



# Delivering more for less II

Transparency in action

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# Foreword

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We live in one of the most centralised democracies in Europe. However, despite the intricate financial and organisational ties binding local government to central government, councils remain the most efficient part of the public sector. They have consistently squeezed the maximum value out of every pound of public money they spend, and they have directed funds to the places where they will have the most long-term impact in their local communities.

Councils have also been imaginative and bold in finding new ways to inform people about their activities, spending and performance. This means they are fully open and accountable to the people they serve. And, even more importantly, this communication helps create an informed public who can contribute to, and help improve, their services.

Greg Clark MP, the minister in charge of leading the decentralisation agenda, has said that “we need to turn central government upside down and inside out”<sup>1</sup>. We want to work to support the government to achieve this and to make it easier for local people, and their elected representatives, to take control of their area.

Significant reform is vital if councils are to continue to not only be efficient, but to deliver more for less. Needless form filling, data returns, reviews, assurance and micromanagement are unjustifiable. They waste precious time and resources and do nothing to improve the lives of local people. Even more damagingly, they confuse and complicate the lines of accountability, making it harder for local people to hold local government and partner bodies to account.

Where GPs commission local health services and colleges decide which courses to provide, we need a local champion of local people’s interests encouraging the development of the highest-quality services, making sure information is available, and acting quickly if things go wrong. In the past we have relied on remote national bureaucracies to do this, when it could be done much more successfully with a lighter touch at the local level.

The reforms in this paper propose moves to open the books on public services, how they are funded, and how they perform, giving people better choice and more information on the issues that matter to them locally.



**Baroness Margaret Eaton  
DBE**  
Chairman of the Local  
Government Group

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<sup>1</sup> Address to the Policy Exchange, Rt Hon Greg Clark MP, Minister of State for Decentralisation, 27 July 2010

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# Summary of recommendations

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1. The government should enact a broad and clear general power of competence in line with the Local Government Association's draft bill.
2. Local government legislation should be codified and consolidated.
3. Legislation should be reviewed to identify and remove areas incompatible with a general power of competence.
4. The government should significantly reduce the number of statutory provisions requiring ministerial consent.
5. Guidance on how to implement statutory duties should be withdrawn.
6. The government should stop excessive data collection and should only collect data from councils where it can prove that it brings value to local people.
7. The government should make further significant reductions in the burden of inspection and assessment of councils.
8. The sector should be given time and space to support areas facing performance challenges before any inspection or intervention takes place.
9. Information on public expenditure should be accessible to local people.
10. The government should support the establishment of local budgets.
11. Expensive and unnecessary grant certification work should be stopped. Instead all spending should be carefully audited through the annual audit.
12. Government departments should co-ordinate efforts to lift the burden on councils.
13. Government should revise the new burdens doctrine process.
14. There should be a formal route for challenge and comment on the issue of burdens on councils.



# Shining a light on the statute book

Our recommendations would:

- make it easier for councils to act confidently and respond to their communities
- reduce the volume of unnecessary regulation and legislation.

**“Local government is still often bedevilled by a complexity of legislation that inhibits confidence in innovation.”<sup>2</sup>**

The British constitution is continually evolving. It is not, as often reported, unwritten but rather un-codified. That is, in the absence of a single constitutional text, every law passed by parliament has the potential to carry constitutional significance. Of course the statute book does not stand still; parliament continually adds to, amends and removes clauses, statutory instruments and acts. We set out this position in greater detail in our publication on the powers and constitutional position of local government ‘One Country, Two Systems?’

New research undertaken by National Foundation for Educational Research (NFER) and commissioned by the Local Government Association (LGA) identified that in the last ten years, 4,000 pieces of legislation and statutory instruments or some 74,000 pages that deal specifically with local government<sup>3</sup> have been issued, equal to around 40 pages for each sitting day of parliament. Between April and August this year the government passed 67 acts and statutory instruments directly relating to local government: some 1,355 pages of new material for councils to absorb, digest and implement.

The complexity of the system means that different parts of government are at times unaware of the legislative position of different initiatives. For example overlapping provisions for a ‘call for action’ under the Local Government and Public Involvement in Health Act 2007 and the Police and Criminal Justice Act 2006 threatened to cause significant confusion and duplication for residents and councillors at the local level. Further to LGA lobbying, the two provisions were eventually reconciled under the Local Government and Public Involvement in Health Act 2007.

<sup>2</sup> Warwickshire County Council, evidence to the balance of power committee, 2009, cited in *Going Nuclear?*, NLGN, 2010

<sup>3</sup> 3,837 pieces of legislation (Acts and SIs) from May 1997 to March 2010 that contain references to local government. The list was obtained by searching the statute law database ([www.statutelaw.gov.uk/](http://www.statutelaw.gov.uk/)). The list excludes obviously irrelevant items, those concerning individual authorities or local areas, and items relating only to Wales, Scotland or Northern Ireland, appropriation Acts or commencement orders.

Of course some of this legislation and policy-making is justified. However each new policy paper, statutory instrument, Act or initiative costs money. It costs government money in time and resources to develop and oversee it; it costs councils money to absorb and understand it and finally it costs money to implement and often to monitor it.



## Recommendation 1. The government should enact a broad and clear general power of competence in line with the Local Government Association's draft bill.

There is widespread agreement that the current legal arrangements provide an unsatisfactory combination of detailed legal prescription about specific services, and uncertainty about a general power. We need a clear power of first resort, and a framework to simplify and remove restrictions from existing statutes, where these create a barrier. We need, as far as possible; to create a power which will not be interpreted in the courts in restrictive way. The LGA has drafted a general power of competence which we believe makes the legal and drafting issues clear<sup>4</sup>.

## Recommendation 2. Local government legislation should be codified and consolidated.

The confusion and complexity of the statute book is not simply an administrative problem. It impacts on councils' ability to respond to the needs of local people by creating uncertainty about their powers and legal position when undertaking new activities. Consolidating and codifying local government-related legislation would clarify the legal position of local government and simplify the process of using a general power of competence.

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

### Recommendation 3. Legislation should be reviewed to identify and remove areas incompatible with a general power of competence.

The weight and complexity of the statute book is at odds with the government's efforts to support local authorities to undertake innovative actions, sure of their legal position through a general power of competence. A review of legislation should be undertaken with a view to removing any provision which is incompatible with the power or as a result of the power, is unnecessary.

### Recommendation 4. The government should significantly reduce the number of statutory provisions requiring ministerial consent.

A large number of provisions in primary legislation require councils to seek the consent of secretary of state for actions and decisions. Of course a number of these consents may be legitimate, however the vast majority concern very local issues and decisions that local authorities working with their communities are best placed to make. We propose an Abolition of Ministerial Consents bill which would 'sunset' all consent provisions in primary legislation unless government confirmed them individually via affirmative resolution in both houses.

### Recommendation 5. Guidance on how to implement statutory duties should be withdrawn.

We propose that all guidance on how to implement statutory duties should be withdrawn. The judgement in relation to the Brent LBC v Risk Management Partners has demonstrated that it has no legal force. It simply provides cover for lazy drafting of primary legislation and promotes a dependency culture<sup>5</sup>.



<sup>5</sup> 'The meaning of the language... is a question for the court and cannot ultimately depend on the view of it taken by the Secretary of State in guidance issued, 'Brent London Borough Council v Risk Management Partners Ltd [2009], EWCA Civ 490, paragraph 29.

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# Local accountability and transparency through a new approach to self regulation

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Our recommendations would:

- save between £473 million and £698 million per annum by reducing the burden and streamlining inspection and regulation costs
- shift accountability from inspectors to local people.

**“Data returns are largely led by central government’s view of its own data needs, rather than an understanding of what performance information is needed locally to manage and improve services.”<sup>6</sup>**

The current complex pattern of national targets, performance assessment, inspection and regulation costs too much, constrains councils and their partners developing radically new and responsive ways of working and fails to provide transparent information to local people.

The wide range and complexity of government monitoring, inspection and improvement activity means that it is difficult to identify precisely how much performance management of local government alone costs the public sector. We believe the cost of the inspectorates, government office’s and councils’ compliance costs to be in the order of £900 million per annum<sup>7</sup>.

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6 *The State of the Burden – The Lifting the Burdens Task Force Final Report*, Lifting The Burdens Task Force, 2008

7 £900m is equal to i) the running costs of the Audit Commission, Ofsted, Care Quality Commission and HM Inspectorate of

The total figure - when taking government departmental activity into account - is much higher.

- The Lifting the Burdens Task Force cited the Gershon 2006 figure of £2.5 billion as the annual cost of regulating local government from Whitehall.
- The National Audit Office, in their evidence to the Lyons Inquiry, indicated that the total cost of monitoring, regulating and inspecting local government was £2 billion.
- Leicester and Leicestershire estimated the total cost to their partnerships of responding to inspections and reporting statutory returns, national indicators and performance measures at £7.23 million per annum<sup>8</sup>.

Information overload does not necessarily equal transparency or promote service improvement. The previous national framework of almost 200 indicators may have provided the government with lots of data but it did little to drive accountability at the local level. Equally, inspection itself often focuses on the wrong thing – assessing process not outcomes, often encouraging a culture of compliance rather than innovation, and focusing accountability upwards to Whitehall.

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Constabulary - over £500m pa, ii) the cost of the nine government offices, which have an overlapping improvement and regulatory role – around £127m pa, iii) councils’ costs of complying with government data demands- approximately £127m pa, iv) councils’ costs of complying with inspection – approximately £169m pa.

8 Leicester and Leicestershire *Total Place Final Report*, 2010

That is why, through our 'Freedom to Lead' initiative, we have developed proposals for a radical new approach to assessment and inspection which frees up councils and their local partners, strengthens local accountability and cuts the cost. If our proposals, on which we are currently consulting, are taken up by government, they will shift accountability from inspectors downwards to local people and could save between £473 million<sup>9</sup>- £698 million<sup>10</sup> per annum.

**Recommendation 6.**  
The government should stop excessive data collection and should only collect data from councils where it can prove it brings value to local people.

In future the government should make the case for any data items it wishes to collect from local government with a clear expression of the value that this will bring to local people. This should be agreed through the sector and taken forward through a sector-led approach. For our part all councils will agree and set out for local people a set of outcomes which they are seeking to agree with partners. They will ensure that performance against these outcomes is made publicly available.

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<sup>9</sup> £473m: this is councils' compliance costs involved as a consequence of current inspection and data returns plus the running costs of the regional government offices and a £50m saving from the abolition of the Audit Commission as cited by CLG ([www.communities.gov.uk](http://www.communities.gov.uk))

<sup>10</sup> £698m, this is councils' compliance costs involved as a consequence of current inspection and data returns plus the running costs of the regional government offices and a £50m saving from the abolition of the Audit Commission as cited by CLG plus half the running costs of the remaining inspectorates.

**Recommendation 7.**  
The government should make further significant reductions in the burden of inspection and assessment of councils.

The annual assessments of councils by OFSTED and Care Quality Commission should be brought to an end. We are currently consulting the sector on the continuing need for adult and child safeguarding inspections, or whether a robust approach to self assessment and peer challenge is sufficient.

**Recommendation 8.**  
The sector should be given the time and space to support areas facing performance challenges before any inspection or intervention takes place.

In turn the LG Group and its performance partners will work with the inspection and regulatory bodies to draw on data to provide 'early warning' of any potential major financial, governance or performance failure. Councils and local partners will develop stronger arrangements at local level for monitoring and assessing their own performance through regular self evaluation and peer challenge and the sector as a whole will collaborate to share good practice and benchmark data to drive productivity and outcomes.

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# Who is spending what?

## Opening the books on public expenditure

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Our recommendations would:

- allow people to see what is being spent in their name and how it is financed
- support local partners to work together
- save up to £20 million per annum through reducing unnecessary certification work outside of the annual audit process.

Communities have a right to know what is being spent where. Transparency over the allocation and use of public money is central to this and forms the basis of the LG Group's offer to government. Our proposal is a simple one – a democratically-controlled budget for local public services centred on place rather than organisational silos<sup>11</sup>.

We believe that local people should have a much greater say over how budgets are allocated and what they are spent on. Where funding follows individual decisions, for example about where to go to college or decisions made by GPs about commissioning health services, there should be local oversight. In some cases, budgets could be devolved to local neighbourhoods, putting them directly in control of local public spending decisions.

Transparency over the totality of spend in a place also helps to enable a shift towards the prevention and early intervention on intractable issues. For example the Total Place pilots identified several areas where services could be rebalanced towards prevention, securing value for money over the long-term, if budgets were pooled removing the split incentives that result from costs occurring to one organisation, and benefits to another:

- in Birmingham 93 per cent of public spending on employment is on out-of-work benefits and less than seven per cent on supporting people into work<sup>12</sup>
- in Manchester, the Statutory City Region Early Years pilot is the subject of longitudinal cost benefit analysis to determine the long-term savings of early intervention exploring the financial efficiencies of ensuring that children begin their schooling 'school ready', reducing expensive specialist support (a place in a pupil referral unit costs £22,873 per year) with wider savings to the criminal justice, health and benefits systems<sup>13</sup>

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11 More information on the LG Group's offer to government can be found in our publication *Place Based Budgeting: the Future Governance of Public Services and Local Budgets - Building the Big Society from the neighbourhood up*.

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12 Birmingham Total Place Pilot, February 2010

13 The Manchester City Region Total Place Report, February 2010

- in Leicester and Leicestershire the estimated costs to the public sector of dealing with alcohol misuse are £89.3 million annually, compared to just £4.9 million to prevent misuse<sup>14</sup>
- in Bournemouth, Dorset and Poole the key to improving services to older people at lower cost is to shift provision from acute care (emergency admission to hospital) and an over-reliance on secondary care for older people to investment in well-being, early intervention and prevention (including telecare and telemedicine)<sup>15</sup>.

## Recommendation 9. Information on public expenditure in an area should be accessible to local people.

Local Spending Reports (LSRs) were introduced under the Sustainable Communities Act 2007 and sought to map the totality of spend in a place.

Robust and accessible LSRs would arm local people and public agencies with basic information about how much money is spent, on what and by whom in their area to enable them to work together to build an area that they want to live and work in. The reports should not only both map total expenditure but increasingly seek to disaggregate expenditure to provide local people with information on the projects, programmes and priorities where this money is being directed in their local area.

## Recommendation 10. The government should support the establishment of local budgets.

The LGA's publication 'Place Based Budgets: the future governance of local public services' proposes that the strategic responsibility for a set of local services should rest with a locally-accountable governance body. This body should be fully accountable for the budgets that it holds. For example, where the budget is funded by local taxpayers, it should account locally to electors; where it is funded by national taxation voted by parliament, it should account both to its local electors for outcomes, and directly to parliament for that money – we propose through the creation of a devolved vote. This eliminates the need for excessive regulation and performance management by the current plethora of intermediary bodies.

<sup>14</sup> Leicester and Leicestershire Total Place Final Report, February 2010

<sup>15</sup> Bournemouth, Dorset and Poole Total Place Final Report, February 2010

## Recommendation 11. Expensive and unnecessary grant certification work should be stopped. Instead all spending should be carefully audited through the annual audit.

The annual audit provides assurance that public money has been spent appropriately. In addition to this audit process, some grant-paying authorities ask the Audit Commission to certify that the grants paid to local authorities are applied to the purposes for which they were intended.

The Audit Commission charged £19.6 million (2007/8), and £18.7 million (2008/09) in fees for additional certification work. We found that in 2007/08 of the 28 different types of grant claim, only in the case of one grant were the adjustments both substantial in absolute terms and in relation to the cost of the audit<sup>16</sup>. The most recent figures suggest that the situation remains the same; certification of claims amounting to £45.6 billion in 2008/09 resulted in amendments in excess of £1 million in only eight cases<sup>17</sup>.

Councils can be trusted to spend money for the purpose for which it is given, and the cost of providing this kind of detailed 'assurance' is an unnecessary luxury. We propose that all spending should be carefully audited, but should only be checked once. That audit should be the annual audit.



<sup>16</sup> Delivering more for less- maximising value in the public sector, LGA, 2009

<sup>17</sup> *Local Government claims and returns*, The Audit Commission's report on certification work 2008/09, The Audit Commission, 2010

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# A new approach to ‘business as usual’

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**“It is important that the momentum is sustained and that we are not given cause to revert back to the way we were and allow the burdens to grow back.”<sup>18</sup>**

There have been many calls to lift burdens on councils and many attempts to do so. Past experience however tells us that most well-intentioned attempts to lift burdens fall once the project closes and ‘business as usual’ resumes.

Our approach in this document has been to take a strategic approach to lifting burdens and removing barriers to action rather than identifying long lists of individual data requests, statutory duties and regulations. However the consistency of the issues raised by burden-lifting processes is striking. Despite a compelling evidence base, a large number of these burdens remain in place. For example:

- Some dozens of statutes require the publication of notices. This issue has been identified by the LGA, the Lifting the Burdens Task Force, by councils through the SCA and most recently through CLG’s ‘cut red tape’ exercise. It is a source of excessive financial burden to the sector and as a government-commissioned report in 2004 found, is ‘considered to be the least effective form of publicity for any type of application by local planning authorities.’<sup>19</sup>

- Councils want to take action against the registered keeper of vehicles from which rubbish is thrown if no one will admit to it, in a system similar to speeding and fly-tipping. The current process is difficult and expensive and means that most councils cannot pursue the case. This issue has been raised through lobbying and evidence from the LGA, proposals under the SCA and a campaign signed up to by 100 councils.

We have set out in this publication a radical approach, which, if accepted by the government would save money and drive more transparent and accountable services. For our part we will:

- establish a ‘burdens watch’ to maintain pressure on the government to fulfil its commitment to decentralise
- contribute through the joint productivity programme to a forward plan to lift burden
- implement a new approach to self regulation through our work on ‘Freedom to Lead.’

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<sup>18</sup> *The State of the Burden - The Lifting the Burdens Task Force Final Report*, Lifting the Burdens Task Force, 2008

<sup>19</sup> Review of the publicity requirements for planning applications, ODPM, 2004

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## Recommendation 12. Government departments should coordinate efforts to lift the burden on councils.

The changes outlined in our publication require implementation across government and its quangos. The reforms we propose will not be easy. They require ministerial backing and a vehicle to coordinate and rally departments around the shared aim to decentralise. This must be informed by experience on the ground and strong sector involvement and leadership. This is essential to ensure that the government tackles areas that are of genuine concern to councils in a systematic and coordinated manner. We suggest that the joint government – LG Group productivity programme, as part of its work on barriers and burdens, should establish or identify a vehicle and work-plan to lift the burden over the long term.

## Recommendation 13. Government should revise the new burdens doctrine process.

The process for assessing new burdens is flawed. The current process is based upon departments assessing the cost of a new burden and consulting with the LGA and councils. Government may provide too little funding, meaning councils and council tax-payers are left to fund government policies. Alternatively, if there is an over-estimate of the resources required, resources are being misallocated.

We propose a simple solution. The new burdens process could be improved firstly, by securing the involvement of an independent, impartial third party in the assessment of new burdens and secondly, by incorporating an automatic retrospective review mechanism, facilitated and mediated by the independent body, to help secure agreement on whether the funding provided is adequate and going to the right places.



## Recommendation 14.

### There should be a formal route for challenge and comment on the issue of burdens on councils.

The traditional approach to lifting the burden is for those that initially set down the burden, prescription and guidance – Whitehall officials – to consider what should be lifted. Our experience has been that this approach rarely results in substantial and sustained lifting of burdens and often results in an ad-hoc and uncoordinated approach across government.

The Lifting the Burdens Task Force proposed in its final report that a vehicle must be found to hold government departments to account, raise potential new burdens and work to prevent them and challenge the culture and attitude to performance management in central and local government.

We agree, and propose that there should be a formal route for challenge and comment on the issue of burdens on councils and an expectation and commitment for a formal government response to this. This could take place via a number of mechanisms for example:

- An independent panel which would make transparent actions taken by the government that added burdens and unnecessary bureaucracy on councils. Such a panel could, for example, be jointly nominated by the LG Group and the CLG Select Committee.
- Periodic consideration on the state of the burden led by either the sector or the CLG Select Committee.



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**Local  
Government  
Group**

The Local Government Group is made up of six organisations which support, promote and improve local government.

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