



House of Commons  
Communities and Local  
Government Committee

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**Local government  
procurement**

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**Sixth Report of Session 2013–14**

*Report, together with formal minutes relating  
to the report*

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## The Communities and Local Government Committee

The Communities and Local Government Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Communities and Local Government and its associated public bodies.

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## Summary

Local government spends around £45 billion—over a quarter of its annual expenditure—on procuring goods and services from third parties. Many local authorities are working to improve their procurement operations in order to: cut council costs and reduce the burdens on those doing business with them, strengthen links with delivery of community objectives, improve risk management and reduce fraud. However, progress has been too slow as well as patchy across the country. The local government sector now needs to step up to the mark and, with assistance from central government, drive improvement.

Councils have shown that they can save millions of pounds through joining up with each other, directly or via procurement organisations, to buy some goods and services. Aggregating spend can deliver economies of scale, by driving down supplier prices, cutting process costs and improving access to commercially skilled staff. However, opportunities to collaborate are not being fully taken and we estimate, conservatively, additional savings of around £1.8 billion could be achieved if all councils were to use collaboration as a default option. But securing savings should not come at the expense of delivering wider commissioning objectives such as supporting local economies. Councils must retain the flexibility to deliver local priorities: there can be no compulsion to collaborate, or to join a centralised procurement body. Rather the Local Government Association (LGA) should review collaborative approaches and produce best practice guidance on the most effective means of joining up procurement to deliver savings which reflect local priorities. The LGA should also continue to focus on supporting councils to pool spend in key categories, such as IT, energy and construction, so as to deliver savings on a large scale without compromising local freedoms and flexibilities.

We are clear that councils can and should fully exploit the potential of their procurement spend to deliver local strategic priorities, including social, economic and environmental objectives, by letting contracts, as appropriate locally, on the basis of wider best value not simply lowest price. With some 47% of council spend currently channelled via Small and Medium Sized Enterprises, the LGA should disseminate examples of councils' successful approaches and produce guidance on how the new EU measures on public procurement should be used to deliver social value such as apprenticeships and trainee opportunities for local people. Furthermore, it should disseminate best practice studies where councils have used targeted approaches to support local businesses, especially small and micro-businesses, without compromising value for money or undermining the effective operation of markets.

On reducing costs to business we identified three steps that councils could take quickly. First, too many councils are applying EU regulations over-zealously, using them as a self-serving justification for retaining overly bureaucratic approaches. The Government and sector leaders including the LGA should spell out clearly what is a proportionate approach which will both meet EU requirements and streamline processes. Second, the LGA should take the lead in ensuring that Pre-Qualification Questionnaires (PQQs) are standardised and where possible simplified to reduce the excessive burden on suppliers and potential suppliers of providing tailored information for multiple procurement exercises. Contrary to the Government's approach, we do not support removal of PQQs

entirely since they can provide a cost-effective means of pre-selecting viable tenderers. We do not accept that in certain circumstances, particularly low cost procurement, it may be advantageous to have no PQQ but this should be left to the discretion of individual councils. Third, Councils must include requirements in contracts that contractors stick to strict timetables for paying their subcontractors, right down the supply chain, with spot checks on implementation.

Outsourcing a contract does not mean outsourcing responsibility for ensuring quality and consistency of service to residents. However, in worst cases, councils not only fail to monitor quality but also bear the costs when a contractor fails to deliver its side of the contract. It is vital that councils are equipped to manage complex contracts, to avoid further examples of failed outsourcing arrangements such as those seen in both councils and central government in recent months and years. Councils must also ensure that residents have a clear point of contact with external delivery bodies so as to receive a seamless service, regardless of who is delivering it.

A large number of people once employed by the public sector now work for private sector and other organisations to deliver services. Despite statutory protections for transferred staff, there is a risk that multiple tiers of employee conditions develop within the new employing body. Councils should consider when letting contracts whether they wish to take into account a bidder's policies on employment issues, including zero hours contracts. We commend those councils which adopt fair working conditions and terms of employment including pay. The Government should explain how it will monitor the ability of the care sector to maintain effective pay and conditions against a background of rising demand for services and constrained council budgets.

We found little hard evidence of significant fraud but widespread unease that as more services were put out to tender local authorities were at much greater risk. Councils must not 'let and forget' contracts but must pro-actively tackle fraud throughout the lifetime of a contract not simply during the tender phase. Those staff managing contracts must have the commercial acumen to detect fraud, including cartel operations, and must share information effectively with other council officers. Contracts let by public bodies must be transparent and performance against them auditable. The LGA should consider how to increase transparency of commercial contracts, for example through disseminating best practice on the use of contract terms to specify how contractors must share and publish information. Councils should consider placing similar requirements on information provision by contractors as apply to a public body under Freedom of Information regulations so as to provide a level playing-field. We heard that one of the best means of identifying fraud was whistleblowing. More needs to be done to support whistleblowers and the Government must publicise arrangements for an anonymous reporting channel.

Achieving change requires procurement to be seen not as a niche activity for specialists, rather as the essential activity under-pinning service delivery. Renewed efforts are needed from the sector, and from its partners in central government and the private and voluntary sectors, to ensure that all council procurement is raised to the level of the best. This includes sector-led work to improve collaboration, spread best practice, develop streamlined processes, and to reduce fraud and poor risk management. This must be spearheaded by council cabinet members and frontline councillors, with close involvement

of senior officers. Even at a time of financial constraint, investment in procurement skills is essential to enable effective management of the multi-billion procurement spend, and should be seen as a wise investment now to save costs in future.





# 1 Introduction

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## Background to this inquiry

1. Local government spends around £45 billion annually on procuring goods and services from third parties.<sup>1</sup> In recent years there has been a concerted focus on public sector procurement reform, in part driven by the squeeze on resources and the consequent need for public bodies, including local authorities, to make efficiency savings as well as to cut costs for those doing business with them. The Cabinet Office is leading a programme of action in conjunction with other government departments, including the Department for Communities and Local Government (DCLG) and the Department for Business, Innovation and Skills (BIS). Local government itself is also leading a number of improvement initiatives. For example, the Local Government Association (LGA) has adopted a National Procurement Strategy and in 2012 launched a 'Local Government Procurement Pledge'. The Pledge commits local government to make every effort to “use procurement to help deliver value for public money”, and to “drive local social and economic growth and regeneration, and provide inclusive services through a diverse supplier base”.<sup>2</sup>

2. In July 2013, we launched an inquiry into how effective these policies have been in improving local government sector procurement approaches, and the potential for further development. Our terms of reference were:

The central focus of the inquiry will be to assess the extent to which local government procurement is delivering good value for money and meeting the objectives of local authorities. The inquiry will highlight and examine good practice and initiatives within local authority procurement and elsewhere and explore how and to what extent local authorities can adopt and take advantage of them. To assist those making submissions the Committee has identified the following topics that it may cover, though the list is not exhaustive.

- To what extent is local government procurement organised to deliver value for money and social, economic and environmental objectives, including stimulating the local economy? To what extent are local authorities achieving the involvement of local residents in delivering value for money? To what extent are local authorities able to develop long-term relationships with contractors?
- Do authorities take sufficient advantage of collaborative and joint procurement opportunities, including those available from central government? In addition, the Committee would welcome information on PFI contracts and their operation with local government.
- How can local authorities access the skills, expertise and capabilities to implement effective procurement strategies, including value for money and

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1 Colin Cram ([LGP 81](#)) Of the £45 billion, £10 billion is spent on social care. A further £15 billion is spent by educational establishments

2 Local Government Association, [Procurement Pledge for Local Authorities](#), June 2012

social and economic objectives? More specifically, does local government have sufficient understanding of its procurement expenditure and the markets for goods and services to deliver quality procurement strategies—locally and regionally. If not, how can deficiencies be addressed?

- To what extent is risk in local government procurement and contracting understood and managed and contracting strategies adopted, which are tailored to product and supplier market places? More specifically, do local authorities maintain and operate effective client management functions and have they entered contractual arrangements which allow the flexibility to meet changing circumstances such as budget reductions or changes in the way a service has to be delivered?
- How is regularity and propriety of procurement secured and are the arrangements for detecting and addressing impropriety and fraud effective?
- Is local authority procurement fully transparent, audited effectively and does it provide appropriate mechanisms for redress? Specifically, are the arrangements for securing the accountability of procured services and goods to local authorities and local residents adequate and effective? More specifically, to what extent are local authorities able to provide assurance to central government that value for money (in the broadest sense of the term) is delivered?

We received 70 written submissions and held seven oral evidence sessions, including one in Sheffield Town Hall. We are grateful to all those who gave evidence. Colin Cram was appointed as the Specialist Adviser for this inquiry.

## Structure of the report

3. In order to produce a comprehensive report our inquiry has addressed procurement in its widest sense, focussing not simply on the purchase of goods but also on the wider commissioning of services and the management of contracts including for outsourced service delivery. The chapters of this report examine the following issues;

- **Chapter 2** considers the scope for further improvement in council procurement approaches and the greater value for money this might bring, and assesses the relative merits of increased collaboration and/or centralisation of local government procurement. We received a wealth of evidence about good practice by many councils though some witnesses expressed frustration at the slow and patchy pace of reform across the country.
- **Chapter 3** addresses the effectiveness of procurement for delivering council strategic objectives, including supporting local and small/micro-businesses. A key tension in effective procurement is the need to balance cost efficiencies with ensuring that wider community objectives are met.
- **Chapter 4** considers the streamlining of processes to cut costs for councils and how burdens might be reduced for those organisations wishing to do business with them.

- **Chapter 5** addresses the challenges of managing risk as procurement becomes increasingly complex, with councils needing to ensure that cost savings are not achieved at the expense of security of, or standards in, service delivery.
- **Chapter 6** considers the employment challenges from outsourcing service delivery to third parties.
- **Chapter 7** addresses the extent to which councils are pro-actively ensuring that probity and effective governance of procurement are achieved. The level of transparency in private sector contracts for delivery of public services is explored.
- **Chapter 8** sets out our conclusions on the avenues which should be pursued in order to make further progress in improving procurement, including through embedding excellence beyond procurement functions, improving the skills of those involved in commissioning services and procuring goods, and developing local government led and other programmes to support councils in their delivery.

4. The LGA told us that its mission is to “support, promote and improve local government” including through working with the sector to help councils maximise the benefits from their procurement spend.<sup>3</sup> We note the number of valuable initiatives the LGA is co-ordinating and, in acknowledgement of its leadership position, we propose that the Association should pursue a central role in taking forward the sector’s work.

5. In early 2014 a new EU Directive on public procurement was approved.<sup>4</sup> We did not take evidence on this since details were finalised after we concluded our evidence gathering but, where pertinent to our recommendations, reference is made in this report to the new measures.

6. This inquiry comes at a time of financial constraint, with pressure on councils to maximise improvements in their procurement practices in order to cut costs for both local authorities and those wishing to do business with them. We make a number of recommendations in this report for actions to accelerate improvement in local government procurement approaches consistently across the sector. In contrast with many of our previous reports where the majority of our recommendations have been for central government, this report makes a number of conclusions that are essentially for local government, in partnership with central government and the private and third sectors, to improve its procurement approaches and disseminate best practice. ***We recommend that the Local Government Association and other bodies working with councils, as well as local authorities themselves, prioritise implementation of our recommendations in order to accelerate reform of local authority procurement across England. It is also important to have in place government policies that empower communities and local government to maximise efficiency and effectiveness in procurement. Hence we make a number of recommendations for the Department for Communities and Local Government to implement as a matter of urgency in conjunction with other relevant government departments.***

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3 Local Government Association ([LGP 17](#)) para 3

4 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014../EU](#) of the European Parliament and of the Council on public procurement. The Directive will enter into force 20 days after publication in the Official Journal of the European Union, expected by mid 2014

## 2 Improving local government procurement

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### Role of procurement in serving communities

7. Whilst councils spend most of their budgets in-house, procurement from other parties makes up a significant proportion of local government spending on the goods and services needed to serve local communities. Of total expenditure of £162 billion,<sup>5</sup> it is estimated that councils in England spend some £45 billion annually on procuring goods and services from third parties.<sup>6</sup> Witnesses told us that further procurement via third parties, for example through outsourcing contracts for service delivery,<sup>7</sup> could deliver significant savings. The National Outsourcing Association (NOA) told us that “an entirely new approach” to public sector outsourcing, including the use of direct sourcing, shared services or mutual organisations, could deliver savings of 15-30% (or a conservative estimate of 10%, worth some £8.2 billion a year if achieved consistently across the local government sector).<sup>8</sup> NOA cited various examples where outsourcing had cut costs, including Birmingham City Council’s savings of £500 million through its joint IT venture with Capita.<sup>9</sup> Other witnesses disagreed. Unison, for example, highlighted a “catalogue of failures of large strategic service partnerships” from recent months and years,<sup>10</sup> and recommended that councils should by default investigate the value for money case for ‘in-sourcing’ of contracts when they came up for renewal.<sup>11</sup> The Audit Commission had a mixed view of outsourcing and warned that, whilst third-party arrangements could bring significant financial and other benefits to councils, complex arrangements carried risks that need to be managed corporately.<sup>12</sup>

### Procurement improvement initiatives

8. The LGA told us that local government understood the important role that procurement played in delivering value for money and councils sought to procure “the right services and goods at the right price”. The LGA stated that local authorities faced a “42% real terms reduction in funding across this Parliament and a widening financial black hole of £2.1 billion a year,” hence councils had prioritised efficiencies from smarter procurement both individually and collectively.<sup>13</sup> The local government sector had itself been leading reform

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5 Department for Communities and Local Government, *Local Government Financial Statistics England*, no. 23 2013, May 2013. This figure is for 2011-12. £45 billion is an estimate of likely annual spend via third parties from evidence to this inquiry. See footnote below

6 Colin Cram (LGP 81) £45 billion includes £10 billion on social care. In addition to the £45 billion, a further £15 billion is spent by educational establishments. The UK public sector as a whole spends £227 billion annually on procuring goods and services, of which £45 billion is spent by Whitehall, and £45 billion is spent by local government. See Public Administration Select Committee, Sixth Report of Session 2013-14, *Government Procurement*, HC123, p5

7 Outsourcing has various definitions but in this inquiry we broadly interpreted it to mean the procurement of a service or goods from a third party rather than delivering or producing that good or service in-house.

8 National Outsourcing Association (LGP 21) Summary

9 National Outsourcing Association (LGP 21) paras 8-10

10 Q73 [Peter Challis]

11 Unison (LGP 27) Appendix 1

12 Audit Commission (LGP 11) summary and para 7

13 Local Government Association (LGP 17) para 2

through approaches such as the National Procurement Strategy and the ‘Local Government Procurement Pledge’.<sup>14</sup> We received evidence of a range of successful approaches to improve the value for money achieved through procurement by councils including Halton Borough Council, Birmingham City Council, Hampshire County Council and Sheffield City Council.<sup>15</sup>

9. However, some witnesses considered that councils had so far failed to improve. The Specialist Engineering Contractors’ Group (SEC Group) told us that construction procurement was “generally inefficient and wasteful for both council taxpayer and the supply side” since approaches had not fundamentally changed in decades.<sup>16</sup> The local authority procurement body, Scape, claimed that local authorities were as a consequence wasting more than £1 billion a year on their construction activities.<sup>17</sup> Other witnesses considered that some progress had been made, albeit inconsistently across the country. The Audit Commission told us that councils were now changing their business models as they restructured to make large-scale savings.<sup>18</sup> The Society of Procurement Officers in Local Government considered there to be “pockets of excellence” in local government contract management,<sup>19</sup> and the Chartered Institute of Purchasing and Supply (CIPS) told us that there had been some excellent initiatives. Nonetheless, CIPS concluded that overall local authority procurement was failing to provide value for money.<sup>20</sup>

10. These concerns point to considerable underperformance by many councils. A key question we asked during this inquiry was what further savings could be unlocked if all councils achieved maximum value for money in their procurement. However, data on procurement savings is not collated by the LGA nationally for local authorities.<sup>21</sup> Examples from witnesses of current savings gave us an indication of potential future savings through particular improvements. The LGA cited savings of over £100 million which the West Midlands Regional Improvement and Efficiency Partnership had achieved for its 33 local authorities through its collaborative approaches.<sup>22</sup> The Confederation of British Industry (CBI) told us that the three London Boroughs of Kensington and Chelsea, Westminster, and Hammersmith and Fulham were each estimated to be saving more than £2 million annually from a joint facilities management contract.<sup>23</sup> The CBI also drew attention to LGA estimates that some £280 million had been saved through joint commissioning by councils across the country via some 325 shared-service agreements.<sup>24</sup> However, although these examples give a sense of the likely level of savings, specific factors apply to each

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14 Local Government Association ([LGP 17](#)) para 3

15 See Halton Borough Council ([LGP 26](#)), Birmingham City Council ([LGP 45](#)), Hampshire County Council ([LGP 03](#)), Sheffield City Council ([LGP 66](#))

16 Specialist Engineering Contractors’ Group ([LGP 60](#)) para 2

17 Scape ([LGP 36](#))

18 Audit Commission ([LGP 11](#)) para 2

19 Society of Procurement Officers in Local Government ([LGP 47](#)) para 4

20 Chartered Institute of Purchasing and Supply ([LGP 39](#))

21 Q20

22 As above

23 Confederation of British Industry ([LGP 59](#)) paras 12,13

24 Confederation of British Industry ([LGP 59](#)) para 12

contract, so figures cannot simply be scaled up to give an accurate estimate of what could be achieved more widely across the local government sector.

**11. We recognise that local government is aware of the need to improve procurement practice across the sector and that some councils are adopting effective procurement approaches which deliver savings to local communities. We are, however, concerned that more needs to be done and that not all are procuring so as to achieve maximum value for money. Councils must ensure that they have appropriate mechanisms in place to enable them to measure the costs and savings of their procurement exercises so that they can evaluate the extent to which they are using optimum approaches. We conclude that the Local Government Association should provide a forum for sharing data on successful approaches and the information should also be used to inform its programme of support for councils.**

12. There are various models for council procurement ranging from individual councils conducting their procurement completely independently, through collaboration amongst councils to conduct joint procurement, to integration of council purchasing via a centralised body. In this section we examine a range of approaches starting with centralisation.

### **Centralisation**

13. The extent of centralisation of procurement has been at the core of central government's consideration of procurement since the 1980s. The Government set up a Buying Agency in 1991 as the main agency for non-specialist commodities and services to let framework agreements. This Agency, via several changes of remit and name, was transformed into the Government Procurement Service (GPS) in 2011. In July last year the Government announced that a new Crown Commercial Service (CCS) was to be created to bring the Government's central commercial capability into a single organisation. For central government, the CCS will also centralise the management of common suppliers and take a lead role in the letting and management of significant contracts.

14. If this approach were applied to local government, it would mean giving the responsibility for procurement to an external body working on behalf of councils to deliver their procurement objectives. Councils would monitor the performance of the body against specified outcomes but not control its day to day activities. The key attraction for central government of using a centralised model is to drive down the costs of procurement. The Cabinet Office told us that its work to streamline procurement, including through development of the CCS, would "fundamentally change the way we procure to improve efficiency, savings and service delivery".<sup>25</sup> It told us that its approaches to date had delivered savings of up to 10%: in 2012-13 the GPS managed £11.44 billion of public spending, delivering £1.1 billion in savings. This included savings of some £100 million for local authorities from a spend managed by the GPS of some £1.25 billion.<sup>26</sup>

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25 Cabinet Office ([LGP 15](#))

26 As above

15. The Cabinet Office noted that councils were increasingly taking up GPS services as “more compelling examples of success” became more widely known. It said that there was a “significant opportunity” for increased use by local government of centralised procurement services without compromising the “localism agenda and the critical need to support economic growth of businesses, in particular SMEs, in local areas”. The Cabinet Office cited the centralised deals for commodities, such as energy, which had been established through central government buying power and which entailed contracts and key suppliers being actively managed, noting that this directly freed up council budgets and capacity to focus on specialist and key strategic procurement projects that supported local front-line service delivery. It further highlighted GPS work with a number of local government buying organisations to drive additional savings on common goods and services through increased aggregation and that this had resulted in a number of collaborative procurements. The Office cited the example of a joint framework for multi-functional devices with Eastern Shires Purchasing Organisation (ESPO) and YPO which was delivering average savings of 46% on hardware and 49% on service costs through standardising specifications.<sup>27</sup>

16. Wales is taking the GPS model further and is establishing a Welsh National Procurement Service to manage contracts across more than 70 organisations across the public sector—including all local authorities, health boards, universities, colleges, fire and rescue and police authorities in the Principality. The Welsh Assembly Government stated that it expected to see reduced expenditure, elimination of duplication and increased efficiency from co-ordination of the 20-30% of the total £4.3 billion Welsh budget spent on “common and repetitive goods and services”.<sup>28</sup> We received evidence that a centralised model for council procurement could generate significant savings for local authorities. Our adviser, Colin Cram, calculated that additional cost savings of 13% could be achieved from this type of fuller integration of council procurement when compared to current savings from collaborative procurement.<sup>29</sup>

17. The International Association of Contract and Commercial Management (IACCM) told us that there should be “selective centralisation of activities and support” to enable establishment of a “critical mass, the dissemination of best practice and coordinated learning and knowledge transfer”.<sup>30</sup> Centralised bodies would employ a specialised staff with commercial skills which some individual councils might struggle to match, although access to commercial support could also be achieved via other means including the use of collaborative bodies and/or programmes of support led by the sector. (We address skills provision further in chapter 0 below.)

18. Many witnesses were opposed to integration of council procurement into a centralised body or bodies. Their concerns focussed on five grounds. First, centralisation would erode the opportunity for locally flexible approaches. For example, the Association of Play Industries told us that, as play spaces and playgrounds were “not commodities like

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27 Cabinet Office ([LGP 15](#))

28 “[Welsh Government launches National Procurement Service](#)”, Supply Management, 21 November 2013

29 Colin Cram calculates that this would be equivalent to additional savings of £4.75 billion. He argued for a fundamental re-structuring of the organisation of procurement, suggesting that a feasible model could be that of a local authorities’ owned mutual, phased in over perhaps five years

30 International Association for Contract and Commercial Management ([LGP 14](#))

paperclips”, tenders for such services needed to be bespoke according to “locality, the communities they serve and the outcomes delivered to children”.<sup>31</sup> The LGA was concerned that a body not under direct local democratic control might limit local choice and flexibility and might have negative impacts on local economies. The LGA said that each of the more than 370 councils needed to be responsive to their voters and their residents, and be held to account for the price they paid as well as the quality they delivered.<sup>32</sup>

19. Second, we heard that not all goods and services were good candidates for centralised purchasing. Paul Smith from YPO warned that, whilst products such as energy could be obtained under “very good deals” when bought at a certain level of volume, some categories were “best bought locally”.<sup>33</sup> However, Mark Robinson from Scape noted that central purchasing need not preclude support for local firms and that Scape’s delivery partners committed to spend locally: “we have national arrangements. We set them up nationally but we deliver locally”.<sup>34</sup>

20. Third, it was argued that local authorities’ procurement arrangements needed to be tailored to locally specific factors, such as requirements for contracts to deliver social, economic or environmental value to the local area. We consider these requirements in detail in chapter 3 but note here that if a council wishes to deliver best overall value, then it is necessary to consider not only how contracts can be secured at the lowest price, but also how they can be linked to the delivery of a council’s strategic objectives. Making such linkages effectively requires each council to be able to retain sufficient control over the outcomes for each procurement exercise. A centralised approach could militate against this.

21. Fourth, aggregation of spend can have negative consequences. The LGA noted that:

aggregation is not necessarily the best solution as it does not always guarantee lower costs and can have a detrimental impact on local jobs. In situations where a few large suppliers dominate the marketplace and where global reserves and market speculators dictate the prices, then even if there was one buyer for all of government it still might not guarantee lower costs.<sup>35</sup>

22. Fifth, implementation might not be straightforward. There have been difficulties in integrating procurement, as demonstrated by central government’s experiences. The National Audit Office (NAO) *Improving Government Procurement* report concluded that the Government was not maximising the potential for savings through centralised procurement since, although it had succeeded in increasing spending through central

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31 Association of Play Industries ([LGP 62](#))

32 Q55 [Brian Reynolds]

33 Q309 [Paul Smith]

34 Q122 [Mark Robinson]

35 Local Government Association ([LGP 17](#)) para 11



contracts from £2.6 billion in 2009-10 to £3 billion in 2011-12, this still represented less than half of its spending on common goods and services.<sup>36</sup>

### *Compulsion to centralise*

23. We received evidence for and against compelling councils to centralise their procurement. In favour were witnesses such as Alasdair Reisner, representing the Civil Engineering Contractors Association (CECA), who told us that the absence of compulsion meant that change happened only slowly in the local government sector and meant that many useful initiatives were blocked, including publication of a ‘pipeline’ of planned future local authority construction projects which would enable construction companies to plan better.<sup>37</sup> Mark Robinson from Scape recommended that an umbrella organisation be set up across the UK with delegated authority to deal with local authority procurement, organised for example either centrally or in regional hubs. Since he considered that consistency in council approaches could not be achieved in a “nice collaborative way” he said that it would be necessary to “make” local authorities procure in a different way.<sup>38</sup>

24. On the other side, Ian Taylor, representing the North East Procurement Organisation (NEPO), told us that “imposing a way of doing things on local government would be inherently difficult”.<sup>39</sup> The Audit Commission also considered that, whilst centralised procurement carried “powerful weight,” compelling all councils to use a centralised body might be seen as a “crude weapon”.<sup>40</sup> The NAO noted that, although the Cabinet Office requirement for all government departments to buy through particular routes had led to savings, there was a “complicated set of factors to take into account” for the local government sector, “not least local accountability”.<sup>41</sup> We also heard commercial arguments against compulsion. Simon Hill from YPO told us that he did not support mandation of centralisation since this generated complacency. He argued that a purchasing body should operate commercially, convincing each buyer that it offered the best deal, and that compelling everybody to use one central body could lead to the creation of “some bureaucratic monolith” that did not offer efficiency to the public sector.<sup>42</sup> Sheffield City Council’s Director of Commercial Services endorsed this view noting that the council considered all options for each procurement, using a blend of central buying via the GPS, regional buying via bodies such as YPO and NEPO, and local buying where, as well as best value, the council made decisions on the basis of supporting local SMEs and delivering social value.<sup>43</sup> Ed Walsh from ESPO, whilst critical of the disparate choices made by councils and recognising the benefits from the rationalisation of choice, conceded that local commissioning strategies needed to recognise different local priorities and that “you

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36 Report by the Comptroller and Auditor General, *Improving Government Procurement*, [HC 996](#), February 2013, p7. The Cabinet Office’s most recent forecast is that this would grow to £5.3 billion in 2012-13

37 Q159 [Alasdair Reisner]

38 Q119 [Mark Robinson]

39 Q119 [Ian Taylor]

40 Q395

41 Q397

42 Q309 [Simon Hill]

43 Q309 [Barry Mellor]

will not have any friends in local government if it is mandated centrally that they have to do x or y and it offends their commissioning strategy”.<sup>44</sup>

**25. We conclude that local authorities' focus on meeting the needs of local communities requires councils to retain control over their procurement operations. Local freedom and flexibility would be lost if they were compelled to adopt a centralised model of procurement such as that adopted by central government in its Crown Commercial Service.**

**26. We recognise that there are potential savings to be gained by increased aggregation and even national arrangements—for example, for purchasing energy—but it has to be for local authorities to decide what provides the best value for money when weighted against their local needs and to enter such arrangements voluntarily. To assist local authorities, we consider that the Local Government Association should review current procurement spend on key categories to identify potential routes to increase the use of aggregated spend for these products and services.**

### **Collaboration**

27. Greater voluntary aggregation, if necessary up to a national level, would build on collaborative approaches currently spreading through local government. There have been a large number of joint council procurement initiatives and regional collaborations established in recent years. The LGA told us that the number of shared procurement services had doubled during 2011–2012 with 75 councils now in 16 formal joint purchasing arrangements.<sup>45</sup> Witnesses told us of the potential for increased collaboration across local authorities to deliver benefits, including reduced costs of procurement exercises and lower prices for goods and services, as well as improved access to specialist commercial skills. For example, the Audit Commission considered that collaborative procurement could save significant sums of money for councils since aggregating demand would generate discounts, although the amounts varied according to the markets involved—whether national, local or regional—and the range of suppliers that was active in each.<sup>46</sup> The LGA cited the example of 313 councils purchasing energy in eight consortia in order to buy at the “simplest and cheapest arrangement”.<sup>47</sup> The LGA was also funding work on councils’ three biggest spend categories—energy, construction and ICT—to investigate how the sector could collaborate more effectively so as to “understand the markets; work better with the suppliers; quantify future planned spend; map and promote existing frameworks; and identify opportunities to make savings”.<sup>48</sup> The LGA further noted that significant cost reductions could be achieved by increasing the capability of procurement teams through sharing of resources.<sup>49</sup>

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44 Q122 [Ed Walsh]

45 Q2 [Brian Reynolds]

46 Audit Commission ([LGP 11](#)) para15

47 Q51

48 Local Government Association ([LGP 17](#)) para 21

49 Local Government Association ([LGP 17](#)) para10

28. Procurement organisations told us of the benefits to councils from using collaborative approaches. NEPO cited a reduction in one council’s procurement spend in 2013–14 of over 26% through a combination of factors including “reduced settlement grants, putting local business first, partnership/outsourced contracts and other changes to the landscape”.<sup>50</sup> Scape stated that its joined up approach to procurement had delivered savings of £200 million, with average savings of 14%, when compared to ‘traditional’ tendering approaches under which councils operated individually.<sup>51</sup> On average procurement bodies estimate collaboration amongst councils to be generating savings of 10-15%. Applying this to the approximately 15-20% of total third-party procurement budgets currently spent this way, we calculate that nationally savings of 2% may already be being generated.<sup>52</sup> Making better use of current collaborative approaches could lead to further savings, in some witnesses’ estimation. Our adviser, Colin Cram, calculated that using collaborative agreements as a default would lead to total savings of £2.5 billion, i.e. additional savings of £1.8 billion per annum.

### *Barriers to collaboration*

29. Witnesses were, however, concerned that maximum use was not being made of collaboration to deliver value for money. CIPS noted that only 15% of procurement spend by local authorities was currently channelled through procurement hubs despite this route securing long-term service and cost benefits for local taxpayers and their local economies.<sup>53</sup> A joint report by the Audit Commission and the NAO, *A Review of Collaborative Procurement Across the Public Sector*, noted that, with nearly 50 professional buying organisations as well as individual public bodies running commercial and procurement functions, the public sector procurement landscape was fragmented.<sup>54</sup>

30. The Audit Commission said that, although care needed to be taken over some locally specific services such as contracted-out provision for looked-after children, councils needed to be very clear as to the reasons why they did not collaborate since they needed to be sure they were obtaining better value for goods such as stationery, vehicles and travel.<sup>55</sup> DCLG stated that local authorities *must* take advantage of collaborative deals on specific categories of spend, particularly in high cost service areas. The Department expressed frustration at the stance taken by some councils and referred to the household waste Weekly Collection Support Scheme which had offered councils £250 million to allow them to take advantage of joint procurement deals. It had identified that many councils were buying similar goods—wheeled bins and refuse collection vehicles—at a similar time and considered that economies of scale would mean that products could be obtained more cheaply for those collaborating. It had organised workshops, with the LGA and other

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50 North East Procurement Organisation ([LGP 34](#)) para 8

51 Scape ([LGP 36](#))

52 Colin Cram calculates that this is equivalent to £716 million annually on the overall procurement spend of £35 billion. This is based on: CIPS estimates that 15% of procurement is collaborative, i.e. £5 billion from a total non-social care procurement spend of £35 billion

53 Chartered Institute of Purchasing and Supply ([LGP 39](#))

54 National Audit Office and Audit Commission, *A Review of Collaborative Procurement Across the Public Sector*, May 2010, p5

55 Q395 [Mark Wardman]

partners, to promote this but was disappointed that authorities had not taken “sufficient advantage of the procurement opportunity created from the Scheme”. DCLG said that “excuses included: working to unique timescales; local sovereignty; and existing contracts, and these were complemented by a lack of understanding of processes and in some cases disinterest— a tunnel vision focused solely on the processes of their local authority”. It further noted that where local authorities had joined up, the advantages had been “obvious” citing for example the London Waste and Recycling Board joint procurement of food waste caddies and caddy liners which had saved 25%, with one authority achieving savings of 68% over the costs of procuring alone.<sup>56</sup>

31. Even where collaboration was seen to be the optimum approach in principle, witnesses identified a range of factors hindering its effective implementation. The Audit Commission warned that “market complexity, along with the variety in size and type of council”, had hindered collaboration in many cases but noted that these were not insuperable obstacles.<sup>57</sup> Witnesses referred to the need to identify the appropriate scale at which to collaborate.<sup>58</sup> Ian Taylor of NEPO considered that, of the North East region councils’ annual £2.6 billion spend on goods and services, only some 10-15% could be bought nationally, some 25% would be best bought from regional suppliers, and about 50% was supplied through local SMEs, and this last category would be very difficult for a national organisation to manage.<sup>59</sup> Furthermore, during our visit to Sheffield we were told that collaboration could have negative effects on more effective councils which were working with less effective authorities since such unequal partnerships could bring more benefits to one party than the other where not all parties were performing at optimum levels.

32. Some witnesses considered that councils should be compelled to collaborate with other councils since joint approaches achieved savings. Although of the view that collaboration among councils in the North East of England was good, NEPO said that the lack of a requirement on councils to collaborate was a barrier since each collaboration was dependent on the commitment of many local authorities. It told us that its attempt to implement a model under which a lead local authority would conduct procurement for all members, on behalf of NEPO, had met with limited success as local authorities lacked the capacity to manage 11 partners.<sup>60</sup> Nonetheless, many other witnesses argued against compulsion due to the constraints this would place on local councils’ ability to deliver local priorities in a locally accountable manner and the arguments they advanced were broadly similar to those we outlined above against compulsion to centralise.

**33. It is clear that many local authorities are already conducting procurement in collaboration effectively with other councils, either through initiatives established between individual authorities or groups of authorities, or via procurement organisations on a regional basis. Enhancing such approaches is a sensible way forward. We can understand the Government’s frustration that authorities’ responses to its funded collaborative initiatives have not been as expected. But the answer is not**

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56 Department for Communities and Local Government ([LGP 63](#))

57 Audit Commission ([LGP 11](#)) para 17

58 North East Procurement Organisation ([LGP 34](#)) para 12

59 Q119 [Ian Taylor]

60 North East Procurement Organisation ([LGP 34](#)) para 20

**compulsion. As we have already stated, councils are answerable to local people and have to retain control over the delivery of local services. Nevertheless, we consider that there is scope for much greater work to join up approaches and deliver economies of scale without compromising local authorities' ability to deliver locally appropriate services, accountable to their communities. We conclude that the Local Government Association should conduct a review of collaborative approaches and produce best practice guidance for authorities on the most effective means of joining up procurement to deliver savings which reflect local priorities.**

### ***Collaboration within localities***

34. We received evidence on the benefits of public sector bodies within localities collaborating on the procurement of common goods and services. The LGA noted that the next challenge beyond inter-council collaboration was collaboration across community organisations such as the health and police services, using community budgets for example.<sup>61</sup> Ian Taylor told us that NEPO had helped a growing number of charities in the north east of England to reduce procurement costs using its contracts, and perceived growing signs of collaboration between health and education bodies.<sup>62</sup> Scape considered that community budgets were a good way of forcing people to work collaboratively if used in the right way.<sup>63</sup> Birmingham City Council told us that it had joined forces with the Birmingham Chamber of Commerce and other local public sector organisations to set up a cross-sector community interest company, Buy for Good, which helped social landlords, local authorities, schools, social enterprises and emergency services to benefit from the reduced prices that the council could secure as the UK's largest local authority.<sup>64</sup>

**35. There is scope for greater joining-up of approaches to deliver economies of scale by linking the procurement approaches of public sector bodies within local communities. The Local Government Association should conduct a review of collaborative public sector approaches at a local level and produce best practice guidance for authorities on the most effective means of joining-up procurement budgets across a range of local public sector bodies to help deliver joint local priorities.**

### **Framework agreements**

36. Framework agreements offer the potential to deliver savings without requiring councils to develop or join new procurement bodies. The existing EU rules define these as:

an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic

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61 Q21

62 Q147 [Ian Taylor]

63 Q148 [Mark Robinson]

64 Birmingham City Council ([LGP 45](#))

operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies.<sup>65</sup>

One significant advantage of a framework agreement is that the purchasing authority does not have to undertake the full Official Journal of the European Union (OJEU) process every time services or goods are required. Having to go through the tender procedure once rather than several times reduces tendering cost and shortens the time required to conduct a procurement exercise. KeepMoat referred to the North West Construction Hub as a “prime example” of a framework that had delivered value for money in a number of ways, for example by enabling the appointment of “competent, committed” contractors in a shorter timescale.<sup>66</sup>

37. However, not all witnesses wholeheartedly supported the use of such framework contracts. The Federation of Small Businesses (FSB) noted that the use of long-term framework agreements often led to the use of very limited numbers of suppliers and significantly reduced competition pressure for the duration of the contract.<sup>67</sup> Market Dojo, a small e-sourcing software company, also noted that frameworks could present problems for SMEs and micro-businesses, citing a tender from ESPO which excluded tenderers who could not offer one or more elements of a wide variety of services.<sup>68</sup> NEPO noted that frameworks could speed up processes but had drawbacks in that they might not meet specific local needs or include local suppliers and could lock new or improving suppliers out for the period of the framework.<sup>69</sup>

38. Some councils have taken steps to make framework contracts more manageable so as to retain economies of scale without such larger-scale contracts disadvantaging smaller firms. Staffordshire County Council,<sup>70</sup> and Halton Borough Council divide contracts into smaller units allocated, for example, by district—a process known as ‘lotting’.<sup>71</sup> Hampshire County Council has adopted a “blended” approach to balance delivery of larger and more specialist contracts by larger companies with the use of SMEs for smaller contracts.<sup>72</sup> We also note that the new EU Directive on public procurement would render discriminatory processes that hamper small businesses illegal.<sup>73</sup>

**39. We recognise that framework contracts can deliver cost savings in certain circumstances but have concerns about the impact on smaller firms. When using framework contracts, councils should consider the potential for sub-dividing at least part of the contract to enable smaller organisations to bid for smaller parcels of work. The Local Government Association should produce guidance on how the measures in**

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65 Office of Government Commerce, *Guidance on framework agreements in the Procurement Regulations*, September 2008

66 Steve Edgington (LGP 35) para 1.3

67 Federation of Small Businesses (LGP 30)

68 Market Dojo (LGP 67) para 13

69 North East Procurement Organisation (LGP 34) para 6

70 Staffordshire County Council (LGP 57)

71 Q43

72 Hampshire County Council (LGP 03) para 1.6

73 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014/./EU](#) of the European Parliament and of the Council on public procurement

**the new EU Directive on public procurement could be used to encourage smaller companies to engage in procurement opportunities with local authorities.**

### 3 Delivering strategic objectives through procurement

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40. At around £45 billion, the scale of spend on procurement of goods and services offers councils a key route for delivering their strategic objectives, including social, environmental, and economic aims. The Centre for Local Economic Strategies (CLES) recognised the significant potential of public procurement to tackle local economic development and alleviate poverty, and that current financial constraints meant that it was vital for councils to use this mechanism to address wider economic, social and environmental challenges.<sup>74</sup> Indeed government policies encourage councils to procure according to criteria other than simply the lowest price. The key legal framework enshrining this approach is the Public Services (Social Value) Act 2012 under which councils are required to consider social value in managing procurement. The Cabinet Office published guidance on using the Act's provisions setting out expectations that councils should consider overall value when reviewing service.<sup>75</sup> However this will need revision following announcement in January 2014 of new EU measures. After we concluded taking evidence, the EU finalised its new Directive on public procurement which is likely to increase both opportunities for, as well as obligations on, local authorities.<sup>76</sup> One change from previous EU rules is that public contracts must be assessed on the basis of the 'Most Economically Advantageous Tender' (MEAT) incorporating wider best value criteria such as environmental or social issues.<sup>77</sup> Article 68 of the new EU Directive will facilitate the inclusion of such aspects in public body procurement exercises.

41. We received evidence on a range of approaches from councils which had used procurement to pursue strategic aims, particularly in the social and economic spheres. London Councils told us that 86% of London Boroughs had changed their procurement processes in response to the 2012 Act, citing as examples of best practice the London Borough of Lambeth's checklist for councillors to identify which social and economic benefits they wished to generate from specific contracts, and the London Borough of Harrow's creation of more than 40 apprenticeships in the supply chain since adopting its Sustainable Procurement Policy.<sup>78</sup> Halton Borough Council told us that it used a weighted tender exercise to assess how contractors would add social value in delivering a contract, such as by engaging with the local workforce,<sup>79</sup> whilst Cheshire West and Chester Council also used contract specifications to increase the rate of apprenticeships and local jobs and to prioritise opportunities for local young people.<sup>80</sup> Essex County Council's requirement

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74 Centre for Local Economic Strategies ([LGP 19](#)) para 4.1

75 Cabinet Office, [Procurement Policy Note: The Public Services \(Social Value\) Act 2012—advice for commissioners and procurers](#), September 2012

76 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014/./EU](#) of the European Parliament and of the Council on public procurement

77 MEAT entails using a cost-effective approach such as life-cycle costing and may include the best price quality ratio. This ratio should be assessed on the basis of a range of criteria including qualitative, environmental and/or social aspects related to the contract's subject matter.

78 London Councils and the London Procurement Strategy Board ([LGP 31](#)) paras 22 and 23

79 Q36 [Lorraine Cox]

80 Q36 [Julie Gill]



that bidders deliver at least one apprenticeship per £1 million of spend if they wished to increase their ‘added value’ score had secured commitments for some 270 new apprenticeships across a range of contracts. Some of the council’s suppliers had gone beyond requirements to promote social employment schemes and further support local SMEs.<sup>81</sup>

42. On the other hand some councils were not maximising opportunities to embed social value in their procurement approaches. CIPS considered that nationally the sector’s focus remained on savings and that there was little evidence that social, economic and environmental considerations were duly regarded in the award of contracts.<sup>82</sup> Furthermore, the Chartered Institution of Highways and Transportation told us that the balance between cost and quality was too often “heavily skewed in favour towards cost” during bid evaluations.<sup>83</sup> Solace, the body representing council Chief Executives, told us that clients and providers frequently expressed frustration that contracts were too focused on the “mundane” and that their impact on strategic outcomes was unclear. It criticised a lack of practical examples where councils had adopted contract specifications focussed on outcomes.<sup>84</sup> The National Council for Voluntary Organisations (NCVO) identified a range of barriers to delivering value for money, including a “disconnect” between those commissioning services and procurement/finance teams, a failure to involve all relevant actors (providers, commissioners, procurement and contract managers) in the design stages of commissioning, and limited engagement of procurement and finance teams directly with providers.<sup>85</sup>

43. We also heard evidence on the central role of procurement in delivering environmental policies such as through the procurement of green goods and services. We were not able during this inquiry to examine environmental policies specifically, but we note the range of initiatives such as the LGA’s *Sustainable Procurement Strategy*,<sup>86</sup> and WRAP’s sustainable procurement modules that include good practice guidelines to enable organisations to deliver cost savings, use fewer resources and send less waste to landfill.<sup>87</sup>

**44. There is a judgment to be made by each council, and for each contract, as to the correct balance for their community between letting a contract at the lowest price and requiring contractors to deliver additional economic and social value, sometimes at an additional cost. We are clear, however, that councils can and should adopt policies which enable them to maximise their procurement spend to deliver local priorities by requiring contracts to be let on the basis of wider best value, not simply lowest price. Such approaches will best ensure procurement is conducted so as to support and improve communities’ long-term economic, social and environmental well-being. Many local authorities are already successfully linking their procurement approaches to delivering such objectives but all councils should assess the potential of each**

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81 Essex County Council ([LGP 18](#))

82 Chartered Institute of Purchasing and Supply ([LGP 39](#))

83 Chartered Institution of Highways and Transportation ([LGP 64](#)) para 1.3

84 Solace ([LGP 42](#))

85 National Council for Voluntary Organisations ([LGP 29](#)) para 2

86 Local Government Association, *Sustainable procurement strategy*, 30 November 2007

87 See WRAP [sustainable procurement](#) webpages, [www.wrap.org.uk](http://www.wrap.org.uk)

procurement exercise, and of their overall procurement policies, to assist delivery of the council's corporate objectives. Furthermore, they should raise awareness of the value of this linkage through more explicit demonstration of successful approaches. All councils should present an annual report to a full Council meeting setting out the authority's strategy for incorporating economic, social and environmental value in its procurement, including employment terms and conditions, impact on local economies and small businesses, relationships between contractors and customers, and the role of councillors.

45. We conclude that the Local Government Association should work with local authorities to disseminate best practice case studies on how to maximise the impact of procurement approaches to deliver local social, economic and environmental objectives, whilst balancing the need to secure value for money in the procurement of goods and services. A particular focus for the LGA should be the promotion of examples of best practice in using procurement to support the increase in local apprenticeships and trainee opportunities. Furthermore, the LGA should update guidance on the potential of new EU public procurement measures to allow procurement to be used to promote social value, and advise councils on what they must do to meet new obligations.

## Revision of the Public Services (Social Value) Act 2012

46. CLES supported the use of the law to “shape and influence” council processes and practices to combat cultures where cost was the primary consideration.<sup>88</sup> NCVO considered that a weakness of the Public Services (Social Value) 2012 Act was that its provisions applied only to contracts above EU procurement thresholds.<sup>89</sup> Plans to increase these thresholds would therefore further weaken the Act's impact. NCVO noted that over a third of the 124 local authorities which had a contractual relationship with the voluntary sector spent less than the EU threshold in total on their contracts with the sector.<sup>90</sup> It therefore recommended that the Government should amend the 2012 Act to place a clear legal requirement on local government to consider social value when procuring any public service contract, irrespective of financial value, and should put in place mechanisms to support and monitor council implementation of the Act.<sup>91</sup> The Joseph Rowntree Foundation also recommended extending duties and powers under the Act to “all services and works procurements”.<sup>92</sup>

47. Although we were told that 65% of local authorities in England and Wales had changed their processes and practices as a result of the 2012 Act, NCVO said that, since councils were not obliged to monitor or report implementation, it was difficult to evaluate the impact of the Act accurately. NCVO recommended that there be regular publication of an

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88 Centre for Local Economic Strategies, [Responding to the Public Services \(Social Value\) Act 2012](#), p1, 13 February 2013

89 See Chapter 4 on process below for details on EU thresholds. The Public Services (Social Value) Act 2012 is also referred to as the Social Value Act for brevity

90 The threshold is currently set at £173,934

91 National Council for Voluntary Organisations ([LGP 29](#)); Section 1(13) of the Public Services (Social Value) Act 2012 refers

92 Joseph Rowntree Foundation ([LGP 20](#)) para 4.1

evaluation of wider social impacts of council procurement.<sup>93</sup> CLES criticised the lack of a standard method of assessing the wider social, economic and environmental impacts.<sup>94</sup> DCLG told us that it did not centrally monitor adherence to social value objectives, but used the CCS ‘Mystery Shopper’ scheme to investigate any complaints about the Act not being applied.<sup>95</sup> It added that it ran a ‘Best councils to do business with’ contest, with the 2013 winners having shown evidence of clear commitment to link procurement to strategic objectives.<sup>96</sup> Ministers further told us that their priority was to make the existing law work and be “something that people are using” rather than tinkering with the Act.<sup>97</sup>

**48. We acknowledge Ministers’ wish to ensure that the Public Services (Social Value) Act 2012 is given sufficient time to bed in and become fully effective. Nonetheless, it is clear that there are concerns that the limited range of contracts to which its provisions apply might be undermining the Act’s impact. We recommend that DCLG undertakes comprehensive post-legislative analysis of the Act to ensure assessment of its effectiveness before the end of 2015. This assessment should consider whether provisions should be extended such that local authorities must consider the potential for a contract of any value to deliver social benefits. Such assessment must take into account the views of all interested parties, including local government and business.**

## Community Right to Challenge

49. The Localism Act 2011 introduced new rights and powers for communities and individuals including the right to challenge a council (whether County, District or Unitary) to take over running of certain of the authority’s services.<sup>98</sup> This is known as the Community Right to Challenge (CRC). Authorities must consider the social value of expressions of interest to run such services in any procurement exercise triggered by the CRC, as well as best value, which includes economic, environmental and social value. Such value could include, for example, creating local jobs, increasing local volunteering opportunities, or improving environmental conditions.<sup>99</sup> Evidence from witnesses indicated that there had been very limited use made of this right to date. NCVO told us that 22 challenges had been launched formally, with only two accepted. NCVO said that it wished to see the voluntary sector taking on more services.<sup>100</sup> CLES noted that the voluntary sector considered there to be drawbacks with the CRC because, in highlighting a wish to deliver a local service, an organisation could open up the service to a full tender exercise that often involved large private sector organisations. This did not necessarily lead to the voluntary or community sector winning contracts. It could be more effective to

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93 Q357 [Oliver Henman]

94 Q342 [Matthew Jackson]

95 The Mystery Shopper is a web-site operated by the Crown Commercial Service where suppliers and potential suppliers can complain if they believe that they are being unfairly treated by a public body. See [Mystery Shopper results](#)

96 Department for Communities and Local Government ([LGP 63](#))

97 Q455

98 [Localism Act 2011](#)

99 Department for Communities and Local Government, [MyCommunityRights webpages](#) [www.mycommunityrights.org.uk/](http://www.mycommunityrights.org.uk/)

100 Q361 [Oliver Henman]

develop a relationship directly with local authority commissioners.<sup>101</sup> Solace told us that account needed to be taken of the process's impact on the voluntary community as well as the private sector and that an extended period of dialogue and consultation would often be required before voluntary sector bodies or social enterprises would be in a position to be able to compete for a contract.<sup>102</sup> Nevertheless, NCVO considered that there was some evidence that the right to challenge allowed organisations to begin a conversation with a council which would not otherwise have been possible. It preferred a more informal approach which could be easier for the voluntary sector than the potentially confrontational formal process.<sup>103</sup>

***50. Government policies to encourage communities to engage in service delivery through mechanisms such as the Community Right to Challenge do not appear to be being used to any great extent. We recommend that the Government undertake within six months a review of the barriers to its uptake, including costs to councils and would-be suppliers of entering into a full-scale procurement exercise and how these might disadvantage some sectors, in particular the voluntary and community sector.***

## Supporting local businesses and small and micro-businesses

51. Councils have the potential to use their procurement practices in order to support small and micro-businesses. A survey in 2013 by the Federation of Small Businesses (FSB) concluded that there was “much good practice” aimed at increasing SME access to public sector contract opportunities. More than 90% of responding authorities had initiatives in place to support SMEs in tendering, and 75% had introduced new initiatives in the last twelve months.<sup>104</sup> Intellect, a trade association for the digital technology and services sector, stated that councils were “ahead of the curve” and that local government had already readily embraced the SME agenda “at a rate much higher than that of central government” when sourcing new technology.<sup>105</sup> Witnesses also highlighted the potential for support for local businesses to improve local economies. The FSB survey concluded that for every £1 spent by local authorities on procuring goods and services from *local* firms, additional benefits of 51 pence were generated for local economies. The research found that local authorities spent on average around a third of their total procurement budget within their own boundaries, and that nearly half of the total spend was with SMEs. It further found that spend via small local firms generated more benefits than spend via large local businesses. FSB calculated that increasing spend with local firms by 5%, and with SMEs by 3%, would increase investment in local SMEs by over £964 million nationally.<sup>106</sup>

52. Other witnesses gave us a range of examples where local councils were working to support local businesses. The LGA identified a number which were spending high proportions of their procurement budgets with SMEs.<sup>107</sup> Halton Borough Council spent

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101 Q361 [Matthew Jackson]

102 Solace ([LGP 42](#))

103 Q361 [Oliver Henman]

104 Federation of Small Businesses ([LGP 30](#))

105 Intellect ([LGP 32](#))

106 Federation of Small Businesses ([LGP 30](#))

107 Local Government Association ([LGP 17](#))

89% of its procurement budget with SMEs nationally.<sup>108</sup> The council told us that it had increased supplier numbers by over 160% in two and a half years by using mechanisms such as advertising all contracts through an e-portal ('The Chest') and engagement exercises with local businesses.<sup>109</sup> The Chair of the South and East Yorkshire Region Federation of Small Businesses told us that Sheffield City Council had adopted the right approach to supporting local suppliers and had increased the number of apprentices to some 300.<sup>110</sup>

53. Nonetheless, some witnesses considered that concerns over compliance with EU non-discrimination requirements could undermine the delivery of local economic objectives. FSB said that:

anecdotal evidence suggests that, while local authorities are comfortable with supporting environmental issues and apprenticeships through procurement, they may be less confident on what is permissible in support of local businesses. As such, procurement teams uncertain of what can and cannot be done to support small local businesses through procurement should seek advice and guidance, particularly from the LGA.<sup>111</sup>

The Chartered Institute for Public Finance (Cipfa) noted that, although EU rules prohibited discrimination against service providers on the grounds of nationality, nonetheless there was scope for discretion. It stated that it was not for example lawful to:

specify that food is locally produced, but it is standard practice to specify that it is fresh or seasonal; and to take into account the level of harmful emissions caused by its transportation. To this extent local government procurement has a lawful purpose unconnected with stimulating the local economy. Indiscriminate local procurement to stimulate the local economy would however be unlawful.<sup>112</sup>

The Joseph Rowntree Foundation agreed, noting that, provided contracts were not directly or indirectly discriminatory, EU processes allowed procurement to address social issues for example by favouring "on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment".<sup>113</sup> The Foundation noted, however, that the contractor would be required to deliver the social benefits without discriminating against non-local suppliers.<sup>114</sup> The revised EU procurement rules will increase the scope for supporting local economic growth, for example through the use of training opportunities, employment of job-seekers and apprentices.<sup>115</sup> The new draft Directive includes a range of articles which will support SMEs through, for example, requiring use of simplified procedures, meeting a

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108 Q2 [Lorraine Cox]

109 Qq 26,27 All contracts between £1000 and the EU threshold

110 Q282 [Gordon Millward]

111 Federation of Small Businesses ([LGP 30](#))

112 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) paras 14 and 15

113 Joseph Rowntree Foundation ([LGP 20](#))

114 As above

115 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014/./EU](#) of the European Parliament and of the Council on public procurement

number of criticisms from witnesses concerned at the impact of current onerous procedures.<sup>116</sup>

54. Some businesses expressed reservations. For example, Alan Rogers, representing housing construction company KeepMoat, considered that local economic benefits were to be had by using local community contractors, but he cautioned that there were practical difficulties in using this approach such as securing contractors with the right specialist knowledge for the contract.<sup>117</sup> Academics also warned of potential negative impacts on wider geographical areas of approaches which favoured local communities. Dr Pedro Telles from Bangor University considered that public procurement should not be used as a “development or social engineering tool” since there was a risk that social considerations could be used as a “protectionist tool under the guise of stimulating the local economy”.<sup>118</sup> Cipfa considered that it would be ineffective to use local procurement indiscriminately to stimulate local economies because “all authorities would start doing it, so that what any local economy gained from its own local procurement it would lose from the loss of cross-border procurement by other authorities”.<sup>119</sup> Dr Telles endorsed this view noting that:

when the first authority raises its barriers to external suppliers all others will be expected to do the same to protect their local supplier base. [...] one [organisation] saving is great, everyone saving leaves the economy in deep trouble. In consequence, it will become almost impossible for a supplier to win business with another local contracting authority.<sup>120</sup>

**55. We recognise that council policies which disproportionately favour local or smaller firms are not in communities’ longer-term interests since these approaches could exclude cost-effective options offered by non-local or larger businesses, as well as ultimately weakening rather than strengthening local economies or regional economies as a whole. However, carefully framed policies that give local and smaller firms the same opportunities as larger firms to compete for contracts have had benefits for local economies. We support targeted council approaches which effectively balance support for local businesses whilst not precluding value for money or undermining the effective operation of markets. We conclude that the Local Government Association should work with local authorities to disseminate best practice case studies on how to integrate procurement and support for smaller businesses. *The Cabinet Office, working with the LGA, should produce guidance on how councils can apply the provisions of the new EU Directive on public procurement to better support smaller businesses and local economies.* We address in the next chapter the approaches which should underpin these policies.**

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116 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014/./EU](#) of the European Parliament and of the Council on public procurement (Articles 22, 51, 34, 36, 56 of the draft Directive refer)

117 Q163

118 Dr Pedro Telles ([LGP 23](#))

119 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) para 15

120 Dr Pedro Telles ([LGP 23](#))

## 4 Procurement processes

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### Costs of procurement

56. Procuring goods and services incurs costs for councils and those doing business with councils at all stages of the process, including the pre-tendering stage, during the tender process and during the implementation of the contract. A typical procurement exercise for a contract above EU thresholds costs a tendering body some £40,000-50,000.<sup>121</sup> These costs are higher than those incurred by firms in other European Union countries. The Centre for Economics and Business Research (CEBR) report published in July 2013 found that UK procurement processes were the most expensive in the EU and took some 53 days longer on average.<sup>122</sup>

### Application of EU procurement rules

57. There are detailed rules on how procurement exercises by public bodies must be conducted set out in the Public Contract Regulations,<sup>123</sup> which implement the current EU Directive on public procurement requirements.<sup>124</sup> Witnesses criticised the manner in which the EU rules had been transposed into UK law. ESPO considered that the UK regulations made authorities “very timid” since they gave licence to “vexatiously minded companies” to take public bodies to court for the “slightest, most technical of transgressions”.<sup>125</sup> Dr Telles noted, however, that there was only a slim likelihood of this.<sup>126</sup> ESPO recommended the “wholesale rewriting” of regulations to allow councillors freedom to decide what standards they wanted suppliers to meet and to construct policies to meet local priorities.<sup>127</sup>

58. Some 75% of all contracts tendered in the UK have a value below the thresholds at which the full EU requirements apply, but witnesses contended that councils applied the full rules to many of these lower value contracts, adding unnecessary costs and bureaucracy. Dr Telles said that some councils used for lower value contracts approaches designed for “very expensive contracts” above the EU thresholds, noting that this disadvantaged SMEs in particular.<sup>128</sup> Scape considered such over-use of regulations to be due to a cultural problem whereby council procurement officers were “paralysed” by fear over breaching EU rules.<sup>129</sup> However, a survey by FSB in 2013 identified an increase from

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121 Q142

122 “[UK public sector procurement most expensive in EU](#)” Supply Management, 11 July 2013

123 Public Contract Regulations 2006 ([SI 2006/05](#))

124 [Directive 04/18/EC](#) will be repealed following adoption of the new [Directive/2014/./EU](#) of the European Parliament and of the Council on public procurement. The full formal EU procedures must be followed for any public contract relating to certain categories of procurement. Under the proposed new EU measures, the threshold will be set at £175,000, broadly equivalent to current Directive levels. The new Directive will however introduce a higher threshold equivalent to £620,000 to apply to a wide range of health and social services, above which member states are required to issue prior information notices but will then be free to determine their own procedures

125 Eastern Shires Purchasing Organisation ([LGP 06](#))

126 Q380

127 Eastern Shires Purchasing Organisation ([LGP 06](#))

128 Q363 [Dr Pedro Telles]

129 Q128 [Mark Robinson]

74% to 83% in authorities adopting different processes for contracts below EU threshold tenders. FSB considered this to be “significant progress”, but urged further rapid progress towards all authorities adopting simplified processes for contracts below EU thresholds.<sup>130</sup> The Federation of Master Builders recommended work across the sector with the LGA and others to ensure all those involved in public procurement were properly informed about any limitations created by the rules.<sup>131</sup> The new Directive on public procurement aims to make procurement faster and less costly for businesses and procurers. The Cabinet Office, with DCLG, is preparing for its early transposition so as to take advantage of the new rules “as soon as possible”.<sup>132</sup>

**59. It is imperative that councils act swiftly to cut costs for those wishing to do business with them. Too many councils apply EU regulations over-zealously, using them as a self-serving justification to retain overly bureaucratic approaches. This approach is pervasive, and a cultural change is needed. Local authorities need to become more confident in their application of EU rules. The first step is for the Government and sector leaders, including the Local Government Association, to spell out what constitutes a sensible approach which will meet regulations in a proportionate manner. The LGA should produce guidance on this aspect of the new EU Directive on public procurement and work with local authorities to disseminate best practice case studies of those councils already minimising costs to suppliers and potential suppliers.**

## Process improvements

60. The failure of councils to streamline procurement processes was a key concern, particularly for SMEs. Market Dojo for example told us that rigid processes had prevented it from delivering “substantial savings” for one county council, contrasting this with another council’s acceptance of e-auctions which had kept costs of auctions down. Representing the company, Alun Rafique referred to a number of councils which had used a “very onerous” procedure for low-value tenders, stating that this “put off” SMEs from applying for these tenders since they took up “a lot of time and money”.<sup>133</sup> Shortcomings in the public sector’s ability to improve access by SMEs and social enterprises to government contracts have been flagged up by the Public Administration Select Committee (PASC). That Committee’s 2013 *Government Procurement* report concluded that insufficient change had been introduced to stop procurement favouring large companies.<sup>134</sup>

61. Some councils are trialling simplified procedures to keep procurement costs down. Dr Telles cited his work with the Institute for Competition and Procurement Studies on a simplified open procedure which it was piloting with three local authorities through the ‘Winning in Tendering’ project. He noted that “given the right tools and processes, contracting authorities will advertise low value contracts instead of using a request for quotes”. Changes to keep costs down included the full use of e-procurement from start to

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130 Federation of Small Businesses ([LGP 30](#))

131 Federation of Master Builders ([LGP 70](#)) See also Federation of Master Builders, *Improving public procurement for construction SMEs*, June 2013

132 Department for Communities and Local Government ([LGP 63](#))

133 Q363

134 Public Administration Select Committee, Sixth Report of Session 2013-14, *Government Procurement*, [HC 123](#), p5



finish; publication of a one page executive summary with all the necessary information required for the supplier to make a decision whether to compete for a contract; refinements to the wording and style of information presentation to improve clarity especially for non-experts. This had reduced procurement process timescales from more than 100 days to around 38 days. Wider simplification of some processes is also likely to result from the Government's recent consultation on procurement reforms across the whole public sector,<sup>135</sup> in response to Lord Young's May 2013 report *Growing Your Business*.<sup>136</sup> The new EU Directive on public procurement will also require public bodies to simplify processes, including for example by requiring e-procurement processes to be used.

### **Pre-Qualification Questionnaires**

62. A specific issue addressed by the Government's consultation and by many witnesses was the cost and unnecessary burden of completing individual, and often complex, Pre-Qualification Questionnaires (PQQs).<sup>137</sup> The CBI cited the example of a construction company which spent on average £8,000 per PQQ which, with 200 tender exercises a year, added up to some £1.6 million spent on pre-qualification alone.<sup>138</sup> The Specialist Engineering Contractors' Group (SEC Group) told us that its research had found that its member firms spent over 60,000 days a year filling in questionnaires, and the duplication required to pre-qualify in Wales as well as England cost its firms £20 million a year.<sup>139</sup> The Sheffield Third Sector Assembly told us during our visit to Sheffield that the requirements councils placed on organisations in order to get on supplier lists were disadvantaging many third sector organisations.<sup>140</sup> The President of Sheffield Chamber of Commerce also considered that PQQs were too complex and many firms were therefore "put off" from entering tendering processes, but he welcomed Sheffield City Council's proposed PQQ simplification.<sup>141</sup> Indeed Sheffield City Council told us that it had developed a standardised PQQ for use across the whole region.<sup>142</sup> Standardisation of forms was recommended by a number of private sector representatives. Alasdair Reisner from CECA considered it to be "insanity" that suppliers must fill in "hundreds of bespoke forms [for different councils] to do what in essence is one job" arguing for a single, standard pre-qualification form, not solely for local authorities but for all public sector procurement.<sup>143</sup> The Federation of Master Builders supported the use of the standard PAS 91 form for construction contracts,<sup>144</sup> an approach endorsed by the Electrical Contractors Association which further

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135 HM Government, [Consultation: Making public sector procurement more accessible to SMEs](#), September 2013

136 Lord Young, [Growing your business: a report on growing micro-businesses](#), May 2013

137 A Pre-Qualification Questionnaire is an initial questionnaire seeking information about an organisation which may wish to tender for a council contract. It may cover financial, legal compliance, policies and procedures and customer base of an organisation. A PQQ may be required when an organisation applies to join an approved/preferred supplier list, at the first stage of a tender process or when applying to join an accreditation scheme. The EU rules on PQQs are set to change under the new Directive (Article 59).

138 Confederation of British Industry ([LGP 59](#)) para 8

139 Specialist Engineering Contractors' Group ([LGP 60](#)) para 4.3

140 Q281 [Ian Drayton]

141 Qq280-281 [Stephen Williams]

142 Q310

143 Q 173 [Alasdair Reisner]

144 Federation of Master Builders ([LGP 70](#))

recommended that a common system of PQQs should be established across the public sector.<sup>145</sup> This standard approach would also assist councils in joining together with other local bodies to deliver services funded by community budgets.

63. DCLG told us the Government wished to see PQQs eradicated for low value contracts, with mandation of a core, standardised PQQ for high value contracts, which would allow suppliers to provide data once only.<sup>146</sup> The Minister, Baroness Stowell, told us that PQQs would only be retained for contracts above the EU threshold and that there would be a standard approach for these from 2014.<sup>147</sup> Halton Borough Council told us that it had already removed PQQs from the council procurement process for contracts above EU threshold levels.<sup>148</sup> The LGA told us that 85% of councils did not use PQQs for contracts below the EU thresholds and would discuss the Government's proposed recommendations with DCLG.<sup>149</sup> It should be noted that we received little evidence arguing for total abolition of PQQs since some form of pre-evaluation enables councils to keep costs down by screening out unviable bids at an early stage.

**64. Whilst some councils have streamlined their processes and are taking a proportionate approach to the pre-tender information they require potential suppliers to provide, the default option in too many procurement exercises appears to be to demand excessive information not commensurate with the specific contract needs. Furthermore, suppliers who wish to work with more than one council are frequently required to complete similar, complex forms. There is clear scope for more standardisation and simplification across the sector to cut the suppliers' costs and to facilitate the use of community budgets to deliver joined-up local services. We therefore support the Government's proposals to standardise on a national basis data collection from tenderers. The Local Government Association should take the lead in ensuring that all Pre-Qualification Questionnaires are as simple and straightforward as possible. This would entail potential suppliers filling in a form once only for use by any public body. However, whilst we concede that some council data collection processes for lower-value contracts can be unduly burdensome, we do not consider the argument to be fully made for the removal of Pre-Qualification Questionnaires for such contracts. There are financial benefits to be gained from weeding out unviable tenders at an early stage, prior to more costly full evaluation of bids.**

### **Payment policies**

65. Whilst most councils operated policies that ensure that their suppliers were paid promptly, we were told that there was a problem with passing these terms on down the supply chain to sub-contractors. FSB noted that, although 95% of councils had policies specifying prompt payment of suppliers, with 68% adopting a 28 day or less payment period, only 38% of councils required their contractors to apply the same standard. Many contractors applied policies to pay sub-contractors only after 60, 90 or even 120 days which

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145 Electrical Contractors Associations ([LGP 40](#))

146 Department for Communities and Local Government ([LGP 63](#))

147 Q425

148 Q2 [Lorraine Cox]

149 Q6

could be particularly problematic for small firms vulnerable to cash-flow crises.<sup>150</sup> FSB noted that the issue could be addressed swiftly and effectively, as Wakefield Council had done, through the use of explicit contract clauses requiring suppliers to pass the council's payment terms on through their supply chains. FSB strongly encouraged all local authorities not already requiring the passing on of payment terms to revise their terms and conditions accordingly as a matter of urgency.<sup>151</sup>

**66. Councils should as a matter of course pay contractors promptly and include a requirement in contracts requiring contractors to ensure their sub-contractors are paid promptly right down the supply chain. Councils should publicise this policy and monitor closely the implementation of these terms through spot checks. Contracts must also require contractors to report failure to comply with these conditions. Local authorities should take into account any failure by a contractor to comply with the conditions when assessing tenders for any future work.**

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150 Federation of Small Businesses ([LGP 30](#))

151 As above

## 5 Managing risk

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67. Procurement of services from third parties can increase risk for a council since there are often added complexities in managing such contracts compared to direct management of a service in-house. Effective risk management approaches which ensure the provision of consistent, high-quality services at the right cost are therefore needed. Some witnesses, such as Cipfa, considered that risk was better understood by practitioners in local government procurement than by many of their critics.<sup>152</sup> However others disagreed. CECA told us that contractors found public sector procurers to be risk averse and consequently they put the bulk of the risk onto the contractor. CECA noted that this immediately discouraged many contractors from tendering for work. It considered that the early engagement of suppliers would help to mitigate this risk.<sup>153</sup> Scape also considered that risk management in local government was not functioning properly and that, whilst there were “pockets of good practice,” it was not being embedded into the daily activities of authorities. Instead councils required excessive provision of documentation, making suppliers “jump through the hoops”.<sup>154</sup> Cipfa criticised the fact that councils were urged to apportion risk to the party best able to minimise it, even though this party had no incentive to do so. It considered the safest course to be minimising transfer of risk to contractors so that authorities would not pay for risks twice, “once when contractors build the cost of risks into their tenders, and again when failing contracts have to be rescued”.<sup>155</sup>

68. Witnesses gave examples where councils had failed to manage risk effectively. Peter Challis from Unison told us that:

We have had a catalogue of failures of large strategic service partnerships that have happened in recent months and years. It started with Bedfordshire County Council and Hyder Business Services, where a contract for 12 years let in 2001 was shut down in 2005. Sefton Council set up a contract with Capita for 10 years in 2008; it ended in September 2013. Rochdale and Mouchel Parkman had a contract for 15 years; it was let in 2006 and ended in 2011. Transform Sandwell: Sandwell Council and BT had a contract for 15 years being ended this year. West Berkshire and Amey was a contract let in 2002 and ended in 2005. There is a whole list. With these big contracts, sometimes we found later down the line that the benefits that were claimed and the savings that councillors were told they would achieve are not materialising.<sup>156</sup>

69. A fundamental tension in awarding of contracts is between keeping costs to a minimum and pricing a contract so as to ensure quality, including on social and environmental factors, and continuity of service delivery. Cipfa told us that “substantial savings” could be made by offering contracts on a “much reduced specification leaving the contractor to deal with all the ensuing redundancies in whatever is the cheapest way. Authorities could do the same without contracting out but they would then have to deal

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152 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) para 28

153 Civil Engineering Contractors Association ([LGP 08](#))

154 Scape ([LGP 36](#))

155 Cipfa ([LGP 07](#)) para 28

156 Q73 [Peter Challis]

with the redundancies themselves, which in the past many authorities were reluctant to do”.<sup>157</sup> Unison criticised the “flawed” practice of allowing contractors to make decisions on how to deliver services in order to optimise cost savings. The union considered that risk transfer was “frequently illusory” since it relied on the assumption that bidders would always make “commercially sensible judgements” that would not over-expose them to demand and other risks.<sup>158</sup> The NAO in its report *Managing government suppliers* wished to see the Government take a greater long-term focus, rather than emphasise short-term savings and warned that, although tough negotiations were necessary, these needed to balance with maintaining supplier relationships in the long term if the government were to maintain competition in public sector markets.<sup>159</sup>

70. Witnesses suggested effective operational arrangements for managing risk. Scape recommended a structured project management approach that identified risks and mitigated them through the life of the procurement.<sup>160</sup> The Audit Commission considered that a corporate approach to commissioning, procurement and contract management helped to manage risks, stating that this did not necessarily mean centralising all functions.<sup>161</sup> The Commission also considered it to be better for councils to build flexibility into long-term contracts, to meet changing needs. It recommended the use of outcome measures that specified what was required, rather than how it would be achieved. Contracts should also contain incentives for councils and suppliers to “share gain and pain” including mechanisms such as profit sharing, and penalties for poor performance.<sup>162</sup> Sheffield City Council told us about their use of outcome measures for highways maintenance, such as the condition of verges, which ensured that service quality was delivered at a set price with the contractor bearing the risk that this might cost more than anticipated but also being incentivised to keep costs down without compromising quality.

71. We heard evidence that, if councils were to deliver high quality services consistently, risks must be managed effectively through all stages of procurement, from first decisions on the aims of the procurement exercise through to letting the contract, managing its implementation and preparing for re-tendering on completion. Cipfa noted that most losses from fraud crystallised during the delivery phase rather than during the initial procurement phase.<sup>163</sup> IACCM told us that there was a need to manage a contract proactively through its lifespan since greater management at the implementation phase could contribute greatly to achieving value for money by, for example, avoiding problems such as unreasonably low price offers which allowed suppliers to drive up the price at a later date.<sup>164</sup> Barry Mellor, Sheffield City Council’s Director of Commercial Services, told us that robust contract management required a “proper dialogue” with suppliers and contractors,

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157 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) para 45

158 Unison ([LGP 27](#)) para 14

159 National Audit Office, *Memorandum for Parliament; Managing government suppliers*, [HC 811](#), November 2013, p 13

160 Scape ([LGP 36](#))

161 Audit Commission ([LGP 11](#)) para 29

162 Audit Commission ([LGP 11](#)) para 27

163 Q229

164 Q238 [Paul Mallory]

for example about efficiency improvements, and pointed to the council's good track record on joint working.<sup>165</sup>

72. Furthermore, witnesses highlighted the need for councils to retain responsibility and accountability for services, even when delivery was outsourced to a third party. Councillor Jack Scott from Sheffield City Council noted that local authorities needed to be very clear with management of outsourced contracts since politicians and lead members remained accountable for the spending of public money.<sup>166</sup> During our visit to Sheffield we discussed the need to ensure that residents had a clear idea about who was accountable for services, including through the provision of a central point of contact for customer service. Councillors told us that Sheffield City Council had taken back in-house the customer contact point for some of its outsourced contracts such as highways management to ensure that residents received a seamless service from the council. DCLG also told us that where councils contracted to other parties they were accountable for ensuring that appropriate arrangements were in place to ensure that the service was delivered, value for money was achieved and, where necessary, contingency plans were in place should the contractor fail to deliver the service.<sup>167</sup>

**73. It is self-evident that outsourcing of a contract does not mean outsourcing responsibility for ensuring the quality and consistency of service to residents. However, we question whether current approaches are sufficient to ensure effective control by local authorities of outsourced contracts in many councils. There are regrettable examples across the public sector, not only in local government, of complex outsourcing arrangements failing to safeguard service delivery and quality. It is vital that councils are fully equipped to manage complex contracts, particularly in their implementation phase. Councils must future-proof contracts so that contractors bear their share of the effect of any further budget cuts. With the proportion of services delivered in-house reducing in many councils, financial constraints will impact disproportionately harder on these services if flexibility is not built into contracts to allow changes to reflect tightened budgets. Furthermore, local authorities need to ensure that there is clarity within contracting organisations and the council itself on the point of responsibility for contract delivery and on the provision of a seamless customer service to residents.**

**74. In the worst cases local authorities not only fail to monitor quality but also end up carrying excessive risk when a contractor fails to deliver. Councils must develop and support a culture which embeds appropriate risk management across the council, not simply in procurement teams. The Local Government Association should undertake, with relevant professional bodies, a detailed assessment of the level of contract and risk management skills and resources available across the local authority sector. It should work with those councils that have a proven record of effectiveness to disseminate best practice and to put in place arrangements to share and provide additional resources on an ad-hoc basis to councils as required.**

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165 Q305 [Barry Mellor]

166 Q305 [Councillor Scott]

167 Department for Communities and Local Government ([LGP 63](#))

## 6 Outsourcing service delivery: employment issues

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75. A specific concern of witnesses was that outsourcing service delivery led to lower terms and conditions for staff who were transferred from a public body to a private contractor,<sup>168</sup> notwithstanding the protections of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).<sup>169</sup> These regulations require that terms and conditions of employees who are transferred to a new body are not worsened (without economic, technical or organisational reason) and that employee representatives are consulted about changes. In response some witnesses such as NOA said that, far from experiencing deterioration in their conditions, many employees working for outsourcing companies were “more satisfied” with their employer and considered themselves to be delivering a better service to the taxpayer.<sup>170</sup> IACCM told us that benefits for people outsourced could increase over time, for example with staff being given an improved package on joining the professional IT stream in a private company.<sup>171</sup> Unison was concerned that there was potential for different tiers of terms and conditions to be applied to staff working for a company.<sup>172</sup> This could occur where staff were recruited in different ways, with some originally transferred into the employment of the outsourcing company under the TUPE regulations from the employing council, while others might be recruited directly under potentially less advantageous terms.

76. Furthermore, there has been criticism that firms conducting outsourced work in some circumstances use less favourable employment models. There are circumstances where zero hours contracts are mutually acceptable to employer and employee, but some contracts can disadvantage employees by restricting the employee’s ability to undertake work for others without a counterbalancing commitment from the employer to provide an acceptable level of work. Unison was critical of “exploitative” zero hours contracts.<sup>173</sup> The union considered that council use of outsourcing for homecare had fuelled the use of such contracts, referring to Care Minister Normal Lamb’s statement that such contracts were “in most circumstances completely incompatible with a model of high quality care in which the individual really gets to know their care worker”.<sup>174</sup> Cipfa cited the case of a contract terminated early which had entailed some workers on zero hours contracts working “extraordinary hours, quite beyond EU limits”.<sup>175</sup>

77. A potential concern about the impact of outsourcing is that, although main contractors might be rigorous in implementing fair employment conditions, sub-contractors might

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168 Outsourcing has various definitions but we broadly interpreted it in this inquiry as meaning the procurement of a service or goods from a third party rather than delivering or producing that good or service in-house

169 Transfer of Undertakings (Protection of Employment) Regulations 2006 ([SI 2006/246](#))

170 Q100

171 Q258

172 Q99

173 Q103

174 Unison ([LGP 27](#)) para 26

175 Q271

not maintain these. Councillor Scott told us that it was harder for the contracting council to influence staff terms and conditions where service delivery was outsourced and the council was not the employer.<sup>176</sup> However, it was possible for contracts to specify the level of wages to be paid by both contractors and sub-contractors to avoid this occurring.

**78. The increase in outsourcing of service delivery by a wide range of councils across a variety of services means that a large number of people once employed by the public sector are now working for private sector organisations. Whilst there are statutory measures which safeguard the terms and conditions of staff transferring from a public body to a private company, it is imperative that councils recognise the need to engage actively with private companies to ensure standards are maintained. Councils should consider when letting contracts whether they wish to take into account a bidder's policies on employment issues such as zero hours contracts. The Local Government Association should produce guidance for councils on how the provisions in the draft new EU Directive on public procurement may affect councils' ability to insist that larger contractors apply minimum standards and remuneration for employees working on their contracts.**

### *Living wage*

79. A number of councils told us of their attempts to raise wage levels for staff, including outsourced staff, to the 'living wage' level.<sup>177</sup> Councillor Scott told us that Sheffield City Council's contracts included a presumption that suppliers paid 'living wages' to employees.<sup>178</sup> He told us that the council wanted to be a "living wage city" and intended to score more highly tenders from suppliers who paid such wage levels, but it was not in a position to mandate this currently across all of its procurement, including in the care sector, due to financial constraints.<sup>179</sup> Other councils were in a similar position. Ian O'Donnell, representing Cipfa, said that his employing council (the London Borough of Ealing) was unable at present to afford to pay the living wage although it would work towards achieving this over a period of some years. He noted that ultimately it was a "political choice" as to what level of wages a council should specify.<sup>180</sup> In January 2014 the London boroughs of Islington and Southwark became the first councils in the country to sign up to a charter promoted by Unison under which councils commit to paying a living wage to all social care staff and to outlaw zero hours contracts.<sup>181</sup>

**80. Whilst councils must be free to develop locally appropriate employment approaches, with the flexibility to adapt to changing circumstances, we commend those councils which adopt fair working conditions and terms of employment, including pay. We recognise that the rising demand for social care services at a time of financial**

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176 Q305 [Councillor Scott]

177 The 'living wage' is currently £8.80 per hour for London (set by the Greater London Authority) and £7.65 per hour for the rest of the UK (determined by the Centre for Research in Social Policy). It aims to reflect the cost of living in the UK and the annual level is announced each November

178 Q317 [Councillor Scott]

179 Q329

180 Q265

181 "[Islington and Southwark Councils become first to ban zero hour contracts for home care](http://www.homecare.co.uk)", Homecare.co.uk website, 14 January 2014



constraints on council budgets represents a challenge for councils wishing to adopt optimum pay and conditions for staff working in the sector. We have not had the opportunity in this inquiry to take a detailed look at the specific issues affecting procurement of social care, but we wish to highlight the need for employment challenges to be taken into consideration in development of Government policy on the sector. *In its response to this report, we recommend that DCLG explain how it will monitor the ability of the social care sector to maintain effective pay and conditions for employees against a background of rising demand for services and constrained council budgets.*

## 7 Probity and governance

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81. Procurement fraud costs local authorities some £876 million annually according to National Fraud Authority figures.<sup>182</sup> Although endorsed by Cipfa,<sup>183</sup> this figure is only an estimate. Alan Bryce from the Audit Commission told us that the estimated figures were not robust since they were merely extrapolations from fraud levels identified by the Ministry of Defence which were not necessarily directly replicated in the local government sector.<sup>184</sup> According to the Audit Commission's report *Protecting the public purse 2013: Fighting fraud against local government*, detected fraud in 2012-13 was only some £1.9 million.<sup>185</sup> Transparency International UK (TI UK) told us that fraud was a "difficult thing to measure" and that a national body with responsibility for collecting this data was necessary.<sup>186</sup>

82. DCLG told us that councils must operate within a robust set of financial regulations which aim to ensure regularity and propriety, as set out in DCLG's accountability system statement. Councils must appoint a Chief Finance Officer (or section 151 officer) who must advise immediately of any illegal spending.<sup>187</sup> Councils must be audited every year by an independent auditor, who looks at the "truth and fairness" of the council's financial statements, and their arrangements to achieve value for money. The auditor has the ability to produce a public interest report which examines concerns about a council's approach to procurement.<sup>188</sup> DCLG noted that *Fighting Fraud Locally*, the local government strategy for tackling fraud, published in April 2012 had been developed by local government for local government, to address the need for a greater focus on prevention and smarter enforcement. It provided a blueprint for how councils could reduce their risk to fraud, realise cash savings, and work together to prevent future fraud losses.<sup>189</sup>

83. However, several witnesses expressed concerns about council approaches to protect against impropriety and fraud. The Committee on Standards in Public Life stated that unless councils specified ethical standards in contracts it was unlikely that the market would operate to drive these up and argued for more consistency in the application of the rules.<sup>190</sup> Cipfa considered that although existing rules meant that regularity and propriety were "in general well protected in procurement",<sup>191</sup> and that councils probably had more

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182 The National Fraud Authority estimates that, of the some £2.2 billion of fraud perpetrated against local authorities, some £876 million was in the procurement arena.

183 Q199

184 Q410

185 Audit Commission, [Protecting the public purse 2013: fighting fraud against local government](#), November 2013. This represented some 0.2% of the 107,000 cases of all types of fraud against local government. See also Q199

186 Q201

187 Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs. The Section 151 officer is usually the local authority's treasurer and must be a qualified accountant belonging to one of the recognised chartered accountancy bodies

188 Department for Communities and Local Government ([LGP 63](#))

189 National Fraud Authority, [Fighting fraud locally: the local government fraud strategy](#), April 2011

190 Committee on Standards in Public Life ([LGP 54](#)) para 10

191 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) para 36

defences than the private sector against fraud, nevertheless there was a “long way to go before all councils have adopted best practice across the board”.<sup>192</sup> The Audit Commission told us that although a 40% increase in detected procurement fraud cases since 2011 indicated a greater focus on the issue, given the scale of potential loss, there was still “some distance to go”.<sup>193</sup> Alan Bryce from the Audit Commission considered that currently there was a “very good chance” that an organisation could attempt procurement fraud without being detected and that a culture of celebrating fraud identification was needed.<sup>194</sup>

84. Some witnesses considered that the move to greater private provision of public services together with changes to legislation and policy were opening up the risk of corruption in local government. TI UK said that with outsourced contracts now accounting for around one-quarter of total public spending, local government was “inherently exposed to considerable corruption risk” and there was a lack of transparency.<sup>195</sup> It stated that:

When services are outsourced, local authorities retain a statutory obligation to ensure that all of the rules that would have applied to them are equally followed by the external providers. However, there are concerns that local government officers do not adequately monitor contract performance or respond to complaints. Councils sometimes seek to claim that decisions made by contractors on long-term contracts are beyond their control.<sup>196</sup>

TI UK’s report *Corruption in UK Local Government* urged the Government to “review changes in local government to ensure that they do not inadvertently create an enabling environment for corruption”.<sup>197</sup> It considered that this would require:

at a minimum a corruption risk assessment, strengthened whistleblowing systems, enhanced audit procedures, extension of the Nolan Principles and Freedom of Information obligations to the private sector services contracted out by local authorities, re-introduction of common ethical standards and a willingness to adjust or amend other recent changes if that should prove necessary.<sup>198</sup>

85. The Local Government Ombudsman noted that “contracting out of a service must not break the chain of accountability that runs between public services and the public” including the right to complain when things go wrong. It considered that the public must be able to access the complaints procedure even when a private contractor is delivering the service.<sup>199</sup> Unison also considered that where an activity was removed from a local authority then it was more difficult to ensure that fraudulent or improper activity was not taking place.<sup>200</sup> However, NOA disagreed, considering that the governance frameworks

192 Q213

193 Q406

194 Q417

195 Transparency International UK ([LGP 69](#)) para 2.1

196 Transparency International UK ([LGP 69](#)) para 2.5

197 Transparency International UK, [Corruption in UK local government: the mounting risk, Executive summary and conclusions](#), October 2013, p 9

198 As above

199 Local Government Ombudsman ([LGP 10](#)) para 9

200 Q90

that were in place for outsourcing contracts went a “long way” to ensuring that there was no impropriety.<sup>201</sup>

86. Witnesses raised the difficulty of detecting less overt forms of fraud including collusion by suppliers. Cipfa consider that suppliers operating in cartels were “the hardest irregularity to detect”. The organisation noted that successive court actions brought by the Office of Fair Trading had shown how collusion could become widespread in particular trades or industries, and that client authorities needed as a defence to maintain the “closest possible security as to the names of firms from whom tenders were currently awaited”.<sup>202</sup> Nonetheless, NOA told us that the introduction of more competition in some industries had made it a “lot more difficult” for oligopolies to form and reduced the likelihood of profiteering that had “previously been perceived to be going on amongst the supplier community”.<sup>203</sup>

### Local authority capacity to tackle fraud

87. Witnesses addressed the capacity of councils to tackle fraud, including the adequacy of skills in commercial management and capacity to manage problems created by outsourcing of contracts. Paul Mallory from IACCM told us that there would be merit in looking at whether more awareness or skills training could be done, for example “around examining price ranges and deciding whether or not there is anything odd about them”.<sup>204</sup> However others such as YPO told us that as experts knew their fields “inside out” they knew what to look for.<sup>205</sup> Scape considered that fraud had been “easy to perpetrate” on local government because most authorities acted independently of each other.<sup>206</sup> Mark Robinson from Scape considered that an umbrella organisation for local government procurement could deter fraud by remedying the current fragmented approaches.<sup>207</sup> Alan Bryce from the Audit Commission was also concerned that the transfer of resources to tackle benefit fraud from councils into the Department for Work and Pension’s Single Fraud Investigation Service would considerably reduce the capacity of councils to tackle procurement fraud.<sup>208</sup> The Minister, Baroness Stowell, told us that the large majority of detected fraud had been identified by only a small proportion of councils and that 100 councils had detected no fraud at all.<sup>209</sup> She drew attention to additional funding of £16.5 million from DCLG which would pay for an additional 200 fraud investigators, replacing some capacity moved from local government to the Department for Work and Pensions.

88. CIPS wanted a greater focus on prevention. It recommended a major education programme to raise awareness of how fraudulent practice occurs and how organisations

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201 Q91

202 Chartered Institute of Public Finance and Accountancy Commissioning Joint Committee ([LGP 07](#)) para 37

203 Q79

204 Q237 [Paul Mallory]

205 Q328 [Simon Hill]

206 Scape ([LGP 36](#))

207 Q119 [Mark Robinson]

208 Q406

209 Q459. Three-quarters of all fraud had been detected by one quarter of councils

could introduce controls to reduce risk.<sup>210</sup> We did not consider internal fraud in detail in this inquiry but note that there is a need to focus on fraud perpetrated on councils both by third parties and by those working within local authorities.

**89. Councils need to be one step ahead of the fraudster. Councils must tackle fraud proactively. This is essential during not only the tender process, but also during the implementation of contracts. It is not sufficient for councils to ‘let and forget’ contracts: rather close monitoring of their delivery is essential to detect potential fraud. We recommend that the Government provides support and guidance to councils on the best ways to identify and tackle fraud.** The LGA should work with councils to provide information on potential abuses of tendering processes and contract implementation and disseminate best practice examples of effective approaches.

**90. We are concerned that some councils have yet to develop sufficient commercial focus and the acumen to combat fraud, including operations by cartels. It is vital that those responsible for managing contracts are alert to the potential for abuse of market power and collusion amongst potential suppliers and that they share information effectively.**

## Transparency and audit

91. We received evidence that the outsourcing of public services can dilute transparency and disclosure requirements on suppliers. TI UK said that commercial confidentiality inhibited scrutiny of outsourced services. It was concerned that, unlike public bodies, private-sector companies delivering public services were not automatically covered by the Freedom of Information Act 2000 since information disclosure was dependent on the specific provisions of individual contracts: “The contract might, for example, narrowly define the information to be treated as held ‘on behalf of the local authority’, thus limiting the public’s right of access to information”.<sup>211</sup> Unison told us that a lack of transparency in council contracts with third parties was a weakness since the taxpayer was not able to “understand precisely what is going on and what value the council is getting for the arrangements it has entered into”.<sup>212</sup> The union recommended that all contractors working for local authorities should be directly subject to the provisions of the Freedom of Information Act.<sup>213</sup>

92. The Audit Commission told us that the difficulty in obtaining information from private companies was seen by some councils as preventing fraud investigations from proceeding.<sup>214</sup> Alan Bryce wanted to see terms written into contracts that suppliers must provide sufficient financial information to enable investigation of any potential fraud.<sup>215</sup> However, some private sector organisations, such as CECA, representing the construction sector, had reservations that placing commercially sensitive documents in the public

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210 Chartered Institute of Purchasing and Supply ([LGP 39](#)) para 5

211 Transparency International UK ([LGP 69](#)) para 2.5

212 Q75 [Peter Challis]

213 Unison ([LGP 27](#)) Appendix 1

214 Q465

215 Q419 [Alan Bryce]

domain could take away commercial advantage and deter companies from coming forward to tender in the future, impacting in the long term on the competitiveness of markets.<sup>216</sup> Nevertheless, the National Audit Office referred to the information that contractors such as Serco, Capita G4S and Atos, were able to provide for the Office's recent reports on government contracts, noting that "contractors might often be willing to go a lot further [with information provision] than we sometimes think".<sup>217</sup> Furthermore the CBI noted that, in recognition of the fact that transparency was essential for identifying and dealing with poor standards, it had developed with its members a common approach to transparency. This included the principle that, although providers were not, and should not be, subject to the Freedom of Information Act they should abide by the exceptions it sets out for the public sector. The approach recommended that suppliers should provide commissioners of services with the "information necessary to respond to public questions about performance".<sup>218</sup> The Cabinet Office Minister, Nick Hurd MP, told us that the Government expected contractors delivering outsourced services to assist councils in meeting their current obligations under the Freedom of Information Act. He referred to the Justice Committee's view that the Act should not be extended to apply to private providers of public services.<sup>219</sup> However, unless requirements apply equally to all service delivery bodies, whether public or private, there is no level playing field for those wishing to compete for contracts since those covered by regulatory requirements may well face additional costs.

93. We heard concern about data collection and monitoring after the abolition of the Audit Commission. TI UK stated that abolition would weaken the independence of internal and external audit, and of monitoring officers, financial officers, and chief executives because there would no longer be an organisation to act as a backstop and provide support.<sup>220</sup> Furthermore, the independence of auditors would be compromised since companies would be "incentivised not to challenge the authority too much" for fear that they would not get a contract renewed or that they would not win other contracts for providing the local authority with other services such as back-office functions.<sup>221</sup> TI UK also cautioned that there would be no institution to collect nationwide data on fraud and corruption or analyse trends.<sup>222</sup> Ian O'Donnell for Cipfa endorsed concerns about the future of work currently undertaken by the Audit Commission. Since the Commission's National Fraud Initiative was transferring to the Cabinet Office, local government might not remain the focus of attention in future. Cipfa would not, however, wish to see created a new heavily resourced body that "looks just like the Audit Commission".<sup>223</sup>

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216 Q184

217 Q391 [Keith Davis]

218 Confederation of British Industry ([LGP 59](#)) para 33

219 Q463

220 Transparency International UK, [Corruption in UK Local Government: the mounting risks, Executive Summary and Conclusions](#), October 2013, p7

221 Q217

222 Transparency International UK, [Corruption in UK Local Government: the mounting risks, Executive Summary and Conclusions](#), October 2013, p7

223 Q222 Department for Communities and Local Government, [Accounting Officer Accountability System Statements for Local Government and for Fire and Rescue Authorities](#), September 2013

94. DCLG stated that local services should be “accountable to local communities rather than Whitehall” and that whilst government continued to reduce “unnecessary bureaucratic central performance management burdens on local government”, at the same time it was strengthening local accountability measures such as transparency. The Department noted that it still had a role in assuring Parliament that the public money it distributed to local government was spent properly and had published its Accountability System Statement setting out the regulatory framework for local authorities to reassure Parliament and the public that councils were spending their resources properly.<sup>224</sup> Baroness Stowell also noted that DCLG had produced a transparency code listing key data which local authorities were required to publish, including information around tenders and contracts extended to the business, voluntary, community and social enterprise sectors.<sup>225</sup> The Department acknowledged nonetheless that there was potential to “go further”.<sup>226</sup> One approach which the Cabinet Office Minister argued would improve transparency was open book accounting under which details of contract performance were fully evident.<sup>227</sup> Cabinet Office officials told the Public Accounts Committee last year that the Office was developing a model contract requiring the use of open book accounting for all central government contracts.<sup>228</sup>

**95. Contracts let by public bodies must be transparent and performance against them auditable. The Local Government Association should consider how greater transparency in private sector contracts can be achieved, without compromising councils’ ability to attract a wide range of bidders. For example consideration should be given to extending the publication of information requirements on contractors relating to performance delivery and contract costs and greater use should be made by local authorities of open book accounting. Councils should consider when seeking tenders establishing a level playing-field for all potential bidders, both private and public, by mirroring in contract terms the regulatory requirements on public bodies to provide information. This may be particularly applicable to long-term or larger contracts. Furthermore, contracts should include terms which require contractors to notify the commissioning council of any identified impropriety relating to the contractor or its sub-contractors. Any such notifications should be published. *We recommend that the Government provide guidance on how central government experience of such approaches as open book accounting can be further utilised by the local government sector in order to improve procurement transparency.***

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224 Department for Communities and Local Government (LGP 63) DCLG, *Accounting Officer Accountability System Statement for Local Government and for Fire and Rescue Authorities*, September 2013

225 Q423, Department for Communities and Local Government, *Code of Recommended Practice for Local Authorities on Data Transparency*, September 2011. The *Government Response* to its 2012 consultation on making the code provisions statutory was published in December 2013

226 Department for Communities and Local Government (LGP 63)

227 Q465, Open book accounting is an arrangement involving the structured management and sharing of costing information between client, contractor and associated suppliers, such that no cost information is deemed to be confidential between the various organisations

228 Evidence to the Public Accounts Committee, *Managing public suppliers*, 25 November 2013, [HC 791-i](#), Qq 12, 13

## Whistleblowing

96. Witnesses told us that whistleblowing was an essential element in effective fraud prevention. The Audit Commission told us that “short of whistleblowing” it was very hard to find procurement fraud.<sup>229</sup> The Commission considered that more could be done beyond a tick box approach which simply required whistleblowing policies to be in place, to give greater assurance to potential whistleblowers.<sup>230</sup> TI UK also considered whistleblowing to be one of the main ways of detecting procurement corruption and fraud in both the public and private sectors, because the employees of an organisation typically had “much more information and more opportunities to witness misconduct than external enforcement agencies”.<sup>231</sup> It considered that whistleblowing had been more effective than audit, internal monitoring or police investigation in revealing corruption in local government and recommended that “suitable mechanisms should be established to provide an easy-to-use and anonymous channel for reporting corruption suspicions or incidents, beyond the local authority itself”.<sup>232</sup> TI UK noted research which showed that whistleblowers were still “typically heavily penalised” for raising concerns at work. Around a fifth who raised such concerns were fired or had some “very hostile reaction” from their organisation.<sup>233</sup> It recommended improved institutional support to protect a whistleblower from an adverse reaction, including systems to examine the records of local authorities in dealing with whistleblowers and a code of practice including a requirement for a senior person to be designated with responsibility for whistleblowers.<sup>234</sup> The organisation was concerned that the abolition of the Audit Commission removed an important safeguard and reporting point for whistleblowers.<sup>235</sup> The Minister, Baroness Stowell, told us that the current arrangements for whistleblowing would be re-established after the Audit Commission’s abolition and that regulations would be amended to enable whistleblowers to raise concerns directly with the NAO under current standards of protection.<sup>236</sup>

**97. Whistleblowing has a vital role to play in detecting fraud and impropriety since those working on, or close to, procurement exercises and contract management will frequently have the best perspective on whether regulations are being adhered to or if suspicious practices have been adopted. We recommend that the Government publicise arrangements, including the role of the National Audit Office, for the provision of an anonymous channel for reports by potential whistleblowers concerned at local authority procurement operations. Furthermore, as part of contractual requirements all contractors should have a robust internal process for whistleblowers to report concerns. Any notification to a contractor by a whistleblower of impropriety relating to a local authority contract should be required under the terms of that contract to be**

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229 Q410

230 Q416

231 Transparency International UK ([LGP 69](#)) para 2.8

232 Transparency International UK ([LGP 69](#)) para 3.8

233 Q225

234 Q225

235 Transparency International UK ([LGP 69](#)) para 2.8

236 Department for Communities and Local Government ([LGP 84](#))



**notified to the council client by the contractor. Contract terms should also specify employee rights to report concerns over a contractor's actions without reprisal.**

## 8 Achieving change

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98. It is clear that there is considerable scope to improve local government procurement. Alasdair Reisner from CECA told us that there were some examples of “terrible practice” as disseminated best practice was 20 years old and had never been updated.<sup>237</sup> IACCM considered that local government procurement suffered from an “absence of executive leadership and investment” and activities were not supported by the skills, tools or professional confidence required to support acquisition practices in today’s complex business environment”.<sup>238</sup> This chapter identifies future changes in policy and practice which could be adopted to improve procurement by the local government sector, focusing on three key areas for action: improving procurement across council functions; developing skills and capacity; sectoral and other support. The new EU Directive on procurement will provide added impetus to improve procurement and require councils to raise their game in order to take full advantage of its opportunities and respond adequately to its requirements.

### Embedding procurement excellence

99. Many councils, such as Halton Borough Council, considered that procurement excellence needed to be embedded across councils, rather than confining it to procurement as a “back office function”.<sup>239</sup> Cheshire West and Chester Council told us that part of establishing the new council organisation entailed putting “procurement at the heart of what we were doing” and the council had made procurement “part of driving the culture of the organisation”.<sup>240</sup>

100. To embed successful procurement across a council requires strategic leadership. Birmingham City Council told us that a very effective way to improve procurement and compliance across a council was to consider allocating to a Cabinet Minister responsibility for procurement, potentially under the wider portfolio of the Deputy Leader or as a specifically identified Finance Cabinet Member responsibility. It cited as a success its establishment of the post of Cabinet Member for Commissioning, Contracting and Improvement to oversee its £1 billion spend with a range of suppliers.<sup>241</sup> Furthermore it is important that, as procurement changes and expands, the roles of those frontline councillors responsible for scrutiny and monitoring are also given full attention.

101. Solace argued that there were three main benefits to having active political leadership: firstly, it provided stakeholders with assurance that procurement exercises were being taken seriously, secondly, it prevented a late emergence of lack of political support for an exercise and, thirdly, it provided Members with learning to give them greater knowledge and confidence.<sup>242</sup> Despite many witnesses acknowledging good practice, others noted the

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237 Q165

238 International Association of Commercial and Contract Management ([LGP 14](#))

239 Q2 [Lorraine Cox]

240 Q2 [Julie Gill]

241 Birmingham City Council ([LGP 45](#)) para 6

242 Solace ([LGP 42](#))

need for further dissemination of best practice, for example via the LGA. The LGA stated that, with some 375 member councils, some of its members did procurement “very well and some less well”. The LGA stated that its work to put ‘procurement at the top table’ would help ensure senior officers and elected members “oversee and support procurement” and that they had a procurement strategy which recognised the importance of risk management.<sup>243</sup> Furthermore, the role of senior executives is key but the CBI considered that many senior council executives were still “too far removed from oversight of major commissioning projects”.<sup>244</sup>

**102. Procurement should not be viewed as a niche activity for specialists, rather as the essential underpinning of a joined-up process from initial service design and commissioning, through purchasing of goods and letting of contracts, to contract implementation and review. All those involved in commissioning, procuring and delivering services should recognise the need to embed excellence in procurement practices at the heart of these activities. We welcome the work by the Local Government Association to put procurement at the ‘top table’ within councils. There is a need for the political leadership in all councils to focus on commercial approaches, with the embedding of a culture of commercial awareness when designing and delivering services. We therefore see considerable advantage in councils identifying a lead cabinet member and a senior officer who will take overall responsibility for ensuring that procurement is as efficient as possible, and that fraud is pro-actively combated. Councils should also ensure that frontline councillors have a clearly identified role in reviewing and scrutinising procurement, including outsourced contracts and their impact on services for residents.**

## Skills and capacity

103. A key issue to consider is whether, given current resource constraints, councils have sufficient numbers of staff with the right skills and if the right training is being made available. This is an issue which affects the whole public sector. The NAO’s *Managing Government Suppliers* report warned that there was a risk that the Cabinet Office’s procurement reform ambitions would not be matched by the “right resources, capability and information” due to gaps in commercial experience and expertise below senior levels.<sup>245</sup> The Public Administration Select Committee (PASC) report on *Government Procurement* identified shortcomings in the ability of the civil service to run effective and efficient procurement.<sup>246</sup> Local government also faces challenges in securing adequately skilled staff. The Audit Commission considered that a move to more commissioning and away from directly providing services meant that councils needed to acquire more commercial skills,<sup>247</sup> but was concerned that a lack of skills was a public-sector wide issue, citing the Institute for Government’s 2012 report, *Choice and competition in public services*,<sup>248</sup> which concluded that councils generally lacked sufficient people with the

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243 Local Government Association ([LGP 17](#)) para 36

244 Confederation of British Industry ([LGP 59](#)) para 19

245 National Audit Office, *Memorandum for Parliament; Managing government suppliers*, [HC 811](#), November 2013, p 13

246 Public Administration Select Committee, Sixth Report of Session 2013-14, [Government Procurement](#), HC 123, p 5

247 Audit Commission ([LGP 11](#)) para 3

248 Institute for Government, [Choice and competition in public services: learning from history](#), August 2012

procurement, risk or contract management skills to make effective use of market mechanisms.<sup>249</sup>

104. Councillor Scott from Sheffield City Council considered that lead members needed to develop a new skill set that 15 or 20 years ago was not required. Pointing to the £1 billion which the NHS had invested in training commissioning and procurement staff, he said that local authorities did not have the same level of focus on skill development and innovation, and that although Sheffield and other councils were “getting there” there was “still an awful lot more that we need to do”.<sup>250</sup> Sheffield City Council was the first council to develop a procurement toolkit, shared with several other councils, for training every officer in charge of procuring a service in order to avoid “fuzzy commissioning”.<sup>251</sup> The council told us they had been investing in the professional skills of its employees: some 75% now had a CIPS qualification although across the Yorkshire region the figure was only 40% due to a lack of training funding.<sup>252</sup> Cheshire West and Chester Council also told us about its work to improve specification and commissioning skills.<sup>253</sup> The Audit Commission noted that commissioning, procurement and contract management skills remained “underdeveloped” but councils nevertheless were able to recruit staff from a commercial background with the “right skills” or use consultants.<sup>254</sup> The LGA’s *Making Savings from Contract Management* report also found that training in contract management was “increasingly common”.<sup>255</sup>

105. Many witnesses recommended further action. NOA recommended that a “repository of best practice” be established to assist councils in understanding better what suppliers are trying to achieve out of their relationships.<sup>256</sup> Halton BC recommended that a national campaign be conducted to improve skills and capacity in procurement at local level.<sup>257</sup> CECA pointed to the potential for a “flying squad” to address skills gaps in particular local authorities.<sup>258</sup> This would address the headcount reductions recently incurred by procurement teams by providing a team that moved from council to council to deliver procurement services which an authority might need to access only every six months or two years.<sup>259</sup> CIPS considered that a centre of excellence approach where “suitably experienced and qualified procurement personnel could be contracted in to provide independent commercial advice to the local team” would be helpful, noting that it would be “impractical” to build a critical mass of expertise within each authority owing to their

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249 Audit Commission ([LGP 11](#)) para 22

250 Q306 [Councillor Scott]

251 Q314 [Barry Mellor]

252 Q307 [Barry Mellor]

253 Q2 [Julie Gill]

254 Audit Commission ([LGP 11](#)) summary

255 Local Government Association, *Making savings from contract management*, November 2013

256 Q76

257 Halton Borough Council ([LGP 26](#))

258 Civil Engineering Contractors Association ([LGP 08](#))

259 Q172

limited scale of spend.<sup>260</sup> The LGA reported that it was working with CIPS to assess education and training options for the sector.<sup>261</sup>

106. Some witnesses noted that collaborative approaches and the use of procurement bodies could help to deliver cost-effective skills capacity. YPO noted that one of the benefits to councils of a procurement organisation was the access to an additional central, skilled resource to supplement in-house capability as and when required.<sup>262</sup> Scape noted that it delivered free training to clients such as Leicester City Council on how to get the best out of frameworks, how to use contracts, and how to collaborate effectively. It counselled that “local authorities should always use specialist procurement organisations such as Scape rather than try to do their own procurement and reinvent the wheel”.<sup>263</sup> NEPO noted that one of its roles in developing procurement capability regionally had been delivery of intensive training to over 200 staff, stating that as local authorities downsized, capacity to collaborate was “getting harder” especially where experts in particular service areas were needed to help specify requirements, support tender evaluations and implement changes to suppliers or processes. It recommended that there should be a “national approach to skills and developing/retaining procurement talent” to help councils to continue to invest despite financial restrictions and that this could “usefully prioritise social care where the skill base is lowest”.<sup>264</sup> The Cabinet Office told us that the Commissioning Academy which it had established brought together senior commissioners from across the public sector to learn from the most successful, with some 67 local authority participants to date (some 58% of the total).<sup>265</sup> Nonetheless, this number represents only a fraction of those working in relevant areas who could benefit from the Academy’s offering. Although rates are subsidised by the Cabinet Office, councils are required to fund some of the costs of participation in Academy programmes.

**107. If all councils are to procure at the optimum level, including procuring in the most effective manner for delivering social, economic and environmental objectives, most need to improve their procurement skills. This will require investment but more cost-effective ways of sharing capabilities need to be found if councils are to address their skills shortages at a time of financial constraint. The Local Government Association should consider supporting the establishment of a peripatetic procurement team—a ‘flying squad’ whose purpose would be to train regionally based teams of trainers. These would be available to augment council capacity for complex procurement exercises where there is a current lack of in-house capacity or to plug short-term skills deficits. We recognise that such approaches are only a stop-gap and that a more comprehensive, long-term programme is needed to train enough staff to high enough standards to meet the challenges of managing the sector’s multi-billion pound investment. Much greater use must be made of toolkits, such as that developed by Sheffield City Council, and the LGA must ensure that these are disseminated across**

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260 Chartered Institute of Purchasing and Supply ([LGP 39](#))

261 Local Government Association ([LGP 17](#)) para 37

262 Q308 [Simon Hill]

263 Scape ([LGP 36](#))

264 North East Procurement Organisation ([LGP 34](#)) paras 32-35

265 Cabinet Office ([LGP15](#))

the sector. Councils should also make fuller use of initiatives such as the Commissioning Academy. *We recommend that the Cabinet Office offers Commissioning Academy programmes to council participants in order to raise the procurement skill levels and status of far greater numbers of local authority staff.*

## Sectoral and other support

108. The local government sector is already addressing some of its need for support with initiatives such as the publication of the LGA's *Making Savings from Contract Management* report.<sup>266</sup> The LGA told us that local government members and officers, as well as private sector procurement and contracting experts, have access to its services and that it had coordinated the 'one voice' for local government procurement programme via a National Advisory Group.<sup>267</sup> Furthermore, central government is also providing support. DCLG told us that, although it was not for central government to dictate local procurement practices, strategies or structures, it had an "important role in incentivising service transformation and encouraging innovation through a number of mechanisms" including through providing examples of procurement savings in its report *50 Ways to Save – Examples of Sensible Savings in Local Government*.<sup>268</sup> DCLG also cited the *Transformation Challenge Award* under which £6.9 million would be made available to councils wishing to make savings by "transforming and sharing their services with others". DCLG expected to see the "innovative use of procurement functions to feature strongly in those bids, which will enable us to reward success and promote exemplars even further".<sup>269</sup>

109. At national level, the NAO noted that after abolition of the Audit Commission it would take on some roles including conducting some national studies across the sector and drawing out good practice.<sup>270</sup> Nevertheless, there are some doubts as to whether this will provide as comprehensive a level of support as is available now since the Audit Commission's current role in central collation of audit information and mapping of the variability of performance across the country would disappear. The Commission recommended that there be established after its abolition "some means of collating the assessments that auditors make in an easily understandable and digestible way".<sup>271</sup>

110. Other witnesses also expressed concerns about the adequacy of support for the local government sector. Bodies representing children's service providers told us that, although they were "encouraged" by Cabinet Office efforts to boost the skills of commissioners, they wished to see more effort across government, including through creation of a national (children's services) framework that could be followed by all local authorities. They wished to work with both the Government and the LGA to promote best practice.<sup>272</sup> YPO considered that the abolition of the Regional Improvement and Efficiency Partnerships

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266 Local Government Association, [Making savings from contract management](#), November 2013

267 Local Government Association ([LGP 17](#)) para 24

268 DCLG, government, December 2012

269 Department for Communities and Local Government ([LGP 63](#))

270 Q399 [Keith Davis]

271 Q399 [Mark Wardman]

272 Nationwide Association of Fostering Providers, Independent Children's Homes Association and the National Association of Independent Schools and Non-Maintained Specialist Schools ([LGP 28](#)) paras 5 and 6

had “undoubtedly left a hole” for local authorities in the provision of market intelligence, guidance and expertise. For this reason YPO was seeking to offer networking opportunities to allow its category groups to share knowledge with procurement teams.<sup>273</sup> The recent changes to EU procurement regulations mean that there will be a number of areas upon which councils will need guidance, including new thresholds triggering EU procurement process rules, revised approaches to inclusion of social value and approaches to support smaller organisations wishing to tender for public contracts.

**111. We commend the work undertaken to date by many councils and by the Local Government Association to improve approaches for procuring goods and services for local communities. We endorse this sector-led approach to supporting council action since it is an effective means of tailoring procurement to local needs. Nevertheless, a change in effort is now required in order for successes to be fully replicated across the country and for detailed support to be provided to tackle all the complex aspects of procurement, particularly given the reduction in some support such as that provided by the Audit Commission. This will require renewed commitment across local and central government. We therefore conclude that the LGA, with the support of DCLG, should establish a task-force with representatives of the private and third sectors to develop an action plan for improving council capacity to conduct effective procurement. We recommend that the Cabinet Office dedicate resources for building procurement capacity in local government and for ensuring that lessons learnt in central government are translated into effective council action where appropriate. The Government should also ensure that full guidance on the implications of new EU public procurement measures is provided during the transposition of the Directive into UK law.**

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273 YPO ([LGP 24](#)) para 3

## 9 Conclusion

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112. This report makes a wide range of recommendations for improving local authority culture and processes in recognition that procurement should not be seen as a niche function conducted in silos, rather as an activity central to delivering high value, cost-effective services to communities. Evidence to this inquiry demonstrates a drive by local government to improve its procurement practices. However, this is a work in progress and requires sustained commitment to partnership working from local authorities, central government and from the third and private sectors in order to raise standards. Devoting resources to bringing the performance of all local authorities up to the levels of the best is more than a worthwhile investment. At a time of financial constraint, spend now will enable savings both now and in years to come which should pay back initial costs many times over. Embedding effective approaches across all council functions will require leadership from the top and a focus on new commercial skills to manage the challenges of procuring in new ways and for different purposes. In keeping with our support for a localist approach, most of the action recommended in this report is for the sector itself to deliver, but we recognise that this requires leadership and co-ordination, not least from the Local Government Association. Key areas for the sector to focus on are:

- improving collaboration across councils;
- spreading best practice on how to maximise the social, economic and environmental impact of procurement;
- developing streamlined processes to minimise costs to councils and suppliers and potential suppliers;
- managing complex contracts to secure better value, and to reduce risks to service delivery and the likelihood of fraud; and
- skills development, particularly of new commercial skills for an increasingly complex procurement landscape.

Local government has a responsibility to show that it can put its own house in order. If it does not, we fear DCLG will opt for compulsion.

113. Nonetheless, local government can learn from central government and vice-versa. We have emphasised in this report the need for effective partnership with, as well as support from, DCLG and other central government departments. Key areas for central government to focus on are:

- providing councils with guidance, for example on how new EU public procurement measures enable and require new council approaches to procurement;
- supporting councils in capacity building to ensure all councils have access to adequate skills, including through access to the Commissioning Academy;



- maximising the effectiveness of current statutory measures, for example in enabling procurement to deliver strategic public sector objectives and reviewing the effectiveness of the Community Right to Challenge;
- monitoring national patterns such as social care sector pay and conditions; and
- with local government sector organisations, disseminating advice to councils, for example on tackling fraud.

114. *We make a number of recommendations for the Government to provide the right support and policy framework to enable councils to reform their procurement approaches and we commend them for urgent action.*

## Conclusions and Recommendations

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1. *We recommend that the Local Government Association and other bodies working with councils, as well as local authorities themselves, prioritise implementation of our recommendations in order to accelerate reform of local authority procurement across England. It is also important to have in place government policies that empower communities and local government to maximise efficiency and effectiveness in procurement. Hence we make a number of recommendations for the Department for Communities and Local Government to implement as a matter of urgency in conjunction with other relevant government departments. (Paragraph 6)*

### Improving local government procurement

2. We recognise that local government is aware of the need to improve procurement practice across the sector and that some councils are adopting effective procurement approaches which deliver savings to local communities. We are, however, concerned that more needs to be done and that not all are procuring so as to achieve maximum value for money. Councils must ensure that they have appropriate mechanisms in place to enable them to measure the costs and savings of their procurement exercises so that they can evaluate the extent to which they are using optimum approaches. We conclude that the Local Government Association should provide a forum for sharing data on successful approaches and the information should also be used to inform its programme of support for councils. (Paragraph 11)
3. We conclude that local authorities' focus on meeting the needs of local communities requires councils to retain control over their procurement operations. Local freedom and flexibility would be lost if they were compelled to adopt a centralised model of procurement such as that adopted by central government in its Crown Commercial Service. (Paragraph 25)
4. We recognise that there are potential savings to be gained by increased aggregation and even national arrangements—for example, for purchasing energy—but it has to be for local authorities to decide what provides the best value for money when weighted against their local needs and to enter such arrangements voluntarily. To assist local authorities, we consider that the Local Government Association should review current procurement spend on key categories to identify potential routes to increase the use of aggregated spend for these products and services. (Paragraph 26)
5. It is clear that many local authorities are already conducting procurement in collaboration effectively with other councils, either through initiatives established between individual authorities or groups of authorities, or via procurement organisations on a regional basis. Enhancing such approaches is a sensible way forward. We can understand the Government's frustration that authorities' responses to its funded collaborative initiatives have not been as expected. But the answer is not compulsion. As we have already stated, councils are answerable to local people and have to retain control over the delivery of local services. Nevertheless, we consider that there is scope for much greater work to join up approaches and deliver economies of scale without compromising local authorities' ability to deliver locally

appropriate services, accountable to their communities. We conclude that the Local Government Association should conduct a review of collaborative approaches and produce best practice guidance for authorities on the most effective means of joining up procurement to deliver savings which reflect local priorities. (Paragraph 33)

6. There is scope for greater joining-up of approaches to deliver economies of scale by linking the procurement approaches of public sector bodies within local communities. The Local Government Association should conduct a review of collaborative public sector approaches at a local level and produce best practice guidance for authorities on the most effective means of joining-up procurement budgets across a range of local public sector bodies to help deliver joint local priorities. (Paragraph 35)
7. We recognise that framework contracts can deliver cost savings in certain circumstances but have concerns about the impact on smaller firms. When using framework contracts, councils should consider the potential for sub-dividing at least part of the contract to enable smaller organisations to bid for smaller parcels of work. The Local Government Association should produce guidance on how the measures in the new EU Directive on public procurement could be used to encourage smaller companies to engage in procurement opportunities with local authorities. (Paragraph 39)

### **Delivering strategic objectives through procurement**

8. There is a judgment to be made by each council, and for each contract, as to the correct balance for their community between letting a contract at the lowest price and requiring contractors to deliver additional economic and social value, sometimes at an additional cost. We are clear, however, that councils can and should adopt policies which enable them to maximise their procurement spend to deliver local priorities by requiring contracts to be let on the basis of wider best value, not simply lowest price. Such approaches will best ensure procurement is conducted so as to support and improve communities' long-term economic, social and environmental well-being. Many local authorities are already successfully linking their procurement approaches to delivering such objectives but all councils should assess the potential of each procurement exercise, and of their overall procurement policies, to assist delivery of the council's corporate objectives. Furthermore, they should raise awareness of the value of this linkage through more explicit demonstration of successful approaches. All councils should present an annual report to a full Council meeting setting out the authority's strategy for incorporating economic, social and environmental value in its procurement, including employment terms and conditions, impact on local economies and small businesses, relationships between contractors and customers, and the role of councillors. (Paragraph 44)
9. We conclude that the Local Government Association should work with local authorities to disseminate best practice case studies on how to maximise the impact of procurement approaches to deliver local social, economic and environmental objectives, whilst balancing the need to secure value for money in the procurement of goods and services. A particular focus for the LGA should be the promotion of examples of best practice in using procurement to support the increase in local

apprenticeships and trainee opportunities. Furthermore, the LGA should update guidance on the potential of new EU public procurement measures to allow procurement to be used to promote social value, and advise councils on what they must do to meet new obligations. (Paragraph 45)

10. We acknowledge Ministers' wish to ensure that the Public Services (Social Value) Act 2012 is given sufficient time to bed in and become fully effective. Nonetheless, it is clear that there are concerns that the limited range of contracts to which its provisions apply might be undermining the Act's impact. *We recommend that DCLG undertakes comprehensive post-legislative analysis of the Act to ensure assessment of its effectiveness before the end of 2015. This assessment should consider whether provisions should be extended such that local authorities must consider the potential for a contract of any value to deliver social benefits. Such assessment must take into account the views of all interested parties, including local government and business.* (Paragraph 48)
11. *Government policies to encourage communities to engage in service delivery through mechanisms such as the Community Right to Challenge do not appear to be being used to any great extent. We recommend that the Government undertake within six months a review of the barriers to its uptake, including costs to councils and would-be suppliers of entering into a full-scale procurement exercise and how these might disadvantage some sectors, in particular the voluntary and community sector.* (Paragraph 50)
12. We recognise that council policies which disproportionately favour local or smaller firms are not in communities' longer-term interests since these approaches could exclude cost-effective options offered by non-local or larger businesses, as well as ultimately weakening rather than strengthening local economies or regional economies as a whole. However, carefully framed policies that give local and smaller firms the same opportunities as larger firms to compete for contracts have had benefits for local economies. We support targeted council approaches which effectively balance support for local businesses whilst not precluding value for money or undermining the effective operation of markets. We conclude that the Local Government Association should work with local authorities to disseminate best practice case studies on how to integrate procurement and support for smaller businesses. *The Cabinet Office, working with the LGA, should produce guidance on how councils can apply the provisions of the new EU Directive on public procurement to better support smaller businesses and local economies.* (Paragraph 55)

### Procurement processes

13. It is imperative that councils act swiftly to cut costs for those wishing to do business with them. Too many councils apply EU regulations over-zealously, using them as a self-serving justification to retain overly bureaucratic approaches. This approach is pervasive, and a cultural change is needed. Local authorities need to become more confident in their application of EU rules. The first step is for the Government and sector leaders, including the Local Government Association, to spell out what constitutes a sensible approach which will meet regulations in a proportionate manner. The LGA should produce guidance on this aspect of the new EU Directive on public procurement and work with local authorities to disseminate best practice

case studies of those councils already minimising costs to suppliers and potential suppliers. (Paragraph 59)

14. Whilst some councils have streamlined their processes and are taking a proportionate approach to the pre-tender information they require potential suppliers to provide, the default option in too many procurement exercises appears to be to demand excessive information not commensurate with the specific contract needs. Furthermore, suppliers who wish to work with more than one council are frequently required to complete similar, complex forms. There is clear scope for more standardisation and simplification across the sector to cut the suppliers' costs and to facilitate the use of community budgets to deliver joined-up local services. We therefore support the Government's proposals to standardise on a national basis data collection from tenderers. The Local Government Association should take the lead in ensuring that all Pre-Qualification Questionnaires are as simple and straightforward as possible. This would entail potential suppliers filling in a form once only for use by any public body. However, whilst we concede that some council data collection processes for lower-value contracts can be unduly burdensome, we do not consider the argument to be fully made for the removal of Pre-Qualification Questionnaires for such contracts. There are financial benefits to be gained from weeding out unviable tenders at an early stage, prior to more costly full evaluation of bids. (Paragraph 64)
15. Councils should as a matter of course pay contractors promptly and include a requirement in contracts requiring contractors to ensure their sub-contractors are paid promptly right down the supply chain. Councils should publicise this policy and monitor closely the implementation of these terms through spot checks. Contracts must also require contractors to report failure to comply with these conditions. Local authorities should take into account any failure by a contractor to comply with the conditions when assessing tenders for any future work. (Paragraph 66)

## Managing risk

16. It is self-evident that outsourcing of a contract does not mean outsourcing responsibility for ensuring the quality and consistency of service to residents. However, we question whether current approaches are sufficient to ensure effective control by local authorities of outsourced contracts in many councils. There are regrettable examples across the public sector, not only in local government, of complex outsourcing arrangements failing to safeguard service delivery and quality. It is vital that councils are fully equipped to manage complex contracts, particularly in their implementation phase. Councils must future-proof contracts so that contractors bear their share of the effect of any further budget cuts. With the proportion of services delivered in-house reducing in many councils, financial constraints will impact disproportionately harder on these services if flexibility is not built into contracts to allow changes to reflect tightened budgets. Furthermore, local authorities need to ensure that there is clarity within contracting organisations and the council itself on the point of responsibility for contract delivery and on the provision of a seamless customer service to residents. (Paragraph 73)

17. In the worst cases local authorities not only fail to monitor quality but also end up carrying excessive risk when a contractor fails to deliver. Councils must develop and support a culture which embeds appropriate risk management across the council, not simply in procurement teams. The Local Government Association should undertake, with relevant professional bodies, a detailed assessment of the level of contract and risk management skills and resources available across the local authority sector. It should work with those councils that have a proven record of effectiveness to disseminate best practice and to put in place arrangements to share and provide additional resources on an ad-hoc basis to councils as required. (Paragraph 74)

### Outsourcing service delivery: employment issues

18. The increase in outsourcing of service delivery by a wide range of councils across a variety of services means that a large number of people once employed by the public sector are now working for private sector organisations. Whilst there are statutory measures which safeguard the terms and conditions of staff transferring from a public body to a private company, it is imperative that councils recognise the need to engage actively with private companies to ensure standards are maintained. Councils should consider when letting contracts whether they wish to take into account a bidder's policies on employment issues such as zero hours contracts. The Local Government Association should produce guidance for councils on how the provisions in the draft new EU Directive on public procurement may affect councils' ability to insist that larger contractors apply minimum standards and remuneration for employees working on their contracts. (Paragraph 78)
19. Whilst councils must be free to develop locally appropriate employment approaches, with the flexibility to adapt to changing circumstances, we commend those councils which adopt fair working conditions and terms of employment, including pay. We recognise that the rising demand for social care services at a time of financial constraints on council budgets represents a challenge for councils wishing to adopt optimum pay and conditions for staff working in the sector. We have not had the opportunity in this inquiry to take a detailed look at the specific issues affecting procurement of social care, but we wish to highlight the need for employment challenges to be taken into consideration in development of Government policy on the sector. *In its response to this report, we recommend that DCLG explain how it will monitor the ability of the social care sector to maintain effective pay and conditions for employees against a background of rising demand for services and constrained council budgets.* (Paragraph 80)

### Probity and governance

20. Councils need to be one step ahead of the fraudster. Councils must tackle fraud proactively. This is essential during not only the tender process, but also during the implementation of contracts. It is not sufficient for councils to 'let and forget' contracts: rather close monitoring of their delivery is essential to detect potential fraud. *We recommend that the Government provides support and guidance to councils on the best ways to identify and tackle fraud. The LGA should work with councils to*

*provide information on potential abuses of tendering processes and contract implementation and disseminate best practice examples of effective approaches.* (Paragraph 89)

21. We are concerned that some councils have yet to develop sufficient commercial focus and the acumen to combat fraud, including operations by cartels. It is vital that those responsible for managing contracts are alert to the potential for abuse of market power and collusion amongst potential suppliers and that they share information effectively. (Paragraph 90)
22. Contracts let by public bodies must be transparent and performance against them auditable. The Local Government Association should consider how greater transparency in private sector contracts can be achieved, without compromising councils' ability to attract a wide range of bidders. For example consideration should be given to extending the publication of information requirements on contractors relating to performance delivery and contract costs and greater use should be made by local authorities of open book accounting. Councils should consider when seeking tenders establishing a level playing-field for all potential bidders, both private and public, by mirroring in contract terms the regulatory requirements on public bodies to provide information. This may be particularly applicable to long-term or larger contracts. Furthermore, contracts should include terms which require contractors to notify the commissioning council of any identified impropriety relating to the contractor or its sub-contractors. Any such notifications should be published. *We recommend that the Government provide guidance on how central government experience of such approaches as open book accounting can be further utilised by the local government sector in order to improve procurement transparency.* (Paragraph 95)
23. Whistleblowing has a vital role to play in detecting fraud and impropriety since those working on, or close to, procurement exercises and contract management will frequently have the best perspective on whether regulations are being adhered to or if suspicious practices have been adopted. *We recommend that the Government publicise arrangements, including the role of the National Audit Office, for the provision of an anonymous channel for reports by potential whistleblowers concerned at local authority procurement operations.* Furthermore, as part of contractual requirements all contractors should have a robust internal process for whistleblowers to report concerns. Any notification to a contractor by a whistleblower of impropriety relating to a local authority contract should be required under the terms of that contract to be notified to the council client by the contractor. Contract terms should also specify employee rights to report concerns over a contractor's actions without reprisal. (Paragraph 97)

### Achieving change

24. Procurement should not be viewed as a niche activity for specialists, rather as the essential underpinning of a joined-up process from initial service design and commissioning, through purchasing of goods and letting of contracts, to contract implementation and review. All those involved in commissioning, procuring and delivering services should recognise the need to embed excellence in procurement

practices at the heart of these activities. We welcome the work by the Local Government Association to put procurement at the ‘top table’ within councils. There is a need for the political leadership in all councils to focus on commercial approaches, with the embedding of a culture of commercial awareness when designing and delivering services. We therefore see considerable advantage in councils identifying a lead cabinet member and a senior officer who will take overall responsibility for ensuring that procurement is as efficient as possible, and that fraud is pro-actively combated. Councils should also ensure that frontline councillors have a clearly identified role in reviewing and scrutinising procurement, including outsourced contracts and their impact on services for residents. (Paragraph 102)

25. If all councils are to procure at the optimum level, including procuring in the most effective manner for delivering social, economic and environmental objectives, most need to improve their procurement skills. This will require investment but more cost-effective ways of sharing capabilities need to be found if councils are to address their skills shortages at a time of financial constraint. The Local Government Association should consider supporting the establishment of a peripatetic procurement team—a ‘flying squad’ whose purpose would be to train regionally based teams of trainers. These would be available to augment council capacity for complex procurement exercises where there is a current lack of in-house capacity or to plug short-term skills deficits. We recognise that such approaches are only a stop-gap and that a more comprehensive, long-term programme is needed to train enough staff to high enough standards to meet the challenges of managing the sector’s multi-billion pound investment. Much greater use must be made of toolkits, such as that developed by Sheffield City Council, and the LGA must ensure that these are disseminated across the sector. Councils should also make fuller use of initiatives such as the Commissioning Academy. *We recommend that the Cabinet Office offers Commissioning Academy programmes to council participants in order to raise the procurement skill levels and status of far greater numbers of local authority staff.* (Paragraph 107)
26. We commend the work undertaken to date by many councils and by the Local Government Association to improve approaches for procuring goods and services for local communities. We endorse this sector-led approach to supporting council action since it is an effective means of tailoring procurement to local needs. Nevertheless, a change in effort is now required in order for successes to be fully replicated across the country and for detailed support to be provided to tackle all the complex aspects of procurement, particularly given the reduction in some support such as that provided by the Audit Commission. This will require renewed commitment across local and central government. We therefore conclude that the LGA, with the support of DCLG, should establish a task-force with representatives of the private and third sectors to develop an action plan for improving council capacity to conduct effective procurement. *We recommend that the Cabinet Office dedicate resources for building procurement capacity in local government and for ensuring that lessons learnt in central government are translated into effective council action where appropriate. The Government should also ensure that full guidance on the implications of new EU public procurement measures is provided during the transposition of the Directive into UK law.* (Paragraph 111)



## Conclusion

27. This report makes a wide range of recommendations for improving local authority culture and processes in recognition that procurement should not be seen as a niche function conducted in silos, rather as an activity central to delivering high value, cost-effective services to communities. Evidence to this inquiry demonstrates a drive by local government to improve its procurement practices. However, this is a work in progress and requires sustained commitment to partnership working from local authorities, central government and from the third and private sectors in order to raise standards. Devoting resources to bringing the performance of all local authorities up to the levels of the best is more than a worthwhile investment. At a time of financial constraint, spend now will enable savings both now and in years to come which should pay back initial costs many times over. Embedding effective approaches across all council functions will require leadership from the top and a focus on new commercial skills to manage the challenges of procuring in new ways and for different purposes. In keeping with our support for a localist approach, most of the action recommended in this report is for the sector itself to deliver, but we recognise that this requires leadership and co-ordination, not least from the Local Government Association. Key areas for the sector to focus on are:

- improving collaboration across councils;
- spreading best practice on how to maximise the social, economic and environmental impact of procurement;
- developing streamlined processes to minimise costs to councils and suppliers and potential suppliers;
- managing complex contracts to secure better value, and to reduce risks to service delivery and the likelihood of fraud; and
- skills development, particularly of new commercial skills for an increasingly complex procurement landscape.

Local government has a responsibility to show that it can put its own house in order. If it does not, we fear DCLG will opt for compulsion. (Paragraph 112)

28. Nonetheless, local government can learn from central government and vice-versa. We have emphasised in this report the need for effective partnership with, as well as support from, DCLG and other central government departments. Key areas for central government to focus on are:

- providing councils with guidance, for example on how new EU public procurement measures enable and require new council approaches to procurement;
- supporting councils in capacity building to ensure all councils have access to adequate skills, including through access to the Commissioning Academy;

- maximising the effectiveness of current statutory measures, for example in enabling procurement to deliver strategic public sector objectives and reviewing the effectiveness of the Community Right to Challenge;
- monitoring national patterns such as social care sector pay and conditions;
- with local government sector organisations, disseminating advice to councils, for example on tackling fraud. (Paragraph 113)

**29.** *We make a number of recommendations for the Government to provide the right support and policy framework to enable councils to reform their procurement approaches and we commend them for urgent action. (Paragraph 114)*

# Formal Minutes

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**Monday 24 February 2014**

Members present:

Mr Clive Betts, in the Chair

Bob Blackman

Simon Danczuk

Mrs Mary Glendon

Mark Pawsey

John Pugh

John Stevenson

Heather Wheeler

Chris Williamson

Draft Report (*Local government procurement*), proposed by the Chair, brought up and read.

*Ordered*, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 114 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (ordered to be reported for publishing on 9, 21 October, 4, 11, 18, 25 November, 2, 16 December 2013, 27 January and 10 February 2014).

[Adjourned till 4.00 pm on Wednesday 26 February

## Witnesses

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### Monday 28 October 2013

**Lorraine Cox**, Head of Procurement, Halton Borough Council, **Julie Gill**, Director of Resources, Cheshire West and Chester Council, and **Brian Reynolds**, Head of Productivity, Local Government Association

**Peter Challis**, National Officer, Local Government Services Group, UNISON, and **Kerry Hallard**, Chief Executive Officer, National Outsourcing Association

[Q 1-112](#)

### Monday 4 November 2013

**Ed Walsh**, Deputy Director, Eastern Shires Purchasing Organisation, **Ian Taylor**, Director, North East Procurement Organisation, and **Mark Robinson**, Chief Executive, SCAPE

**Alasdair Reisner**, Director of External Affairs, Civil Engineering Contractors Association, **Alan Rogers**, Business Development Director, KeepMoat, and **Bola Abisogun**, Chair, Procurement Group, Federation of Master Builders

[Q 113-184](#)

### Monday 11 November 2013

**Dr Elizabeth David Barrett**, representing Transparency International UK, **Paul Mallory**, Vice-President, International Association for Contract and Commercial Management, and **Ian O'Donnell**, Executive Director of Corporate Resources, London Borough Ealing, representing the Chartered Institute of Public Finance and Accountancy

[Q 185-278](#)

### Monday 18 November 2013

**Gordon Millward**, Chair, South and East Yorkshire Region, Federation of Small Businesses, **Stephen Williams**, President, Sheffield Chamber of Commerce, and **Ian Drayton**, Chair, Sheffield Third Sector Assembly

**Simon Hill**, Managing Director, and **Paul Smith**, Procurement and Supply Chain Director, Yorkshire Purchasing Organisation, **Barry Mellor**, Director of Commercial Services, **Councillor Ian Saunders**, Cabinet Adviser for Finance and Resources, and **Councillor Jack Scott**, Cabinet Member for Environment, Recycling and Streetscene, Sheffield City Council

[Q 279-333](#)

### Monday 25 November 2013

**Matthew Jackson**, Associate Director, Centre for Local Economic Strategies (CLES), **Richard Macfarlane**, Consultant, representing the Joseph Rowntree Foundation (JRT), and **Oliver Henman**, Head of Partnerships and International, National Council for Voluntary Organisations (NCVO)

**Martin McTague**, Chairman, Local Government Policy Unit, Federation of Small Businesses (FSB), **Alun Rafique**, Director, Market Dojo, and **Dr Pedro Telles**, University of Bangor

[Q 334-385](#)

## Monday 2 December 2013

**Keith Davis**, Director, Cross-Government, National Audit Office, **Alan Bryce**, Head of Counter-Fraud, and **Mark Wardman**, Senior Manager, Research, Audit Commission

[Q 386-420](#)

## Monday 16 December 2013

**Nick Hurd MP**, Minister for Civil Society, Cabinet Office, and **Baroness Stowell of Beeston**, Parliamentary Under-Secretary of State for Communities and Local Government

[Q 421-467](#)

# List of published written evidence

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The following written evidence was received and can be viewed on the Committee's [inquiry's web page](#). LGP numbers are generated by the evidence processing system and may not be complete.

- 1 Abby Semple ([LGP0041](#))
- 2 Association of Play Industries ([LGP0062](#))
- 3 Audit Commission ([LGP0011](#))
- 4 Baroness Stowell, Parliamentary Under Secretary Of State, Department For Communities And Local Government ([LGP0084](#))
- 5 Birmingham City Council ([LGP0045](#))
- 6 Briefing from Civil Engineering Contractors Association ([LGP0079](#))
- 7 Cabinet Office ([LGP0015](#))
- 8 Carillion ([LGP0055](#))
- 9 Centre for Local Economic Strategies (CLES) ([LGP0019](#))
- 10 Chartered Institute of Purchasing & Supply ([LGP0039](#))
- 11 Chartered Institution of Highways and Transportation ([LGP0064](#))
- 12 Cheshire West and Chester Council ([LGP0049](#))
- 13 CIPFA Commissioning Joint Committee ([LGP0007](#))
- 14 CIPS ([LGP0085](#))
- 15 City Of London Corporation ([LGP0065](#))
- 16 Civil Engineering Contractors Association ([LGP0008](#)) ([LGP0076](#))
- 17 Cllr Jack Scott, Sheffield City Council ([LGP0073](#))
- 18 Colin Cram ([LGP0081](#))
- 19 Committee On Standards In Public Life ([LGP0054](#))
- 20 Confederation Of British Industry (CBI) ([LGP0059](#))
- 21 Department for Communities and Local Government ([LGP0063](#))
- 22 Dr Pedro Telles ([LGP0023](#))
- 23 Eastern Shires Purchasing Organisation ([LGP0006](#)) ([LGP0071](#))
- 24 Electrical Contractors' Association ([LGP0040](#))
- 25 Essex County Council ([LGP0018](#))
- 26 Federation Of Master Builders ([LGP0070](#))

- 27 Federation Of Small Businesses ([LGP0030](#))
- 28 Halton Borough Council ([LGP0026](#))
- 29 Hampshire County Council ([LGP0003](#))
- 30 Intellect ([LGP0032](#))
- 31 International Association Of Contract And Commercial Management ([LGP0043](#))
- 32 Jane Green ([LGP0083](#))
- 33 Joseph Rowntree Foundation ([LGP0020](#))
- 34 Lambeth Council ([LGP0037](#))
- 35 Local Government Association ([LGP0017](#))
- 36 Local Government Ombudsman ([LGP0010](#))
- 37 London Councils and the London Procurement Strategy Board ([LGP0031](#))
- 38 Louise Brookes ([LGP0077](#))
- 39 Market Dojo ([LGP0067](#))
- 40 National Outsourcing Association ([LGP0021](#))
- 41 Nationwide Association of Fostering Providers, Independent Children's Home Association and the National Association of Independent Schools and Non-Maintained Special Schools ([LGP0028](#))
- 42 North East Procurement Organisation (NEPO) ([LGP0034](#)) ([LGP0080](#))
- 43 Oxygen Finance Ltd ([LGP0052](#))
- 44 Peter Cumings ([LGP0004](#))
- 45 Revolution Consulting ([LGP0009](#))
- 46 Rosie Cooper MP ([LGP0072](#))
- 47 Scape ([LGP0036](#))
- 48 Sheffield City Council ([LGP0066](#)) ([LGP0082](#))
- 49 Society of Procurement Officers in Local Government ([LGP0047](#))
- 50 Solace ([LGP0042](#))
- 51 Specialist Engineering Contractors Group (Sec) ([LGP0061](#))
- 52 Staffordshire County Council ([LGP0057](#))
- 53 Steve Edgington ([LGP0035](#))
- 54 Tax Payers Alliance ([LGP0048](#))
- 55 The Market Research Society ([LGP0044](#))
- 56 The National Council for Voluntary Organisations ([LGP0029](#))
- 57 The Prince's Trust ([LGP0053](#))
- 58 Timber Trade Federation UK ([LGP0056](#))
- 59 Transparency International UK ([LGP0069](#))
- 60 Unison ([LGP0027](#))
- 61 Warwickshire County Council ([LGP0016](#))
- 62 Weight Watchers ([LGP0005](#))
- 63 West London Alliance ([LGP0046](#))
- 64 YPO ([LGP0024](#))

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2013–14

First Report	The Private Rented Sector	HC 50 (CM 8730)
First Special Report	Committee's response to the Government's consultation on permitted development rights for homeowners: Government response to the Committee's Seventh Report of Session 2012–13	HC 173
Second Report	The work of the Regulation Committee of the Homes and Communities Agency	HC 310 (HC 836)
Third Report	Community Budgets	HC 163
Fourth Report	Post-legislative scrutiny of the Greater London Authority Act 2007 and the London Assembly	HC 213 (CM 8761)
Fifth Report	Further review of the work of the Local Government Ombudsman	HC 866
Seventh Report	Building Regulations certification of domestic electrical work	HC 906

## HC Session 2012–13

First Report	Park Homes	HC 177-1 (CM 8424)
Second Report	European Regional Development Fund	HC 81 (CM 8389)
Third Report	The work of the Local Government Ombudsman	HC 431 (HC 615 & HC 650)
Fourth Report	Pre-appointment hearing for the Chair of the Audit Commission	HC 553
Fifth Report	Mutual and co-operative approaches to delivering local services	HC 112 (CM 8547 & HC 1091)
Sixth Report	Councillors on the frontline	HC 432 (CM 8582)
Seventh Report	The Committee's response to the Government's consultation on permitted development rights for homeowners	HC 830 (HC 173, 2013–14)
Eighth Report	The role of local authorities in health issues	HC 694 (CM 8638)
Ninth Report	Implementation of welfare reform by local authorities	HC 833 (CM 8635)

**Session 2010–12**

First Special Report	Beyond Decent Homes: Government response to the Committee's Fourth Report of Session 2009–10	HC 746
First Report	Local Authority Publications	HC 666 (HC 834)
Second Special Report	Local Authority Publications: Government response to the Committee's Sixth Report of Session 2010-11	HC 834
Second Report	Abolition of Regional Spatial Strategies: a planning vacuum?	HC 517 (CM 8103)
Third Special Report	FiReControl: Government response to the Committee's Fifth Report of Session 2009–10	HC 835
Third Report	Localism	HC 547 (CM 8183)
Fourth Report	Audit and inspection of local authorities	HC 763 (CM 8209)
Fifth Report	Localisation issues in welfare reform	HC 1406 (CM 8272)
Sixth Report	Regeneration	HC 1014 (CM 8264)
Seventh Report	Pre-appointment hearing for the Government's preferred nominee for Chair of the Homes and Communities Agency Regulation Committee	HC 1612
Eighth Report	The National Planning Policy Framework	HC 1526 (CM 8322)
Ninth Report	Taking forward Community Budgets	HC 1750
Tenth Report	Building regulations applying to electrical and gas installation and repairs in dwellings	HC 1851 (CM 8369)
Fourth Special Report	Preventing violent extremism: Government response to the Committee's Sixth Report of Session 2009–10	HC 1951
Eleventh Report	Financing of new housing supply	HC 1652 (CM 8401)