

Briefing on the Localism Bill from NAVCA on behalf of the Real Power for Communities Campaign

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1. About the Real Power for Communities campaign

- 1.1 We welcome the Localism Bill and support the intention to devolve greater power over decisions about local services to local communities. The Bill has the potential to give communities the power to change their areas, to take control of their neighbourhoods and improve the quality of life for local people. NAVCA has brought together a number of our partners to form the Real Power for Communities Campaign <http://www.rp4c.org.uk/>.
- 1.2 This briefing follows discussions between a number of voluntary and community organisations who have come together to frame a joint response. We focussed on Community Empowerment, Part 4 of the Bill, which we consider will have the greatest overarching impact on the activities of voluntary and community organisations.
- 1.3 The organisations who have taken part in this process are listed below. The views expressed in this briefing do not necessarily represent the views of every organisation listed.

ACRE	NCVO
Age UK	National Council for Voluntary Youth
Community Matters	Services
Community Development Foundation	NAVCA
Community Foundations Network	Novas Scarman
Development Trusts Association/ bassac	Runnymede Trust
London Civic Forum	Urban Forum
London Voluntary Service Council	Workers Educational Association

We are also grateful for pro-bono support for our work on the Localism Bill provided by Peter Grant Ltd.

2. Cross cutting themes

- 2.1 Equalities:** The Bill must aim to reduce inequality and safeguard the rights of minorities. The widening of public service provision should be subject to the fundamental protections contained in the Human Rights Act 1998 and the new Public Sector Equality Duty under the Equality Act 2010. The aim should be to ensure that where decisions are made outside of traditional local government structures, decision-makers are subject to those equality and human rights obligations which would have applied to the local authority. The Bill must ensure that localism will be inclusive and promote equality and human rights.
- 2.2 Fairness:** The Bill must be fair in its application. A primary motivation of the Real Power for Communities campaign is to make sure that disadvantaged communities have real access to these powers – not just the powerful and affluent.
- 2.3 Democracy:** The Bill should stimulate local democracy by promoting both representative and participative democracy. Voluntary and community organisations provide an important channel for the development of participative democracy at local level and we believe that the Bill must encourage effective engagement between them and local councillors at all levels.
- 2.4 Value:** The Bill should harmonise with the Sustainable Communities Act 2007 and, should it progress, the Public Services (Social Enterprise and Social Value) Bill 2010, to ensure that local public services deliver both value for money and social value, which recognises the wider social benefits to communities and individuals.

3. Key issues

- 3.1 Decentralisation to the lowest practicable level:** We support the principle that power should be decentralised to the lowest practicable level, in particular that services which are enjoyed collectively should be provided by community based organisations. Local authorities must be prevented from seizing decentralised power for themselves; they should be under a duty to encourage and support community ownership of assets and services.
- 3.2 Balancing the rights and responsibilities of the service user and the service provider:** In attempting to give communities power to take over services and assets, the needs and rights of service users should be respected. Not all sections of the community will want to participate directly in management and delivery, but all have a right to expect continuity of inclusive services and facilities of a good quality to be assured.
- 3.3 Addressing the urban-rural divide:** Formal structures for governance are much more prevalent in market towns and villages in the form of town and parish councils. Attempts to replicate these structures in urban areas have frequently proved difficult and controversial; the Bill should, rather, promote local authority partnership with voluntary and community

sector local support and development organisations¹, building upon what already exists in urban areas and extending good practice to ensure that all the benefits of localism are shared.

3.4 Defining communities: We welcome the clarification, following publication of the Bill, that the right to challenge will extend to virtual communities and causes, by which we infer communities of interest and communities of identity, as well as those which can be geographically defined. Communities of interest, such as elderly people, those with disabilities, faith groups and others can thereby be offered a fuller opportunity to participate. But this should not over-ride the principle of localism; it is important that the Bill safeguards against powers being used to benefit big national organisations to the detriment of valued local services.

3.5 Providing a level playing field: Successful challenge opens up the possibility of tendering processes under procurement law which currently favours large national and private sector providers, who are unaccountable in any real way to local people. To deliver real localism, increase local accountability and encourage community action, the Bill must promote the government's stated intention to open up services to enable local voluntary organisations, smaller charities and community groups to compete on a level playing field with the statutory and private sectors. Indeed, we believe that true localism would favour locally owned voluntary and community organisations.

4. Community Empowerment (Part 4 of the Bill)

Right to Challenge (Chapter 3)

4.1 We support the principle of the right to challenge because it offers communities the potential to exert greater influence over local services; ensuring they are delivered to a high standard that reflects the needs of the local community. In our view, success depends upon the extent to which local people have access to the support they need to engage in the kind of voluntary and community action that will improve the quality of life for the whole community.

4.2 It is vital that devolution does not stop at the town hall, but brings about a genuine partnership between local people and their elected representatives. We believe this local compact between councillors and their communities is vital to the success of the Bill, but believe that it must go further in order to empower people through their local community groups and ensure that local decision making promotes equality of participation and voice by involving diverse communities.

4.3 Powers in the Bill which will result in significant changes to local delivery of services should require relevant authorities to conduct wide ranging consultation with communities. This

¹ Local support and development organisations include councils for voluntary service, volunteer centres and rural community councils

should take account of protected groups in the Equality Act (particularly those groups that feel consistently excluded from the decision making process, such as older and younger people²) to ensure any potential adverse impact to these groups is mitigated in the implementation of service changes.

- 4.4 There should be a requirement that the expression of interest can only be initiated by a local organisation. If for example a national charity is interested in submitting an expression of interest, they would have to do so via a local community partner. This will encourage locally-driven partnerships and collaborative working between small and large and local and national organisations.

Proposed amendment

Clause 66, page 49, line 1, after “means”, insert “a body which is operating primarily within the area of the relevant authority, and which is”

- 4.5 We believe that the Right to Challenge could provide communities with the means to exert real influence over services, however it does not go far enough to create opportunities for local voluntary and community groups. Indeed, in its current form the Bill could in fact be used by large national agencies or private sector organisations to take contracts away from local community bodies. For example, the expression of interest, as it stands, could be used by local authority employees setting up a private company; this loophole needs to be closed.

Proposed amendment

Clause 66, page 49, line 7, after “authority”, insert “who have formed an organisation for charitable purposes or a community interest company or industrial and provident society”

- 4.6 Our members inform us that some local authorities respond to the current difficult financial environment by favouring in-house provision, thus protecting their own services. We believe that the right to challenge will help where such decisions do not represent value for money and do not promote the optimum outcomes for local communities. We believe that this would be best achieved through explicit provision for communities to be actively involved in the redesign of the service and in discussions about the potential for co-design; the expression of interest should trigger a period to allow such discussions to take place.

Proposed amendment

Clause 68, page 50, line 1, after “must”, insert “provide a period for consultation with the relevant body on options for service re-design, and must”

- 4.7 The Community Right to Challenge must promote equality if it is to have any credibility; indeed, many will judge its success by whether it delivers improved outcomes for the most disadvantaged members of the community and provides safeguards to protect vulnerable people.

² The Citizenship Survey 2009-10, Department for Communities and Local Government:
<http://www.communities.gov.uk/publications/corporate/statistics/citizenshipsurveyq4200910>

Proposed amendment

Clause 68, page 50, line 12, leave out subsections (5) and (6) and insert:

'(5) A relevant authority must, in considering an expression of interest, consider –

- (a) whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority's area,***
- (b) whether acceptance of the expression of interest would promote or improve equality for people who work, study or live in the authority's area,***
- (c) whether acceptance of the expression of interest would disadvantage vulnerable groups in society, and***
- (d) the effect of acceptance of the expression of interest on the continuity of the relevant service.***

(6) A relevant authority must, in carrying out the exercise referred to in subsection (2), consider—

- (a) how it might promote or improve the social, economic or environmental well-being of the authority's area by means of that exercise,***
- (b) how it might promote or improve equality for people who work, study or live in the authority's area by means of that exercise,***
- (c) the interests of vulnerable groups in society, and***
- (d) the continuity of the relevant service.'***

4.8 Commissioners need a proactive approach to developing the local market and a good understanding of the local voluntary and community sector, its value and diversity. Local support and development organisations are ideally placed to support smaller voluntary organisations and community groups to enable them to develop new funding and operating models, but this infrastructure support needs to be properly resourced to be effective. It is important, for example, to know whether public services are delivered by a mix of different sized voluntary and community organisations and whether they are locally governed.

4.9 The local authority should not necessarily put a service out to competitive tender and where possible should seek a locally sourced solution, using, wherever possible, the flexibilities that the procurement rules permit³. The Bill should be consistent with spirit of the Public Services (Social Enterprise and Social Value) Bill, to ensure that local public services deliver both value for money and 'social value', which is the wider social benefits to communities and individuals of a particular approach, through the use of social clauses.

4.10 To make sure the Right to Challenge offers genuine local solutions requires commissioners to develop a good understanding of local voluntary organisations and community groups and the legislative, funding and cultural environment within which they operate. In doing so commissioners should consider:

³ Chapter 2 of *Pathways through the maze: a guide to procurement law* addresses the complex issues around the public procurement rules (see <http://www.navca.org.uk/publications/maze>).

- i) In what way are local voluntary organisations and community groups affected by the commissioning of this service?
- ii) Is there an existing market of local voluntary and community sector providers that could deliver this service?
- iii) Will a competitive approach improve the service or not?
- iv) Will a competitive approach increase or reduce local social capital?
- v) Will it increase or decrease the diversity of the local voluntary and community sector?
- vi) What will the effects of this be on local communities?
- vii) Will it provide real opportunities for local voluntary organisations and community groups to deliver local services, or open up opportunities for large scale private sector providers?
- viii) What size of contract will achieve best value for money over the short and longer term?

4.11 The Localism Bill has the potential to create more opportunities for local voluntary organisations and community groups, which are well-placed to deliver cost-effective, preventative services. We believe the following will assist:

- i) The right to challenge should be ring fenced to charities, town and parish councils, formally constituted voluntary and community associations and incorporated social enterprises;
- ii) Public sector procurement procedures should be overhauled to provide a level playing field in which the above organisations can bid to take over services;
- iii) Careful consideration needs to be given to the packaging of services, commissioning cycles and contract length to ensure that local voluntary organisations and smaller charities are not deterred from bidding;
- iv) Localism also demands that local people have real influence in the choice of service providers. Any consideration of value for money predicated purely on cost may make big contracts with large service providers seem attractive in the short-term, but local commissioners must also be required to consider social value;
- v) Where a challenge is mounted, local authorities must publish a reasoned response to the challenge, in order that they are seen to be accountable to local people.

Assets of Community Value (Chapter 4)

4.12 We are concerned that a number of local authorities are considering disposing of a significant proportion of their assets of community value as a result of current funding pressures.

4.13 Based on the experiences of Community Matters in running several schemes to encourage asset transfer, the number of community organisations ready and willing to take on those buildings is generally overestimated. All the guidelines for transferring assets to the community used by experts such as the Asset Transfer Unit⁴ (ATU) start from the assumption that there is an interested community organisation, and focus on supporting them.

4.14 The combination of the Bill and the current financial environment could well change the emphasis: starting with a mixed portfolio of assets that need to be disposed of and trying to identify buyers. This would result in the opposite of what has become standard practice in relation to community asset transfer over the last 15 years. There have been many successes following the model used by the ATU and there is no reason to believe that mass disposals will produce similar results.

4.15 Community Matters estimates that there are currently 5,000 community assets under threat as a result of Treasury capital asset reduction targets rather than a desire to transfer assets to community use. The ATU has, to date, assisted the transfer of 200 assets to the community; this would suggest that most of the 5,000 will not find a community use. Community Matters believes that the major threat is to youth and community centres, libraries, heritage buildings and museums.

4.16 The government is proposing that a community group should not have a right of first refusal within the moratorium period, but rather that at the end of the moratorium period the community group would compete against others on the open market. We are concerned that this would lead to a widespread loss of assets of community value to the private sector. We take the view that the very fact that an asset is identified as being of community value should lead to a presumption in favour of making every effort to retain it as a public benefit, and only if there is no community purchaser should the asset then go onto the open market.

4.17 As a result, we propose:

- i) The Bill should specify that not only parish councils and community councils but also any local community organisation, should have the right to nominate assets of community value;

Proposed amendment:

Clause 73, page 53, after line 7, change “(ii)” to “(iii)”, “(iii)” to “(iv)” and insert “(ii) by a community organisation operating in the local authority area.”

- ii) In all other cases, the provisions must apply equally to public and private sector land and property and this should include leasehold and PFI/PPP assets;

⁴ A partnership between Community Matters, the Development Trusts Association and the Local Government Association

- iii) There should be an additional ‘right to try’ – allowing community groups an opportunity to take over and run facilities for a trial period – in order to identify and manage risks and provide additional time to raise funds for outright purchase;
- iv) In addition to a right to buy, as set out in the Bill, there should be a right of first refusal on disposal of public sector land and property;

Proposed amendment:

Clause 79, page 56, leave out from the beginning of line 25 to the end of line 30 and insert:

“(3) Condition B is that either—

(a) the interim moratorium period has ended without the local authority or the owner having received during that period, from any community interest group, a written request (however expressed) for the group to be treated as a potential bidder in relation to the land, or

(b) where the owner is a public body or third sector organisation any community interest group or groups which meet the requirements of subsection (3)(a) have been provided with the option of first refusal to purchase the asset, with regulations for this purpose specified by the relevant authority, or

c) the full moratorium period has ended.”

- v) The moratorium period during which sale of land and property is prevented should be a minimum of one year to allow bidders to commission surveys, prepare a business case, raise funding and complete legal work;

Proposed amendment:

Clause 79, page 57, line 7, after “shorter”, insert “than twelve months and must not be shorter than”

- vi) There should be provisions for emergency listing of land and property to avoid them being sold or damaged or otherwise prevented from being acquired by the community;
- vii) Provisions allowing sale of public sector land and property at below market value should be strengthened, allowing assets to be acquired at nil or reduced cost, subject to justification in a cost benefit analysis, which would include an assessment of social value;
- viii) The appeals process should be open to communities (i.e. prospective purchasers as well as owners);
- ix) Communities will face substantial difficulties in raising funds to finance purchases – the Big Society Bank, the Community Infrastructure Levy and the Big Lottery Fund should be available for the purchase of land of community value amongst eligible purposes.

Strengthening Democracy (Chapter 7)

- 4.18 We are deeply worried about the proposal in Section 27 to repeal the Duty to Promote Democracy in the Local Democracy, Economic Development and Construction Act 2009 (LDEDC). Unless people have the knowledge and skills to understand how the system works, the provisions of the Localism Bill will largely favour those who already have the time, money and knowledge to get involved. In 2008, only 31% of councillors were women, 3.4% from BME backgrounds (9.5% nationally) and the average age was 59 (up from 55 in 1997).
- 4.19 The Duty to Promote Democracy requires local authorities to give people information about democratic decision-making by public authorities but leaves local authorities to interpret this in locally relevant ways, “having regard” to the statutory guidance.
- 4.20 Many of us are actively involved in enabling local people to have a voice and understand how the system works. We would therefore welcome the opportunity to work with local government to develop cost-effective ways of involving the voluntary, community and education sectors to carry out this Duty. Abolishing the Duty on grounds of cost would send the wrong message.

5. Planning (Part 5 of the Bill)

- 5.1 It is not clear how much of the community infrastructure levy would be made available to communities affected by development. We believe that the Bill should incorporate provisions to safeguard against exacerbating the poverty gap between wealthy and poor areas. We also believe that the exclusions for how the funds can be applied (for example affordable housing and jobs, training and enterprise stimulation) should be removed.

6. Housing (Part 6 of the Bill)

- 6.1 We share the concerns expressed by Shelter about the impact of this part of the Bill on many of the most vulnerable people. In particular that the proposals represent a significant threat to the fundamental principle of a homelessness safety net.
- 6.2 We are concerned that the Bill will allow councils to discharge homeless households into insecure private rented accommodation rather than having a duty to find them a settled home. As a result some of the most vulnerable households will have no access to secure housing; particularly worrying for families with children of school age, as well as more vulnerable households, such as people with disabilities.
- 6.3 The loss of security and support offered by many social landlords risks creating cycles of homelessness for people as they struggle to settle in the much more insecure private rented sector. This will be exacerbated by the distinct lack of good quality housing at the bottom

end of the private rented market; as a result, many of the most vulnerable households will find themselves in totally unsuitable accommodation.

6.4 People who have experienced homelessness will not be offered a 'reasonable preference' for social housing, which will trap some of the most desperate households (most of whom are never likely to be able to become settled homeowners) in a cycle of insecure tenancies with no prospect of ever securing a settled home, especially when combined with the change to security of tenure.