

# Freedom for Public Services

WILLIAM MASON AND JONATHAN McMAHON





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## SUMMARY

- The main public services – hospitals, surgeries, schools, policing, social care – are delivered at a local level yet financed, controlled, managed and regulated by central government.
- Including support staff, there are now 1,500,000 health workers, 750,000 teaching staff and 230,000 police in the UK.
- Central control is not working. Leading politicians of both main parties recognise that public services in the UK today are too large and complex for effective central management. In particular, David Cameron’s advocacy of the post-bureaucratic age is based on the premise that freedom of information can “make possible a new world of responsibility, citizenship, choice and local control.”
- The alternative to failing central control is to transfer accountability for, and control of, public services to the local level.
- Local professionals should be trusted to do their jobs; and local people should be trusted to hold them to account.

- Locally elected mayors, sheriffs and heads of health services should be created to ensure local democratic accountability.
- Central control should be limited to providing information through efficient inspectorates. Professionals and citizens would thus be able to make informed judgements on their own local services. Inspectorates should be accountable to a parliamentary select committee.
- Professional associations and trade unions can be expected to support and promulgate innovation and best practice.
- Most centrally imposed targets, guidelines, regulations and codes of practice could then be abolished, as could many quangos. Where the professionals concerned believe it to be desirable, prescriptive regulation could be replaced by principle-based guidance.
- This would enable a significant reduction in the number of central civil servants employed in departments such as the Home Office, Ministry of Justice, Department for Children, Schools and Families and the Department for Communities and Local Government.
- Freedom for public services would enable professionals to provide better, more responsive and more innovative public services.
- If the budgets of the main spending departments fell by 5% as a consequence of lower bureaucratic and regulatory requirements, government spending could be reduced by £15 billion a year – with no loss in front-line services.

## **ABOLITION**

Implementation of the proposals made here will lead to the abolition of the following Acts, targets, regulations and quangos. This list is not intended to be comprehensive but indicates the scope for significant reductions in levels of central control.

### **Police**

- All central regulation of employment, including the Police Initial Recruitment Test.
- All central regulation of police officer promotion (with the exception of examinations for sergeants and inspectors).
- All national police manuals (to be replaced with principle-based guidance where necessary).
- The system of police decisions logs.
- All national policing targets.
- The National Police Improvement Agency.

In addition, the police should be given legal exemption from the Health and Safety Act at Work 1974.



## **Health**

- All health regulators (to be replaced by a single body answerable to Parliament).
- The Postgraduate Medical Education and Training Board.

## **Local Government**

- All hypothecated grants to local authorities.
- Executive powers and the great majority of funding of Regional Development Agencies.
- The Local Government Act 2007.
- Central oversight of Local Area Agreements.
- All employment regulation specific to local authorities.
- The Government Offices Network.

## **Schools**

- The Education Acts of 1944 and 1986 and the Children's Act 1989 (to be replaced by a statutory duty to provide a good standard of education for all).
- All regulations on school governors (to be replaced with regulations similar to those granted to Academies).
- All central reporting requirements.

## **Higher Education**

- All HEFCE hypothecations.
- All HEFCE involvement in allocating research funding.
- The Office of Fair Access and the Quality Assurance Agency.

## FOREWORD

William Mason was a valued senior member of my team at the Government's Better Regulation Task Force for four years. More recently I worked with William and Jonathan McMahon on an independent Review of the means to improve the effectiveness of regulation across the UK economy as a whole.

However, it quickly became apparent that there were many points to be made on the regulation of public services that needed to be made in their own right. These are contained here, completely independently of my own forthcoming review.

A profound sense of concern for the future of our public services gave rise to this report. Traditions of public service date back centuries in Britain. With roots in voluntary, charitable and religious organisations, many public services pre-date the welfare state. Every citizen uses public services, and every taxpayer contributes to their delivery. Today, all the major political parties are committed to funding high-quality public services. What few have addressed, however, is that bureaucratic oversight and excessive regulation of public services can influence their effectiveness, in some cases as profoundly as central government funding or policy initiatives.

This paper argues for a changed approach to public service governance and regulation. It is clear that public services cannot escape regulation: as employers they are subject to health and safety regulations; as consumers of public money they must account for its expenditure. But it is also clear that regulations can hinder the delivery of public services, or at least do little to improve outcomes for users of these services. Bureaucracy and regulation create barriers to entry. These barriers entrench existing providers, who have little incentive to change, and discourage new, innovative providers. Centralised bureaucracy may also dampen the enthusiasm and talents of public servants, who, faced with rules, targets, and assessment forms may lose motivation. Public service regulations can lead to unintended or undesirable consequences, such as where police officers feel inhibited from 'doing the right thing' in certain situations, or where schools exclude certain pupils to improve exam results. Peeling away these layers of regulation is not a simple task, but taxpayers, those who use public services, and public servants themselves deserve a better deal from regulation.

The public sector has grown in ways that few would have expected. In a country where the state now consumes nearly half of national income, how it regulates the activities it funds is an essential question. A top-down, target obsessed culture in government will necessarily foster a defensive, limp public service culture. But it does not have to be that way. This report shows both why and how public service regulation needs to be reformed as urgently, and with as much purpose, as financial sector regulation.

Sir David Arculus  
December 2008

*Sir David Arculus was Chairman of the Better Regulation Task Force from 2002 to 2006.*

# 1. INTRODUCTION

The British state is highly centralised: most funding for public services comes directly from central government revenues. This has enabled central government to manage the public services in the way that it believes is best.

For the public services covered in this report, government spending for 2007/8 was £294 billion, consisting of:<sup>1</sup>

- police – £18 billion (or £740 per household);
- health – £92 billion (or £3,770 per household);
- local government – £156 billion (or £6,390 per household);
- schools – £47 billion (or £1,930 per household); and
- higher education – £10 billion (or £410 per household).

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<sup>1</sup> These figures are calculated from the financial year 2007/8 estimated outturns taken from HM Treasury, *Public Sector Statistical Analysis 2008*, April 2008. The total does not equal the sum of the parts as £28 billion of local government expenditure is a dedicated schools grant which has been excluded from the total to avoid double counting. Household figures assume 24.4 million households in the UK.

The evidence that central management is not delivering the public services which people want is overwhelming. Despite the NHS' annual budget more than doubling between 1995 and 2006 productivity fell by 2% a year, on average, between 2001 and 2005.<sup>2</sup> One in five 11-year-olds leaves primary school without basic literacy and arithmetic skills. More than half of teenagers in England are leaving school without achieving 5 good GCSEs (A\* to C), including English and Maths.<sup>3</sup> Many of our universities regard bureaucracy and regulation as a distraction rather than an aid.<sup>4</sup> The police are diverted from protecting the public by the demands of paperwork: Home Office figures show that just 13.8% of police time was spent on patrol in 2007/08 – amounting to 1 hour 39 minutes in a typical 12 hour shift.<sup>5</sup>

This centralising approach must be challenged. And it appears that some Labour ministers, following a high water mark in 2003-4, are now starting to do so. For example, the then Business Secretary John Hutton made the following remarks in a speech delivered to the Fabian Society on 29 May 2008:<sup>6</sup>

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<sup>2</sup> Office of National Statistics, *Public Service Productivity: Health Care*, 2008.

<sup>3</sup> Ofsted, *Annual Report 2007/08*, 2008.

<sup>4</sup> For example, *The Guardian* (15 May 2007) reported that “The University and College Union pointed to the results of a poll carried out in October that revealed that more than 40% of university lecturers complained ‘red tape or external influence were the worst aspects of their job and reduced the teaching time they could spend with students.’”

<sup>5</sup> Hansard, 30 October 2008.

<sup>6</sup> The authors' discussions with a number of senior civil servants revealed that many of John Hutton's colleagues now share his doubts over the ability of a centralised system to deliver better public services.

“If we accept that continually loading new burdens on to business will ultimately compromise the ability of families to provide for themselves, we must re-examine the role of government in the workplace.

I think there is an urgent need to update and improve the way we think about rights and responsibilities at work. In future, beyond minimum standards, we must place increasing emphasis on government creating the opportunity for workers and businesses to work out what is best for their own circumstances”.

This growing realism is welcome, and is clearly held even more strongly by the Opposition. For example, David Cameron has put forward the theme of the post-bureaucratic age as central to his thinking:<sup>7</sup>

“If we want to make a reality of this post-bureaucratic era, an era only made possible by the information revolution... it's clear to me that political leaders will have to learn to let go. Let go of the information that we've guarded so jealously. Let go of the power that we like to exert. And above all, let go of the idea that 'we know best' – that people can't be trusted to run their own lives and their own communities...

Because if we get things right, we can now move confidently into a new, post-bureaucratic era... where true freedom of information makes possible a new world of responsibility, citizenship, choice and local control.”

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<sup>7</sup> Speech on “The Post-bureaucratic age”, 12 October 2007.

The purpose of this report is to set out a series of practical steps, based on empirical research, which can reduce the central bureaucratic and regulatory burden on the public sector.

The following principles underpin the proposals:

- decisions made by professionals on the spot tend to be better than those mandated from afar;
- central government targets should be reduced, as should central involvement in the provision of local services;
- the nature of public sector regulation should be reversed so that it addresses the causes of problems rather than regulating the consequences of failure;
- barriers to entry in public service provision should be reduced so that competition fosters innovation; and
- local citizens should have the information and ability to challenge those who provide public services.

The proposals are not intended to be comprehensive. Nor do they preclude other reforms which transfer power from the state to the citizen. In many ways, indeed, they can be a useful first step to further structural reform.<sup>8</sup>

Freedom for public services will lead to better policing, schools and hospitals, delivered at a lower cost. Citizens, and not the regulators, will have the authority and power to demand the services they expect.

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<sup>8</sup> This would apply to the education reforms proposed in *Raising the bar, closing the gap* (Conservatives, 2007) and the prison reforms proposed in *Prisons with a Purpose* (Conservatives, 2008).

## 2. WHAT CAUSES REGULATION?

National politicians tend to be instinctively intolerant of diversity. They prefer consistency. They fear accusations of post-code lotteries. The result is a proliferation of centralised regulation and micro-management of services.

Some common standards are necessary. For example, were Crown Courts in Somerset to require a different standard of proof to convict a murderer from those in Wiltshire, many might cease to talk of England as one country. On the other hand, many might question whether police in those same counties, responsible for dealing with two different armed robbers in different situations, really need to follow legally binding guidance to the letter. It might be better that the police should be expected to exercise reasonable professional judgement in order to attempt to attain the best outcome in these two different situations.<sup>9</sup>

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<sup>9</sup> The revised edition of the *Manual of Guidance on the Police Use of Firearms* (Association of Chief Police Officers, February 2005) runs to 88 pages.



Where the line is drawn between national standards and local or operational discretion will always be a political issue. Yet over the years, this line has moved inexorably in favour of more and more centralisation.

It is time to challenge this drift. This will require political courage and will. It will involve questioning central planning, reducing bureaucracy and trusting those who are doing the work to make the right decisions.

### **The spider's web of central control**

One of the arguments put forward against public sector deregulation is that there needs to be accountability. The centre provides the money; and, in return, the centre must ensure that that money is spent efficiently.

Today, the demand for accountability has created a spider's web – the centre of the web being the Prime Minister's Delivery Unit in Whitehall which sets the strategy for the public services. The centre imposes targets, financial controls, legally influential guidance, codes of practice, and secondary and primary legislation to make sure that those charged with delivering services do so in the way mandated by the centre.

It need not be like this. It is possible to improve accountability while also reducing the burden of central bureaucracy. This can be done by transferring accountability to the local level. It is local people, not remote civil servants and ministers, who are best able to judge what they want from their local services. And if people were allowed to elect a local person to represent their priorities, they would then be able to hold them to account.

Some degree of central expertise is necessary – in particular the need for expert inspections will remain. Inspectorates such as HM Inspectorate of Constabulary, Ofsted, the Healthcare

Commission and the Audit Commission should continue to provide information on the comparative quality of services.

There may be a danger that, in such a system, the inspectorate would predominate; and that Whitehall's priorities would be enforced through the inspectorate in question. This danger would be alleviated by copying the model of the National Audit Office (NAO) and making the inspectorates formally accountable to Parliament, as opposed to the government of the day. The NAO is a markedly more acute inspector of public services than many other agencies because its accountability to the Public Accounts Committee protects it (at least to some degree) from the winds of political fashion while ensuring that it is held to account for the quality of what it produces.

A new joint select committee (drawing members from both the House of Lords and House of Commons) could be set up to hold the public service regulators to account. The NAO has both the subject matter experts and the capacity to provide expert support to MPs and peers sitting on such a committee to ensure powerful parliamentary scrutiny.

In this model, the inspectorates would not be responsible for mandating 'best practice' with the layers of innovation-stifling *de facto* regulation which that entails. Rather, they would confine themselves to providing the information which would enable local citizens and authorities to judge whether their local services were performing as well as they should be.

All professionals, whether in the public or private sector, need to maintain and refresh their skills. The question is how best to achieve this. Is it by mandate from the centre, so that new methods are imposed on teachers? Or is it through professional organisations? The evidence is that, in practice, the advice of

fellow professionals is far more valued and useful than that provided by regulators and central government: the latter tends to constitute prescriptive, and frequently inappropriate, instruction which constrains them from exercising their professional judgement, whereas the former is based on practical knowledge and experience.

This evidence on what works well could be shared through professional associations such as the Improvement and Development Agency (owned by the Local Government Association (LGA)), the Association of Chief Police Officers, the Superintendents Association, the Teaching Unions and the Medical Colleges.

Transferring accountability also involves the issue of trust. It is based on the premise that, in the main, professionals want to do their best. Similarly, it is based on the belief that local people can be trusted to exercise power over local services responsibly, without a coercive set of regulatory targets to constrain them. And, that when things go wrong, local people can be trusted to resolve them through voting, rather than having teams from central government imposing prescriptive regulations.

This means abolishing those regulations which currently mandate rigid national standards and practices on the public services.<sup>10</sup> It would also involve a significant reduction in the number of civil servants who have to create, inspect, monitor, police and report on these regulations. Government departments such as the Home Office, Ministry of Justice, Department for Children, Schools and Families, Department for

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<sup>10</sup> These are outlined for each major public service in the following chapters.

Innovation, Universities and Skills and the Department for Communities and Local Government could all shrink significantly.

Given political will, there are great benefits to be won. A reinvigorated professionalism in our public services. A public service ethos which is once again reconnected to the idea of serving the public. And the freedom to innovate and respond to local needs.

And there will be savings in terms of government expenditure. In the short term, quangos will cut, as will the number of central civil servants currently engaged in creating, administering and enforcing regulations. In the medium term, savings from improved efficiency and more innovative solutions would be even greater.

It is of course impossible to estimate the level of savings on an objective basis, as it is by nature not a static calculation but a dynamic one. However, it is not unreasonable to expect that, at a minimum, the proposals put forward in this report could cut spending in the relevant departments by 5%. If so, the savings could amount to £15 billion a year.

### **3. THE POLICE**

The UK government spent £18 billion on the police in 2007/08. There are 43 police forces in England and Wales employing over 233,000 people. This includes over 140,000 police officers, nearly 78,000 police staff and over 15,600 Police Community Support Officers.

These huge numbers of staff are subject to more and more regulation. Today, the ability of the individual police constable to exercise his or her own professional judgement is severely compromised. It is time to abolish much central regulation and to enhance local accountability. This will both reduce bureaucracy and help to restore public confidence in policing.

#### **Centralised regulation of personnel issues**

Many personnel issues (including pay) are set at the national, and not the local, level.

One example of how central regulation now hinders, rather than helps, the police is the national Police Initial Recruitment Test which all potential police officers now have to complete. A central part of the Test is an interview. This has been designed in an attempt to remove bias from the selection process and

consists entirely of scripted questions from which the interviewer is not allowed to deviate. No discretion is allowed to police assessors. Regardless of the response the police interviewer receives, regardless of what common sense and judgement indicates an interviewer should do, there is no option but to continue asking follow-up questions by rote.

This system was imposed on the police nationally, presumably because the government felt it could not trust the police service to exercise judgement on who should be selected. Few within the police have any confidence in it. As one chief constable observed:<sup>11</sup> “We have no ownership of it and it does not add value.” Instructors at the Metropolitan Police’s training centre in Hendon believe that the system leads to low-calibre recruits being accepted who will be unable to withstand the pressure which some criminals will try to put on them.<sup>12</sup>

Promotion of police officers is also highly regulated. For several decades there have been two national exams to get respectively from constable to sergeant, and from sergeant to inspector. These are felt to be accurate tests of ability but they are only one part of a two-stage process. The other part is an assessment centre, or a workplace assessment – currently being piloted to replace the assessment centre. Both are highly problematic. The assessment centres do not allow for performance on the job (such as ability in preventing crime or catching criminals) to be taken into account. They assess skill in doing the right thing in assessment centres and little else. The proposed workplace assessments are no better: they are

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<sup>11</sup> In discussion with the authors.

<sup>12</sup> In discussion with the authors.

intensely bureaucratic and seem to put the need to screen out any potential bias higher than anything else. This does not lead to good quality judgements being made. To quote a senior officer, the workplace assessment is “dire.”

All these regulations should be abolished.<sup>13</sup> Police forces should be subject to the normal constraints of employment law, and individual police forces should be allowed to follow their own recruitment and selection procedures. Such a system would allow officers of command rank to correct clear flaws in the current system using their professional judgement.

### **Manuals and logs**

When things go wrong (as they will always do), the natural response has been to write a guidance manual on the correct procedures to be followed in the future. These manuals become, *de facto*, regulations. Those who have not followed them leave themselves open to criminal or civil charges, no matter how worthy their intentions or actions.

Today, these manuals (often hundreds of pages long) are seen by police officers not as a useful source of advice but as a regulatory stick which the courts can use to beat officers after the event. This contributes to a risk-averse culture in situations which often require risk-taking and quick decision-taking. The opportunity costs of such manuals – as constraints on the ability of the police to act effectively to do their job – has never been properly evaluated.

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<sup>13</sup> An exception should be made for the examinations for sergeants and inspectors. These are highly regarded and well-proven and have some merit in providing a nationally recognised standard.

In addition, police commanders are required to log all decisions in a 'decisions log' in a difficult situation. If they do not, they risk being prosecuted later for procedural breaches, irrespective of the outcome of the incident. There is a case for recording why decisions were made but, as with having to follow manuals of guidance, such procedures can constrain high quality decision-making. As one experienced counter-terrorism officer put it:<sup>14</sup>

“The decisions log is highly impractical given the urgency which surrounds so many life threatening situations. Moreover, while it could be argued that caution is a necessary ingredient of good leadership, inculcating leaders to ‘watch their back’ is highly undesirable. Risk is inevitable.”

All existing national police manuals and the system of decision logs should be abolished. Where police officers or chief police officers themselves consider guidance to be needed, this should be provided by the Police Federation, the Police Superintendent's Association or the Association of Chief Police Officers (ACPO). To be effective, these should mainly be statements of principle rather than prescriptive instructions which attempt to cover every possible outcome.

### **Health and Safety Regulation**

Health and safety regulation is another major constraint on police action.

The Health and Safety Executive started to take a serious interest in the police, and whether it was properly complying with the Health and Safety at Work Act 1974, in about 2002. At

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<sup>14</sup> In conversation with the authors.



that point, circulars started to be distributed telling officers that, were they to chase criminals across roofs, for example, they would be breaching health and safety legislation. Officers were told that health and safety should be accorded some sort of priority in all their decision-making.

The problems of obeying health and safety regulation, and of rigid adherence to manuals of guidance, were shown in 2004 in Henley when police held back emergency services from treating two women who had been shot at a barbecue. Both women later died. Similarly, in 2007, two Police Community Support Officers in Manchester failed to go into the water to help save Jordon Lyon from drowning. Countless other incidents of police failure to intervene exist. As the Chief Constable of Merseyside put it:<sup>15</sup>

“The police are required to do two, possibly contradictory things. We have a duty to intervene to protect the public’s life and limb but we are also commanded to minimise the risk to ourselves. But it makes no sense to the public, by whom we are paid.”

Policing is intrinsically dangerous. Doing it effectively involves taking calculated risks. Having sufficient professionalism and/or courage to face down an angry drunken mob, to chase a robber across roofs or electrified railway lines is difficult enough. Today, police officers fear that, if they put themselves at risk, they will not be backed by their senior officers and may even be prosecuted for breaches of health and safety law.

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<sup>15</sup> Bernard Hogan-Howe, *The Times*, 5 December 2007.

The perversity of the current situation is corrosive of police morale and needs urgent resolution. The police should therefore be given legal exemption from complying with the Health and Safety and Work Act 1974. This would allow forces to act properly to protect the public and would allow for the proper legal protection of officers who take risks to serve the public.

### **Targets**

Over the last ten years, local police forces have been set a huge number of national targets in a whole range of areas. The National Policing Plan, for example, had a Policing Performance Assessment Framework to assess delivery. This had 32 performance indicators comprising 55 components. It has now been replaced by the equally prescriptive Assessments of Policing and Community Safety (APACS) performance management framework which has 34 different performance measures. The Government is now planning to give the Home Secretary powers to appoint and dismiss police chiefs on the basis of whether they meet central government targets.<sup>16</sup>

The focus on these targets undermines good policing in a number of ways. First, targets are not necessarily appropriate to all police forces. Must the Chief Constable of North Wales Police have the same focus on racial crime as a borough commander in Tower Hamlets? Secondly, incentives for meeting targets mean that police officers are more interested in the targets than in the policing priorities of the local area (senior

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<sup>16</sup> On 17 July 2008, the Home Secretary published the Policing Green Paper *From the neighbourhood to the national: policing our communities together*. Para 7.17 sets out the Government's intentions to enhance the Home Secretary's already considerable powers to dismiss chief constables.

officers can receive bonuses of between £5,000 and £15,000 for meeting their targets).<sup>17</sup> Thirdly, to meet their targets, police now classify incidents as crimes that would previously “have been dealt with informally, classified differently or ignored.”<sup>18</sup> Fourthly, as all crimes can rank the same, targets can encourage police officers to prosecute minor misdemeanours rather than serious crimes which may be more difficult to resolve.

The ability of an officer to exercise professional judgement on how to deal with a situation is compromised by nationally-set targets. And the police themselves realise that targets are not working. The Chief Constable of Staffordshire Police said that he had been alarmed by the large gap between his force’s high ranking in government tables and the public’s disappointment with street-level policing.<sup>19</sup> The police forces in Surrey, Leicestershire, Staffordshire and the West Midlands have announced that they are to withdraw from some Home Office performance measures in an attempt to restore the ability of the constable to treat minor offences as minor offences.

All national policing targets should be abolished and, where appropriate, be replaced with locally set targets. The National Crime Recording Standards should be reviewed with a view to lightening the regulatory load they impose on officers on the beat.

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<sup>17</sup> See Harriet Sergeant, *The Public and the Police*, Civitas, May 2008.

<sup>18</sup> Ibid.

<sup>19</sup> *The Times*, 31 May 2008.

## **Policing – Current Accountability Models**

The 1964 Police Act set up Police Authorities composed of local magistrates, councillors and “independent” persons, to which the local police force was to be accountable, in parallel with the Home Office at a national level. This model has not enabled genuine local accountability. Power has gradually migrated to the centre. As one chief constable put it, Police Authorities do not tend to constitute a genuine oversight team but rather a set of idiosyncratic individuals who hold no collective brief or mandate.

The formation of the National Police Improvement Agency (NPIA) in April 2007 has provided yet another means of imposing central control on individual forces. It describes its remit as “driving improvement and leading-edge practice where it matters, fostering self-improvement and helping to shape the future of policing; delivering and developing critical essential services and infrastructure to support policing day-in and day-out; and providing accessible, responsive and joined-up solutions, enabling the police services to put more time into front line police work.” While all these aims may be laudable, they all represent a further tendency to guide and control the individual police officer and so displace the scope for individual professional judgement.

In addition to the new NPIA there is also HM Inspectorate of Constabulary. HM Inspectors of Constabulary (HMICs), accountable to HM Chief Inspector of Constabulary have been accountable since the County and Borough Police Act 1856 for examining and improving the efficiency of the police service. This role is clearly similar to the mandate of the NPIA although the HMICs have historically fulfilled their role through support and audits rather than through imposing central controlling

bureaucracy. A recent example of HMIC playing a positive role was Sir Ronnie Flannagan's report on how police paperwork should be reduced.<sup>20</sup>

Further to the above statutory agencies, ACPO has fulfilled and continues to fulfil a quasi self-regulatory function, forming committees on different policing issues, and producing guidance which can have a regulatory effect (in that it is influential upon the courts).

Local regulation and accountability is therefore limited. The Police Authorities are structurally weak – and yet they are the only mechanism able to put forward local policing priorities and ensure local accountability. Against them are the centralising forces of the Home Office, the NPIA and (to a lesser extent) ACPO. And with the Home Office threatening to pass new regulations to give it direct powers over the appointment of chief constables, the centre will grow stronger still.

### **Resisting regulation**

Chief Constables have been unable to stem the trend to excessive regulation. They are not politicians and they have felt obliged to accept much of the centralised regulation which the Home Office and others have placed on them and their forces. Police Authorities have also proven ineffective in resisting regulation.

Bringing local police forces under much greater democratic control will make excessive police regulation structurally less likely, while improving accountability.

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<sup>20</sup> Sir Ronnie Flanagan, *The Review of Policing – Final Report*, Home Office, 2008.

HMIC should be directly accountable to Parliament rather than, as currently, the Home Office. It should continue to work in a non-regulatory manner to examine police forces and help them improve efficiency. The NPIA should be abolished.<sup>21</sup> The Home Office should delegate all functions connected with policing and setting of local force priorities to local bodies. All divisions of the Home Office concerned with monitoring police performance and setting policing targets should be abolished, with a significant reduction in the size of the Home Office.

ACPO, alongside the Police Federation and Police Superintendants Association, has a clear role to play in helping in the exchange of best practice. It should also take note of Sir Ronnie Flannagan's recommendation that, "all existing doctrine, which includes regulations, codes of practice, operational policing manuals and practical advice of best practice should be reviewed and consolidated."<sup>22</sup>

### **Bring back the Sheriff**

Directly elected Sheriffs would, at a stroke, bring far greater accountability to policing.<sup>23</sup> Sheriffs would be elected at the same time as the main local authority elections were held. He or she would chair a board to whom the Chief Constable would be

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<sup>21</sup> It is probable that commissioning of national police information systems projects would need to be reintegrated into the Home Office.

<sup>22</sup> Sir Ronnie Flanagan, *op. cit.*

<sup>23</sup> In some areas, where the force area corresponds with a local authority area (such as Kent or the City of London), it might be possible to make the Chief Constable directly accountable to the local authority. In such circumstances, it would be straightforward to have a council cabinet member identified as being responsible for local policing.

accountable, the other board members being local authority councillors, in order to aid the integration of matters such as Children's Services

Unlike the Association of Police Authorities, Sheriffs individually and collectively would have a powerful democratic mandate and incentive to lobby against any central regulation which inhibited them from honouring the manifestos on which they were elected. Thus, once governance of policing was transferred from Whitehall, the structure would be naturally resistant to central regulation.

HM Inspectorate of Constabulary would be expected to provide audits and further support to Sheriffs. The public would be able to monitor the effectiveness of their local police force through publication of HMIC reports.

With 43 different police forces in the UK, it is likely that there are some areas of expertise which cannot viably be maintained by every police force. Problems such as terrorism or murder enquiries may affect neighbouring forces or a group of forces. In these cases, the Home Office should put out to tender long-term contracts for specific police services on a national or regional basis. One police force would become the national or regional centre of expertise for such services. An example of how this already works in practice is the expertise of the City of London Police in tackling fraud.

Probation services and prosecution services are generally provided on a local level (unlike prison services).<sup>24</sup> These should

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<sup>24</sup> Recent proposals by Nick Herbert MP, Shadow Secretary of State for Justice, on local prisons are welcome. These involve the creation of 5,000 additional prison places in small, local jails, where prisoners can receive

also be accountable to the Sheriffs so that discussions on how best to co-ordinate probation and prosecution work were taken at a local level rather than being prescribed by national regulation. Such a model, with common accountability to a Sheriff would give scope for experiment, pilot studies and the sharing of best practice.

The current method of police financing – where a considerable portion of local policing is funded through council tax – should continue.<sup>25</sup> Local Sheriffs would then have the power to reduce or increase local police spending to match their policing priorities.

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more effective rehabilitation, and be held closer to their families and the communities to which they will return.

<sup>25</sup> Over the last ten years the proportion of total police funding raised through the precept on council tax has risen from 13.0% in 1997/98 to 21.5% in 2006/07 according to the Fourth Report of Session 2006-7 of the House of Commons Home Affairs Committee.



## 4. HEALTHCARE

The UK government spent £92 billion on health in 2007/8. The NHS employs more than 1,500,000 people. Of those, just short of half are clinically qualified, including 90,000 hospital doctors, 35,000 general practitioners (GPs), 400,000 nurses and 16,000 ambulance staff. The NHS deals with 1,000,000 patients every 36 hours. Each GP in the nation's 10,000-plus practices sees an average of 140 patients a week.

The public rightly expects medical staff to be properly trained and accredited and to maintain skills and competencies; that premises and equipment are safe and fit for purpose; that medicines are controlled; and that standards of patient outcomes upheld.

Yet controlling, regulating and managing such a huge number of individuals who are trying to provide an enormous range of services is clearly incredibly difficult, if not impossible, to do well.<sup>26</sup>

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<sup>26</sup> See for example, Harriet Sergeant, *Managing not to Manage*, Centre for Policy Studies, 2003.

The confusion in the current regulatory structure illustrates how central control can never be the right answer.

### **Current regulatory organisations**

Most healthcare is regulated, at least in part, by the Healthcare Commission through the Annual Health Check which has replaced the star ratings for NHS organisations. The Healthcare Commission also regulates aspects of services provided by the National Health Service through Acute Trusts, Primary Care Trusts (PCT),<sup>27</sup> General Practitioners (GPs), Ambulance Trusts, and Mental Health Trusts. It also supervises the independent healthcare sector, prison healthcare, healthcare in the defence organisations, the Health Protection Agency, and the National Blood Transfusion Service and UK Transplant.

A further level of regulation is provided by Strategic Health Authorities (SHAs) which are responsible for ensuring that standards, governance and targets are delivered by PCTs and Acute, Mental Health and Community Trusts. They have little power in practice as finance is devolved directly to PCTs who then commission services from the above providers. SHAs have no power over Foundation Trusts (FT) which are regulated largely through Monitor.<sup>28</sup> Dentistry is dealt with separately by the General Dental Council.

Most healthcare procedures in Trusts are paid for by a national tariff which is also called Payment by Results (PBR). This is set nationally – the same price is paid for every procedure performed on an inpatient or an outpatient. It is administered by

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<sup>27</sup> The Healthcare Commission is devising a methodology to assess the value for money achieved in the PCT's commissioning of services.

<sup>28</sup> Formally known as 'Monitor – Independent Regulator of NHS Foundation Trusts'.

PCTs. In theory, money follows patients. This should allow patients to choose where they would like to be treated – thereby facilitating patient choice.

There are also a number of 'Arms Length Bodies' such as the National Patient Safety Agency (NPSA), the newly-formed National Clinical Audit and Patient Outcomes Programme which also carry out assessments and audits which are topic related. These are not direct regulators like the Healthcare Commission or Monitor but the information they gather may go towards an overall rating awarded by a regulator to a healthcare provider.

The Health and Social Care Act enables the merger of the Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Act Commission. The new regulator will be called the Care Quality Regulator (CQR).

In addition, medical staff are regulated by:

- Medical Schools (teachers and students);
- Royal Colleges and the Postgraduate Medical Education and Training Board (PMETB) for training and accreditation of trainees & training centres; and
- The General Medical Council for disciplinary procedures/ revalidation (process for revalidation is still under discussion).

Nursing staff are regulated by the Royal College of Nursing (RCN), the Strategic Health Authorities and the Higher Education Council. Allied health professionals are regulated by their professional organisations or Colleges. Managers and other in-house non-medical staff are not regulated individually but managed through normal in-house management structures.

These are not the only regulators. Other bodies involved in healthcare regulation are the Department of Health itself, the Strategic Health Authorities, the NHS Executive, the National Institute for Clinical Excellence (NICE), the Health and Safety Executive, the Medicines and Healthcare Products Regulatory Agency (MHRA), the Clinical Negligence Scheme for Trusts (CNST), the National Commissioning Group, the Audit Commission. There are also many other smaller bodies.

This structure of regulation is clearly too complex. Numerous overlapping regulators are pursuing slightly different aims. There is, throughout the system, a lack of clarity as to who is in charge. Is it the Strategic Health Authorities, the Healthcare Commission, the NHS executive, the Primary Care Trusts or the Department of Health? Nor is there any clarity on whether commissioning power is truly being delegated to local areas or held centrally.

Clinicians and managers have, unsurprisingly, come to see regulation as 'tick-boxing' and not a mechanism to deliver better outcomes for patients.

A further problem is that the system is in constant flux. Frequent reorganisations have ended up adding additional administrative layers and bureaucratic processes.

### **Improving healthcare regulation**

Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) should be restructured so that their supervisory boards contain a majority of locally elected non-executive members. The chairman of the SHAs and PCTs should be elected locally.

The chairman would be responsible for ensuring that the SHA and PCT delivered the services of the type, standard and quality which local residents wished to see. In order to ensure

integrated local outcomes, a proportion of the non-executive directors should be district, county and borough councillors.

This reform would deliver democratic accountability for local healthcare. Having given a genuine democratic mandate to SHAs and PCTs, there would also be considerable scope for the Department of Health and its associated policy-making agencies to step back from managing many aspects of the healthcare system. This would mean that the national targets set by the Department of Health would be abolished. National pay bargaining would also be abolished so that local bodies could set locally appropriate wages.

In order to reduce overlap and lack of co-ordination in the current regulatory structures, all regulatory functions should be transferred to a single organisation, which would be directly accountable to Parliament. This regulator could combine the quality, governance and financial aspects of healthcare; merge Monitor and the Healthcare Commission; and take over the value for money assessment from the Audit Commission for non-foundation trusts. This would reduce the need for these three separate organisations to collect data separately from Trusts. It could also supervise the health and safety aspects of equipment and medicines, combining with the Medicines and Healthcare Products Regulatory Agency.

The Postgraduate Medical Education and Training Board has not worked. The current regulatory and training structure is confused and delivers poor outcomes. It is not necessarily effective in maintaining the quality of medical personnel. As one senior consultant surgeon commented:<sup>29</sup>

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<sup>29</sup> In discussion with the authors.

“The level of paperwork and bureaucracy in current training has quadrupled in an effort to ensure safe consistent standards. However, the pile of forms that require completion is so great that supervisors simply sign the form and ask the trainee to complete the rest themselves.”

The PMET should be abolished, and its functions – to certify training and supervise self-regulation of medical professionals – should be handed back to the Royal Colleges.

The General Medical Council could play a central administrative role in registering training which was delivered to standards set by the Royal Colleges. In the past, the Royal Colleges have led on postgraduate training whilst university hospitals have led on undergraduate training. Giving doctors control over their own professional standards is an important step towards rebuilding the professional ethos which has been so badly eroded by excessive centralised regulation.

These reforms would help to create a system with a much lighter regulatory touch – one which replaced much prescriptive national regulation and targeting with local accountability. In the long term, patients would have more power to influence the health care they receive. Expert regulation would be in the hands of a single body to avoid duplication and to provide the public with assurance as to quality.

## 6. LOCAL GOVERNMENT

Local authorities spent £156 billion in 2007/08. There are 410 local councils in England and Wales and over 11,000 town, parish and community councils. There are over 20,000 democratically elected local councillors in England and Wales. Over 2,000,000 people are employed in local government.

The framework which the government has created for the delivery of public services through local authorities is extremely heavy handed. It leaves little to local people to decide, saps initiative and motivation and imposes central control at the cost of local diversity and innovation.

The degree of central government regulation of local government is growing. Since 1997, 28 new Acts of Parliament have been passed which impose specific duties on District Councils.<sup>30</sup> Unitary and County Councils – which have responsibility for education, social and caring services – have seen even more legislation.

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<sup>30</sup> This excludes those acts such as the National Minimum Wage Act which imposed additional regulation on all employers.

## Control through targets

The government sets 200 National Performance Indicators (the National Indicator Set) to monitor the work of local authorities. In addition to these 200 national indicators, “the government can also request: indicators for specific delivery programmes, disaggregation of indicators and additional reporting of financial or other data.”<sup>31</sup>

The government also regulates through Best Value, a bureaucratic, nationally standardised system of performance management for local authorities imposed through the Audit Commission. While it is encouraging that Best Value reviews by the Audit Commission will cease to exist from this financial year, its successor, the Comprehensive Area Assessment, does not promise significant improvement.

Local Area Agreements (LAAs) are another means of *de facto* central control of local authorities. They are meant to be a means through which local authorities agree a “central, single delivery contract between central and local government, local partners and their communities.”<sup>32</sup> They are in the process of being replaced by second generations LAAs – LAA2s, which are meant to allow for more local autonomy. However, the LGA has shown how these appear to be little more than yet another tool of central regulation:<sup>33</sup>

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<sup>31</sup> Local Government Association, *Lifting the Burdens Task Force – 13 Steps to Reduce Performance Management Burdens*, March 2007.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.



“For many local government practitioners, the development of LAAs has been viewed as nothing more than the introduction of an additional layer of reporting. Additional bureaucracy, specific funding for specific targets and mandatory targets make the process feel oppressive and dysfunctional as opposed to liberating and flexible...

The LAA is a three year agreement that gets amended on a constant treadmill of six monthly reviews and refreshes. Such constant monitoring is an unnecessary burden as it does not help drive improvement.”

LAA2 agreements supposedly gave local authorities some autonomy in choosing the 35 national performance indicators most relevant to their objectives. Yet the government’s Regional Offices have reportedly been imposing central government policies through them. For example, irrespective of the wishes of local authorities, the Government Office for the South East is effectively imposing NPI 154 “Net additional homes provided” on local authorities. So much for local decision-making.

### **Control through finance**

Whitehall also constrains local government autonomy through financial controls. 90% of the revenue collected in Britain goes to the Chancellor in Whitehall while 75% of the money spent locally comes from the Treasury. Only 17% of local government expenditure is raised through Council Tax.<sup>34</sup> There is a lack of clarity, with central government grants to local authorities being

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<sup>34</sup> HM Treasury, *Forecast expenditure 2008/9, Public Sector Statistical Analysis 2008*, April 2008.

determined through an opaque process. Capping of Council Tax, hypothecated funding and the centralised distribution of business rates are other restrictions on local authority activity.

### **Government Offices and Regional Development Agencies**

The Government Office Network consists of nine regional offices and a corporate centre, the Regional Co-ordination Unit. Government Offices are, in their own words, supposed to offer “experience and expertise to Whitehall Departments in the development of policy and in the way that policies are best implemented, and are the primary means by which a wide range of Government policies and programmes are delivered in the English regions.”<sup>35</sup>

They work with field forces – teams of civil servants or private companies operating under contract with the government whose job is ostensibly to support the delivery of service in local areas within their policy remit. There are, for example, field forces for Special Educational Needs, substance misuse and teenage pregnancy to name a few. In practice, however, these are another means of central control. As the LGA has pointed out:<sup>36</sup>

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<sup>35</sup> The following description from the website of the Government Offices gives an indication of the style and nature of this organisation: “The Regional Co-ordination Unit provides the Network with a vital interface with Whitehall, working closely with sponsor Departments to ensure programmes reinforce each other and are implemented effectively. They feed the regional perspective received from the Government Offices back to sponsor Departments, ensuring the Network influences the development and evaluation of Government policy.” See [www.gos.gov.uk/aboutusnat/](http://www.gos.gov.uk/aboutusnat/)

<sup>36</sup> Local Government Association, *Lifting the Burdens Task Force – Review of the Department for Children, Schools and Families*, February 2008.

“Field forces engage with councils on the basis that they are offering support but in reality appear to spend most of their time checking and making judgements on how well services are being delivered... checks and judgements are best made by Ofsted who have the experience and expertise to carry out that role.”

Government Offices have no democratic accountability and it is not clear what role they fill in the regulatory structure.

The Regional Development Agencies are not, at the moment, direct regulators of local authorities. Nevertheless, the Government is planning to strip most strategic planning powers from local authorities (exercised at present through bodies such as the South East of England Regional Assembly which contains elected local authority councillors) and give them to bodies such as the unelected South East of England Development Agency. These bodies will then be expected to undertake strategic planning to meet central government development targets. When the new system comes into operation in 2010, regional development agencies will become a micro-regulator of the planning decisions they will expect local authorities to take.

### **Employment law**

In addition to normal employment regulation, local authorities have to cope with enhanced labour protection regulations which have the effect of inhibiting their ability to innovate and to provide public services efficiently.

For example, under the terms of the Warwick Agreement which the Labour Party entered into with the trade unions on the eve of the 2005 General Election, the Transfer of Undertakings Regulations (TUPE) have been markedly toughened. Any ex-

local authority employee who is transferred to the private sector must be taken on with the identical terms and conditions. Equally, his or her replacement, when engaged by the private sector company, must remain on the original public sector conditions. This has stopped outsourcing being a particularly viable way of saving taxpayers' money.

This might not matter so much were local authority workers to be paid on the same basis as their private sector equivalents. They are not. Local authorities are obliged to undertake national pay bargaining with public sector trade unions. This results in nationally set wages which do not reflect the different costs of living in different localities. Manual workers are now about 20% more expensive to employ than their equivalents in the private sector.

Further to this, if a local authority needs to reduce its permanent staff, it will be bound by local authority national pay arrangements which guarantee redundancy up to a maximum of £15,700 for the average council employee, relative to the £9,300 maximum entitlement under normal employment legislation.<sup>37</sup>

### **The power to override**

Local government has become, in many respects, little more than a local administration tasked with implementing central government policies in a prescriptive manner. And should there be any doubt over the degree of central control, consider Section 15 of the 1999 Local Government Act. This gives ministers the power to overrule – by statutory instrument – any

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<sup>37</sup> Statistics from a presentation by Cllr Warwick Lightfoot of the Royal Borough of Kensington and Chelsea to a delegation from the People's Republic of China.

decision of any local authority. This backstop regulation acts to implicitly constrain any temptation a local authority might feel to innovate and go against any central guidance and targets.

### **Local accountability – a systemic route to lighter regulation**

The role of the central state with respect to local authorities was originally confined to passing permissive legislation to give local authorities the power to do things if the local civic leaders saw a need for it. A classic example was Disraeli's Artisans' and Labourers' Dwellings Improvement Act of 1875 which permitted councils to compulsorily purchase derelict and unsanitary houses. Parliament sought to enable rather than regulate local authorities' conduct. This system of enabling legislation was helpful but it meant that local authorities had to look to it, or to their original charters, to find a mandate for action. Anything that was not explicitly authorised was outside their powers and therefore not legal.

Much of this original enabling legislation has now been replaced by a complex set of statutory duties accompanied by endless guidance and targets. This has left local authorities in a tight regulatory strait-jacket.

The Government does appear to have gone some way to recognising the problems. For example, it created a 'General Wellbeing Power' in the Local Government Act 2000 and enhanced it in the Local Government Act 2003. This allows local authorities to raise finance for activities which enhance general wellbeing. Local authorities now have some discretionary powers to provide services for the benefit of the local population. In a sense, this is a return to enabling legislation. Unfortunately, this small step toward local autonomy is insignificant besides the huge increase in binding and prescriptive central legislation.

## Recommendations for regulation of local authorities

- **Freedom for schools.** The Education Acts 1944 and 1986, and the Children's Act 1989, should be replaced with framework acts which place a statutory duty on local authorities to provide a good standard of education for children within their boundaries and of care for children in need. Local authorities would then be free to adapt education provision to the needs of their area. Some might invest further in comprehensive education, others might adopt selective education or a quasi-voucher system. It would be a local decision.<sup>38</sup>
- **Funding.** A British version of the Australian Local Government Grants Commissions would provide a simpler, more secure and transparent system.<sup>39</sup>

In addition, hypothecated grants to local authorities should be eliminated. Local authorities, given broad statutory duties and different situations in different localities, will naturally want to allocate different amounts of money to fulfilling different duties and conducting different activities.

Regional Development Agencies should be reformed so that they become forums in which elected local representatives can interact with key business leaders to determine local development priorities. All their executive powers and the great majority of their public funding should be removed.

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<sup>38</sup> See also the later chapter on Schools for other education proposals.

<sup>39</sup> This is similar to the proposal made by the LGA's contribution to the Lyons' Inquiry, published in *A new vision for local government finance*, 2006.

- **Enabling, not prescribing.** The Local Government Act 2007 and associated guidance connected with LAA should be abolished. Local Authorities should be free to deliver the services which their residents demand. While it is likely that some Local Authorities will fail to respond to the opportunities that are available to them, others will. The example of successful authorities will encourage failing authorities to adopt better practices.
- **Primacy over planning.** Explicit powers should be granted to local authorities to determine the development strategy for their community. Appeals to DEFRA should only be possible on the basis of maladministration in public office. All parts of planning acts inhibiting such freedom of action should be abolished.
- **Cut the number of civil servants.** The number of civil servants dedicated to policy areas where local authorities are responsible for policy implementation should be cut, probably by 80%.
- **Reform employment law.** Local authorities should be held to the same standards as private sector employers with freedom to negotiate conditions with their own workforces. Local authorities should be freed to decide their own approaches with elements of the 1906 Trade Disputes Act and 1976 Trade Union and Labour Relations amended as necessary to restore primacy to the normal civil law of tort and contract.
- **Abolish the Government Office Network.**

## **Ensuring high standards while deregulating**

Unlike many other public services, Local Authorities already have an accountability mechanism in place – elected local councillors. Local councillors of all parties now tend to be interested in providing high quality public services and the extremism often found in local government in the 1980s has all but disappeared.

In addition, it is not necessary for all local councillors to be high-powered managers. Local authorities have professional staff to manage: as one local authority chief executive put it:<sup>40</sup>

“I don’t need more than a few councillors to be engaged with the detail and offering leadership, rather I need them to be locally connected people who want the council to achieve high standards.”

Some of the current weaknesses in the calibre of councillor will be remedied by virtue of restoring genuine powers to councils as this will create an incentive for people from a wider range of backgrounds to consider standing for office.

The creation of directly elected local mayors for all authorities will reinvigorate local democracy. Having powerful local political leaders will prove to be one of the most effective and long-lasting barriers to central regulation.

Another way in which failing authorities can be helped is the new approach being pioneered by the LGA. This has introduced a system where – at both an official and political level – failing authorities are offered support by their peers. Thus the LGA’s

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<sup>40</sup> In discussion with authors.



Conservative Political group (which consists of Conservative councillors from a variety of councils) is approached when failings are identified by the Audit Commission or others at a Conservative-controlled authority. They work with the relevant party machinery to help the failing authority to restore standards. This self-regulatory approach is relatively new and holds out the promise that, in many instances, clear failures by local authorities can be treated through peer assistance rather than through prescriptive regulatory action. To the degree it proves effective it should be encouraged by future governments.

The Audit Commission would also continue to hold local authorities to account. There is evidence that the Commission has been pressurised by central government to ensure that local authorities focused on central government initiatives.<sup>41</sup> To protect it from this pressure and to help it be seen as an impartial arbiter, the Audit Commission should be made directly accountable to Parliament, in a manner similar to the National Audit Office.

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<sup>41</sup> A serving senior Audit Commission official told the authors how different Whitehall departments lobbied to impose their policy priorities on the Audit Commission's statutory audit of local authorities. Another former top level Audit Commission official observed that: "It has gone quite seriously awry in recent years, again through the superimposition of exciting government initiatives on a broadly sensible auditing regime."

## 6. SCHOOLS

The UK government spent £47 billion on primary and secondary schools in 2007/08. In January 2007, there were 7.3 million pupils in 17,361 state primary and 3,343 state secondary schools.<sup>42</sup> In January 2008, there were 441,200 full-time equivalent teachers in those schools, and 326,400 support staff (made up of 176,900 teaching assistants, and 149,500 administrative staff, technicians and other support staff).

### **Current structure of school regulation**

The main schools regulator is Ofsted (Office for Standards in Education). Its role is to:

- provide the school self-evaluation form which a school uses to assess its own performance;
- provide school performance information;
- inspect schools;

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<sup>42</sup> Data from National Statistics SFR 30/2007, released by the Department for children, schools and families on 27 September 2007.

- review performance of local authorities (with other inspectorates);
- monitor progress of poorly performing schools; and
- conduct research.

In addition to Ofsted, central government has an important role in regulating schools. Its three main tasks are to:

- implement legislation relating to schools;
- oversee and allocate funding to schools and local authorities; and
- design policies, implement national initiatives, and monitor performance.

These activities involve central government deeply in the running of schools. Combined with the array of health and safety and employment regulations, the level of intrusion of central government into school management is significant.

Local government also has a significant role in education although this varies from authority to authority. In broad terms, local authorities allocate some funding, provide support to schools, and monitor local performance. In some authorities, however, there is an impetus to direct local schools which, in turn, creates material regulatory burdens, often of a trifling but administratively taxing nature.

### **What is regulated in schools**

The role of central government in regulating schools has increased markedly during the past three decades. This has been motivated in large part by a commendable desire to address poor performance. The corollary of this increased

central government intervention is, however, that many schools are now directly accountable to Whitehall, although without ever completely shedding accountability to local government. Central government and local authorities now impose their will on individual schools on questions such as:

- **Access.** Are the admission arrangements of the school 'fair'?
- **Standards.** Does the school provide a good standard of education? Are teachers appropriately trained?
- **Curriculum.** Does the school teach the right things in the right way? The creation of the National Curriculum has given central government much greater power over what is taught in the classroom, and also how it is taught.
- **Financial control.** Is the school's money used wisely?
- **Discipline.** What is expected of children in a classroom, and what sanctions are available to teachers?
- **Governance.** What is the proper model of oversight and accountability for the school?

This level of regulation means that today increasingly little is left to the discretion of individual schools. Although the benefits of some central government arrangements are demonstrable,<sup>43</sup> they are not without a cost. Peter Hyman, a former adviser to then Prime Minister Tony Blair, and, subsequently a teacher in a comprehensive school, describes both the motivations of

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<sup>43</sup> For example, see National Audit Office, *Improving poorly performing schools in England*, 2006.

central government intervention and its unintended consequences.<sup>44</sup>

“Schools, I was now discovering, like other public services, are caught in the middle of the Westminster game between politicians and media. Because we wanted to show momentum, departments and Number 10 were constantly looking for things to announce... Policy was also made for the party conference, for the Queen’s speech, in the Budget and the spending review... Its development followed the political calendar, not the timings of schools... So schools would face pronouncements on uniform, or healthy food, or homework, or drugs testing, and would not know how seriously to take them, not knowing if they would result in legislation or were merely Ministerial thoughts.”

Hyman’s experience is not unique. Other specific concerns with school regulation include:

- **Testing.** The mechanics of the testing regime, and the demonstrable burdens on teachers and schools it creates, are unsatisfactory. It is not clear how the Government’s hunger for statistics makes any practical difference to the quality of a child’s education, nor that these statistics reveal much that is meaningful in a child’s education.

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<sup>44</sup> Peter Hyman, *1 out of 10: from Downing Street vision to classroom reality*, Vintage, 2005.

- **Performance management.** Employment law, and the role the teaching unions play in the state education sector, make it hard to deal with poorly performing teachers. While the Government has invested heavily in testing, building new schools and promulgating new policies and initiatives, it has not equipped schools to tackle one of the most important questions: the quality of a teacher.
- **Governance.** Central and local government place extensive duties on school governors. To a large extent, school governors are now merely clerks for government bureaucrats. The exceptions to this are the governors of Academy schools, who have a much freer hand to govern, with demonstrable benefits to their schools.
- **School trips and extra-curricular activities.** The restrictions and controls placed on school trips and other activities are the source of much frustration. Pupils and teachers lose many opportunities because of constraining regulation.<sup>45</sup>

### **Recommendations for improving school regulation**

Centralised regulation should be replaced with greater independence for schools and more local accountability. Specific deregulatory measures would include:<sup>46</sup>

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<sup>45</sup> One example of unnecessary regulation told to the authors is the requirement to conduct a risk assessment of the O<sup>2</sup> arena before a school trip could take place. Quite why this was necessary, and quite what risks the teachers were required to assess, was unclear to all involved.

<sup>46</sup> These measures are designed to alongside other policies which give greater freedom for schools, in particular those advocated by Michael Gove, Shadow Secretary of State for Children, Schools and Families.

- **Governance.** School governance is central to a school's performance. However, the quality of some governors, and the requirements placed on them, work against robust, effective governing bodies. An observable strength of the Academy programme is the demonstrable improvement it has made possible in school governance. Although Academies receive extra funding, the presence of talented and hard-working governors is a far more important difference. The reasons such people are attracted to Academies is because they are given a freer hand to govern than in the rest of the state school sector. The freedoms granted to governing bodies under the Academies programme should therefore be replicated throughout the rest of the state school system.
- **Ofsted.** Although there are concerns over the independence of Ofsted from central government, its inspection of schools, and the reports of the inspections, have been useful. Ofsted should therefore be made accountable directly to Parliament so that its inspection regime can be developed independent of the government of the day's education policies; and so that MPs are able to scrutinise the results of its work. In addition its budget should be increased so that it is able to support a devolved model of school governance more effectively.
- **Failing schools.** There are deep reservations about how the government executes its programme to help failing schools. In particular, when good teachers need to be encouraged to stay with a failing school, government takes a highly directive approach to all aspects of school management. This discourages creativity in the classroom, and makes a school less likely to retain and attract good teachers. The approach to failing schools should be reviewed and far more powers should be delegated to governors and head teachers.

- **Reporting.** Schools are now subject to ever-greater reporting requirements from central government. It is evident that the costs are high, and the benefits unclear. These should be abolished to free professionals to educate.
- **School trips and extra-curricular activities.** Valuable activities are discouraged by regulation and an over-cautious approach to risk. Regulatory and legal barriers to school trips and extra-curricular activities should be removed. School heads should be free to make the risk assessments that they think necessary.



## 7. HIGHER EDUCATION

The UK has 169 universities and colleges in its higher education sector. English higher education institutions employ 364,000 staff who teach 2.3 million students. With 44% of school leavers now entering higher education (up from 3% in the early 1960s), the state provides over 80% of the sectors £21 billion turnover. Although technically autonomous institutions, the state has increased the level of regulation to which universities are subject as the numbers of students has been increased.

Universities, unlike other public services, do not constitute near natural monopolies, they are more open to market forces and they can aspire to stand independent of public funding (save for that provided through research councils for pure research). As a result, the current regulatory model for universities could be markedly pared back, their autonomy much improved and their quality enhanced.

### **The current regulatory system in higher education**

The main regulator of Higher Education in England is the Higher Education Funding Council for England (HEFCE). As the name suggests, HEFCE distributes funds as well as regulation to universities.

In recent years, funding for mainstream teaching has been diverted by government to reward universities which implement the government's political priorities. Thus of the total teaching funding of £4.6 billion in 2008-9, £907 million is hypothecated to reward universities for widening participation, increasing student numbers and other policy initiatives<sup>47</sup>. As the head of one leading university put it:<sup>48</sup>

“There is a separate bidding process for something called the Higher Education Innovation Fund. I cannot see that anything very much is achieved through that fund, and indeed the allocations are close to the formula [for general teaching funding] but it is a separate funding stream which adds cost and inconvenience.”

In order to administer this, a regulatory bureaucracy has developed with universities required to submit reports on targets achieved. Current arrangements are costly, and constrain universities from adopting different management and teaching models to meet their different needs.

In addition to distributing teaching funding, HEFCE monitors the financial stability of universities, requiring an annual monitoring statement and corporate planning statement, together with five year financial forecasts; an annual “assurance return”; financial statements and external audit management letters; internal audit and audit committee annual reports; the Higher Education

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<sup>47</sup> These included initiatives on employer engagement, governance and management, lifelong learning networks, and skillset screen academies.

<sup>48</sup> In discussion with the authors.

Students Early Statistics Study (HESES) survey and the Research Activity Survey (RAS); and a Transparent Approach to Costing (TRAC) return. This is clearly heavy-handed.

As well as disbursing money for teaching, HEFCE allocates £1,450 million of research funding annually. In order to do this it employs a 'Research Allocation Exercise' based on peer review. HEFCE is not the primary funder of research – the seven research councils have the lead in allocating another £2.8 billion of public money. The HEFCE money funds research infrastructure whereas the Research Councils fund actual research. The HEFCE allocation process is done using different processes from those used by the Research Councils.

### **Statistical regulation in higher education**

The main body for delivering student data is the Higher Education Statistics Agency (HESA) which is funded jointly by the government and the universities. Other regulatory bodies, however, refuse to make use of HESA data. UCAS, HEFCE and health bodies demand different data to different specifications at different times from when HESA data is collected.

### **Other regulators of higher education**

The number of bodies which now have some regulatory impact on Higher Education have proliferated. They now include the Department of Innovation, Universities and Skills (DIUS), the Department of Health, the Health Professions Council, HEFCE, HESA, the Information Centre for Health and Social Care, the Joint Information Systems Committee, the Learning and Skills Council, Managing Information Across Partners, The Office for Fair Access, Ofsted, the Quality Assurance Agency for Higher Education, Research Councils UK, Skills for Business Network, Skills for Health, the Student Loans Company, Training and Development Agency for Schools, and the Universities and

Colleges Admissions Service. Four years ago, the cost of these organisations was £210 million.<sup>49</sup>

Quality assurance was originally left to universities and professional associations accrediting qualifications themselves. Today a number of overlapping agencies regulate this area of higher education. These include the Quality Assurance Agency, Ofsted, the Training and Development Agency for Schools and the healthcare assessors brought together in the Healthcare Professions Council. Some of these, such as the teaching and healthcare bodies, focus on inspection; others, such as the Quality Assurance Agency, rely on self-assessment by universities. Senior university leaders have described it as creating an onerous and ill-thought out system. One Vice Chancellor pointed out that those called to do the assessments were sometimes those academics whose departments could “most easily spare them”.<sup>50</sup>

Finally, the government also attempts to control universities through the power of invective. Cambridge University was telephoned every week or two by one of HM Treasury’s most senior officials who persistently asked it to change its governance structure to meet Gordon Brown’s views. It is questionable whether this counts as regulation – probably not as Cambridge was clearly robust enough to say “no” to the nameless Treasury official – but it is symptomatic of the

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<sup>49</sup> PA Consulting, *Higher Education Regulation Review Group Report – Less Regulated: More Accountable*, 2005.

<sup>50</sup> In discussion with authors.

regulatory micro management which this Government has imposed on universities.<sup>51</sup>

### **An attempt at reform**

Faced with a volume of complaints about the ever-increasing regulatory burden on higher education, the Government set up the Higher Education Regulation Review Group (HERRG) which produced its first annual report on the burden of regulation in 2004. This HERRG group led the creation of a Higher Education Concordat on Quality Assurance Arrangements and Data Collection in May 2006. Unfortunately, it is now clear that none of this has made any difference on the ground.

### **Recommendations for improving higher education regulation**

On the assumption that universities will continue to require large disbursements of public money to survive, the following reforms should reduce the regulatory burdens while improving both teaching and research.

- **Eliminate HEFCE hypothecations.** These carve outs involve HEFCE in micro-regulation of university activity. Should a government wish to pursue these ends, it should do so in a non-regulatory fashion by explicitly allocating additional monies to certain types of student to provide universities with a financial incentive to take them. Universities would then be free to take or reject these. Thus, for example, the government could offer extra funding for a child whose parents had never been to a university, extra funding for certain categories of mature student and so on.

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<sup>51</sup> This revealing anecdote was first described by David Willetts MP in his Oakeshott Lecture at the LSE, 20 February 2008.

- **Remove HEFCE's role in allocating research funding.** Such funding should be pro-rated in accordance with the research funding from the seven research councils. The Research Councils, in awarding public money, already have well established steps in place to ensure accountability for its use. Duplicating this at HEFCE makes little sense.
- **Require HEFCE to place reliance on an institution's annual report and accounts, as approved by the external auditor.** This should be all that HEFCE needs to assure itself that a university is financially viable.
- **Abolish the Office for Fair Access.** If market-based incentives are used to encourage universities to accept students from deprived backgrounds, it would be obsolete.
- **Unify all data collection in HESA.** Having different government bodies making different statistical demands on higher education institutions at different points in the year is unnecessary. They should work through HESA so that universities only have to deal with one government statistical agency.
- **Abolish the Quality Assurance Agency.** Numerous private sector bodies review the quality of university courses and will readily expose those that are offering poor quality teaching. Further to this the Office of the Independent Adjudicator (OIA) now provides students with the opportunity to pursue legal redress if the course they have embarked upon falls short of a reasonable standard. This provides a powerful incentive for universities to assure themselves that all the courses they offer are of a decent standard. In addition, universities should be relied upon to assess and assure the quality of their own courses. Poor quality courses damage

the reputations of universities and universities have every economic reason to safeguard their reputations, as their reputations determine their income streams.

### **Evolution towards a deregulated future**

The above recommendations would substantially reduce the burden on higher education institutions and restore some of the autonomy which they have enjoyed in the past – an autonomy which has allowed the UK to develop some of the greatest learning institutions in the world.

It is, however, worth noting that a move to a more market-based system is possible for some universities. If the caps on tuition fees are lifted, some universities will be able to raise fees and gain complete independence from state funding. In such circumstances, HEFCE's role could fall away and those universities capable of supporting themselves would become entirely subject to market disciplines. Truly independent universities – delivering world class teaching and research – would greatly benefit academics, students and the UK as a whole.

## METHODOLOGY

One year ago, Sir David Arculus asked the authors to research how regulation might be cut in the public sector as part of the Arculus review of regulation set up by David Cameron. As Sir David notes in his Foreword, their initial findings evolved into this report which is, it is stressed, entirely independent of Sir David's Review.

The authors – themselves both with senior management experience in regulation – held around 30 in-depth interviews with experts who have been involved in creating, enforcing or complying with regulations and regulators. These individuals were drawn from the highest ranks of the civil service, local government, all levels of public and private education, the police, and the health sector. All relevant chapters were reviewed by senior specialists.

The authors of the report are deeply grateful to all those who gave so freely of their time to help construct it. Many of those who helped them made clear that they would only do so on condition of professional anonymity. That said, the authors would particularly like to acknowledge the help received from Ian Locke and Jeremy Mayhew.





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