing “a degree of protection for local government and its citizen from centralisation and overregulation”. Like all relationships, this is one where both sides have rights and responsibilities and the code needs to articulate these in a balanced way.

2. The current draft *also* conflates two processes which might better be treated separately. These are:

- (a) Defining the subject matter to be covered by the Code eg the principles of the relationship; the process of consultation for policy and legislative changes relevant to local government and the ways in which the relationship is to be protected in constitutional terms.
- (b) B. Describing the terms of the relationship eg the degree of financial independence to be provided to. local government and the degree of autonomy afforded to local councils.

To conflate these two issues surely risks losing both and produces a draft code which is unlikely to find favour with any of the stakeholders. The objective should be:

- (i) To agree the powers, duties and responsibilities of local and central government.
- (ii) To establish the process by which these can be amended (effectively Articles 1 and 10 of the current draft).
- (iii) To describe how the relationship should be managed on a routine basis (ie how central government should consult on policy/legislation affecting local councils).

3. At this stage, the Committee might do better to identify the issues which need to be resolved if we are to achieve a clear definition of the relationship rather than attempt to resolve them immediately. To seek to define the extent of local government financial independence has eluded us all for more than forty years. It seems unlikely that the commendably simple statements in Article 7 will succeed when so many have failed—and to be fair, the “brief assessment” does identify the pitfalls and difficulties. As it stands, the draft leaves the Committee open to the accusation of being naive in its considerations.

4. It would also be better to focus on the “big” issues—in particular, I found Article 4 in its current form something of a distraction although it could form part of any section devoted to the management of the routine relationship between the centre and local government.

5. In summary, there is much in this draft and its accompanying exemplification which is helpful and could form the basis for further work and negotiation if the distinct purposes identified in paragraph 2 above were agreed.

May 2011

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#### **Written evidence submitted by Stephen Hughes, Chief Executive, Birmingham City Council**

1. Thank you for sending me a copy of Colin Copus’ paper on codifying the relationship between central and local government. I think overall it’s an excellent paper and has dealt with most of the complications that have to be tackled in an impressive and cohesive way. Naturally I have a few observations and comments, but notwithstanding those I think it’s a great basis for further discussion. Tony Smith may also write with observations.

2. There are two broad issues that I want to raise at the beginning. The first relates to the evidence I and others have previously given to the Committee. Some of us, particularly from the larger cities, argue that local authorities vary considerably in their ambition for their areas, capacity to deliver and capacity to manage risk.

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There's an argument for recognising that explicitly and accepting that for some authorities there can be greater autonomy and self government than others. The code set out in Colin's paper will be seen by some as very radical and threatening (particularly to the authority of Government) and it may be that its full applicability is differentiated between different local authorities.

3. The second broad point relates to the existing complex structure and division of responsibilities between different types of local authority. The code reads as if applicable to unitary local authorities responsible for all local services in their area. But in practice every area of the country has multiple levels of local governance—Shire Districts and County Councils, Fire, Police and Transport Authorities and Town and Parish Councils. There needs to be some thought given to how those parts of the code that relate to local citizen control over boundaries and functions are to work and how local government as a whole can gain influence over this architecture, as there is a risk that what we have now is stuck for all time, or until central government again intervenes.

4. Article Four raises some interesting questions not explicitly addressed in the code. Generally speaking where service standards exist they are set by central government as a means of ensuring that common standards for key services (eg child protection) can be assured everywhere. In the constitutional settlement, these services need to be specified and a method established of agreeing how these standards are to be set. It may need an Article One process. I don't think they can be realistically set by an independent body, who would need guidance in any case.

5. The other question unanswered is the consequences of standards not being met. In more general terms what are the criteria and basis for outside intervention in the case of a failing authority? Local Government would like the ability to police itself and have peer scrutiny and improvement. Currently that depends on voluntary acceptance by the individual Council, but that would be unlikely to satisfy Government.

6. Article Six is a set of very practical statements. It has an implicit feeling that "Councils are to be controlled by local citizens". It may be a generalised statement along those lines could be placed at the beginning of the Article with the subsequent clauses effectively being the ways in which the objective is achieved. Such a statement could also cover the types of authority in an area and the division of functions and finance between them.

7. Article Seven is radical and ambitious, but I agree it's at the core of what is needed to make the whole work. In this context it may be worth taking a view on the current Finance Review which is dealing with localisation of Business Rates. The key question that the review raises is the tension between the principle of local financial autonomy and equalisation of needs and resources. This is a fundamental issue. If equalisation continues (as seen by sub para 4) then there cannot really be financial autonomy as Councils will be dependent on other bodies taking financial decisions and influencing local choice about service standards. It's a point that needs real debate.

8. Sub para 3 sets out a real proposal to achieve financial autonomy for the sector as a whole. If it were to be implemented you wouldn't need sub para 7 in so far as that sets out a mechanism for Government to set funding envelopes for Councils. Councils would be able to do their own financial planning without Government interference!

9. Sub para 5 is effectively the current situation, although some limits are now being proposed for the reformed HRA.

10. I hope you find these comments helpful.

*April 2011*