



CORRUPTION IN UK LOCAL GOVERNMENT

THE MOUNTING RISKS

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EXECUTIVE SUMMARY

We have identified 16 areas in which we find a marked decline in the robustness of local government to resist corruption

How corrupt is local government in the UK?

In our 2011 assessment of Corruption in the UK,¹ we found a considerable degree of public concern about corruption in local government. This was reinforced by anecdotal evidence of corruption, particularly in relation to procurement, social housing and the planning system – an impression strengthened by the occasional high-profile case of local government corruption reported in the media.

Paradoxically, there seemed to be little evidence of widespread corruption taking place, other than these high-profile cases. There might be many explanations for this, such as under-reporting, a prevalence of low-level corruption that is not investigated and poor scrutiny mechanisms – or, indeed, that there is relatively little corruption in UK local government.

‘Corruption is the abuse of entrusted power for private gain’
[Transparency International]

A notable feature of researching this report has been the lack of agreement among the many experts we consulted about the scale and prevalence of corruption in UK local government. Some argued that the cases that have come to light represent the tip of the iceberg. Others felt equally strongly that the relatively small number of obvious corruption cases, and the fact that they had often been exposed by the existing oversight structures, was a sign that there is in fact no iceberg.

This report sets out to shed light on this paradox. Our intention is not to prove that corruption exists in local government, nor is it an investigative inquiry into cases of corruption. We deliberately avoid making a judgement on the levels of corruption in local government, as we do not feel the evidence exists to make such a judgement. Rather, we have undertaken an analysis of the institutional robustness and integrity of local government – looking at the safeguards against corruption and the rapid and substantial changes to this regime instituted by the current UK Government.

Here, a disturbing picture emerges, and one on which experts and interviewees were agreed. On the one hand, the conditions are present in which corruption is likely to thrive – low levels of transparency, poor external scrutiny, networks of cronyism, reluctance or lack of resource to investigate, outsourcing of public services, significant sums of money at play and perhaps a denial that corruption is an issue at all. On the other hand, the system of checks and balances that previously existed to limit corruption has been eroded or deliberately removed. These changes include the removal of independent public audit of local authorities, the withdrawal of a universal national code of conduct, the reduced capacity of the local press and a reduced potential scope to apply for freedom of information requests. We have identified 16 areas in which we find a marked decline in the robustness of local government to resist corruption.

1. Corruption in the UK, 4 vols, Transparency International UK, London, June 2011

In some areas, key institutional defences to ensure resilience against corruption risks have been removed through recent legislative reforms. In other areas, the decline in institutional robustness is a by-product of other trends such as the changing nature of the media and the trend towards outsourcing. Either way, the current and proposed arrangements represent a change that may be inadequate to protect the public and the public purse. Of course, many of these are recent changes, and we do not yet know what the result will be. However, a lesson Transparency International has learnt across the world is that it is better to take notice of emerging risks and to act early, because once corruption takes root it can be very hard to eradicate.

We note that many of the Government's recent changes apply only to England. However, we believe that much of our report's analysis and many of the recommendations are relevant to local government throughout the UK. They should also act as a warning signal to other parts of the UK to ensure that corruption risk is assessed before making any changes similar to those instituted in England.

We feel it is important to emphasise, as has been noted in a number of public consultations and inquiries, that the majority of local councillors and council officers observe high standards of conduct and very few misuse their positions to further their own ends. There is no substitute for a commitment to ethics and integrity in public service. However, when accountability is absent, public officials may exercise their power for private ends unchecked by scrutiny, complaint, or the threat of punishment. Clear opportunities exist for unethical officers and members to exploit public trust for private gain. In any sector, corruption tends to increase as oversight and enforcement are weakened.

Even under historic arrangements, unethical local politicians and officials have engaged in corruption resulting in cost to the public purse, damage to trust in local politics, and in direct harm to citizens and public services. For those who are actively seeking the opportunities for corruption, perhaps most notably organised criminals, the changes will provide a greater opportunity to exploit the many valuable corruption opportunities inherent in the local government.

Irrespective of how much corruption currently occurs, we believe that under the new and proposed arrangements for local government, corruption is likely to increase and there will be less reporting of that corruption.

How big is the problem – and where does it occur?

The scarcity of data makes it impossible to build a real picture of how much corruption there is in UK local government. This is in line with other institutions like the NHS and prison service, where data capture and record keeping on corruption are weak. In fact, with no central institution responsible for the collection and analysis corruption data in the UK, and the probable reduction in detection of local government corruption owing to changes affecting internal audit, external audit and investigations, the opaque picture is unlikely to become clearer. Unless there is a concerted effort to collect and categorise corruption-related information, we will be no more able to assess the scale of local government corruption in the future.

Our report is therefore unable to answer some important questions about corruption in UK local government, including the scale and prevalence, regional variations and whether corruption is worse in local government than in other sectors or institutions. At times, the case study evidence we use consists of unproven allegations. We use such examples to illustrate how corruption might occur, and not with any intent of supporting

Clear opportunities exist for unethical officers and members to exploit public trust for private gain

the allegations. It is a feature of researching corruption in any institution that the problem is concealed by the participants, and so hard evidence is scarce. An important recommendation of this report is that such information and evidence that is available should be collated at national level.

Notwithstanding the methodological difficulties encountered by our research team, it is clear that corruption in local government does exist. This should come as no surprise, as the sector employs millions of people, has a large budget, and is involved in millions of transactions each week. Indeed, local government is inherently exposed to a number of corruption risks. Public officials enjoy considerable discretionary powers and monopoly over public services such as health, education, housing, land, water and sewage. High levels of bureaucracy combined with closer interactions at the point of service delivery can provide opportunities for corruption, bribery and extortion. Local power structures, party affiliations and social networks, combined with a multiplicity of interaction points between the public and private sector, quite apart from the involvement of organised crime, provide a rich backdrop for corruption pressure.

We have identified twelve areas in which local government is particularly vulnerable to corruption. These are outlined in section 2. They relate to procedures for awarding public contracts and overseeing their implementation, as well as to new risks arising from the growing tendency to outsource service provision and the transfer of personnel between public and private roles that this entails. Planning decisions remain highly discretionary and are vulnerable to corruption in several areas. Councillors and officers have opportunities to collude in social housing fraud. And the new system of individual electoral registration will bring new opportunities for corruption.

In terms of significant examples, this report sets out historical cases of:

- Bribery in local government, such as in the case of a councillor in the West Country who was recorded making claims that he could obtain planning permission in return for payment;
- Collusion, such as the construction contracts bid-rigging scandal in local government after which the Office of Fair Trading (OFT) issued penalties to 103 companies worth a total of £129.5 million;
- Conflicts of interest, such as that of former leader of Lincolnshire County Council who sought to influence the route of a new bypass so as to divert it through his own land for financial benefit;
- Corruption-related fraud, such as the case of the head of energy procurement for the Local Authority South East Region, who defrauded over 120 local authorities at a personal gain of around £400,000;
- Electoral corruption, such as the in the 2004 Birmingham local elections, when over 1,500 votes cast were subsequently identified as fraudulent.

Of course, in many cases the impact cannot be measured in financial terms. Public safety might be compromised when an organised criminal gang corruptly obtain contracts for local services. A family badly in need of housing might be pushed down a waiting list because the cronies of a particular interest group have manipulated the list. A public amenity such as a local playground might be earmarked for building development when an influential member of the planning committee has a financial interest in the development.

[Local] Public officials enjoy considerable discretionary powers and monopoly over public services such as health, education, housing, land, water and sewage

How is the situation changing?

The Coalition Government has, since its formation in 2010, pursued a 'localism agenda'. The previous Government's central standards framework was regarded by the new administration as excessive, bureaucratic and a dampener on healthy local democracy. From August 2010, the Secretary of State for Communities & Local Government announced plans to disband the Audit Commission, transfer the work of the Audit Commission's in-house practice into the private sector, put in place a new local audit framework, abolish the Standard Board regime and hand responsibility for ethical standards back to local authorities. The resulting Localism Act received Royal Assent in 2012. The Local Audit and Accountability Bill will finalise the reform process and is currently before Parliament.

On the issue of localism specifically, we do not believe that there is a discernible link between localism and corruption outcomes in the UK. The decentralisation agenda is not necessarily in tension with counter-corruption efforts. However, it is a concern that oversight roles will be undermined, and that the removal of national-level codes and the ability to observe and react to the problem at national level increases corruption risk.

While the government may have good reasons for devolving powers to deliver services to the local level, relying on self-regulation of professional standards in local government is risky. There is an inconsistency in the fact that the government is promoting centralisation of anti-corruption standards in the private sector, through the Guidance to the Bribery Act, while promoting decentralisation in the public sector.

A decentralised model that relies on local institutions and individuals to act as a check on the power of elected members runs the risk that those individuals will back away from challenging those in local power for fear that their jobs, promotion prospects or status in a political party will be jeopardised. Those who are given such oversight functions must be empowered to fulfil this role in practice. They need resources to carry out their responsibilities and the support of a robust framework so that they are not deterred from challenging concentrated and informal power networks. It is not clear that the support and resources are in place to enable this decentralisation of standards to be effective.

In addition, there are practical difficulties to decentralising the regulation of standards. The regulation of conduct requires specialist skills, knowledge, and legitimacy, and in some local areas there may be a lack of well-qualified or experienced people willing to engage in monitoring standards. Smaller councils, in particular, may lack the member and officer capacity to ensure that standards are upheld.

A thorough and wide-ranging audit should be part of the system of checks and balances to counter corruption. We believe that the new system – in which local authorities themselves are solely responsible for awarding their audit contracts and where there is no back-stop support for auditors who are challenging the local authority – will narrow the scope and effectiveness of local audits, while increasing potential conflicts of interest. Other changes in the audit regime cause further concerns.

While the government may have good reasons for devolving powers to deliver services to the local level, relying on self-regulation of professional standards in local government is risky

Increasing corruption risk as a result of recent changes

We have identified 16 changes in the new legislation and policy which we believe increase the corruption risk in local government.

Audit arrangements

1. The independence of internal and external audit, and of monitoring officers, financial officers and chief executives, is weakened because there is no longer an Audit Commission to act as a backstop and provide support;
2. There will be no institution with wider powers of public audit to enable criminal investigations, which the Audit Commission used to have;
3. There will be no institution to collect nationwide data on fraud and corruption or analyse trends;
4. New external audit reports will not be adequately covered by the Freedom of Information Act;
5. Local authorities will have a reduced internal capacity to investigate fraud and corruption, due to austerity measures;
6. The responsibility for investigating and detecting fraud and corruption is being delegated to lower-level officers;
7. Audit committees are weakened and may disappear because there is no longer a statutory requirement for an audit committee to be a full committee in its own right;
8. External auditors appointed under the new arrangements may face incentives to avoid undertaking investigations or raising concerns about suspicions of fraud or corruption.

New regime for regulating the conduct of elected members:

9. There is no longer a universal code of conduct to provide clarity to members serving on different public authorities and committees;
10. There is no longer a requirement for members to declare gifts and hospitality and no legal requirement for either a standards committee or the monitoring officer to check any register of interests on a regular basis;
11. There is no longer a statutory requirement for a council to have a standards committee;
12. There is no longer any obligatory sanction for members that violate the local codes of conduct, with overreliance on party discipline as a sanction;
13. Since the abolition of Standards for England, there is no longer a national investigations body for misconduct;
14. Some local authorities may struggle to appoint the required independent persons of the appropriate calibre and legitimacy to perform the new role that has been created under the self-regulation system;
15. The system relies too heavily on the new offence of failing to declare a pecuniary interest – which is arguably unenforceable and misses the point that transparency is not sufficient to deter corruption;
16. The ability of chief executives, financial officers and monitoring officers to hold elected members to account would be compromised by proposals to abolish their statutory employment protection.

Who owns the problem?

With the abolition of the Audit Commission and Standards for England, the potential abolition of Audit Committees within local authorities, and the downgrading of officials who deal with corruption, it is unclear who owns the problem both nationally and locally.

Under the new arrangements in England, the police are the main body with the responsibility to investigate corruption allegations. Yet this is fraught with difficulties, such that it is unlikely to work.

Investigating and proving corruption is one of the hardest tasks in criminal prosecutions, which is why investigating authorities usually require specialist teams and units to deal with it, armed with the appropriate investigative powers. Under the former regime, the Audit Commission had special powers and responsibilities to investigate financial misconduct and illegality including the right to require and seize records even from third parties and demand explanations from officers, councillors and even contractors and those working alongside local authorities. Importantly, it could produce Public Interest Reports to highlight corruption risks and issues without the need for the level of evidence that would be required by the Crown Prosecution Service. Under the new arrangements, an external auditor risks being sued if it tries to fulfil a similar role, even if the auditor had the appetite to do it, which is less likely given their commercial priorities and the expected relative reduction in the scope of audits.

There is strong reason to doubt that the police will devote resources to investigating possible violations or that the Crown Prosecution Service will consider it worthwhile to prosecute, especially in smaller cases. Police forces may not be able to justify an investigation as a good use of limited resources when, for example, it might turn out that a member simply forgot to declare an interest. Further, police investigations will be much more difficult to initiate in the absence of evidence gathered from the external audit, and such evidence is less likely to be gathered as the scope of audits reduce. This is in addition to the police's reduced capacity to investigate fraud and corruption in general as a result of austerity programmes affecting a range of police services.

Overall, the new arrangements place a greater emphasis on the need for local authorities at senior level to take ownership of the issue of corruption, and for the police to have sufficient expertise and investigative capacity for crimes that they may not historically have investigated. At national level, there is an apparent vacuum of ownership that needs to be filled.

What are the conditions for success?

Transparency International's wider research in the public sector indicates that among the key determinants of effectiveness in countering corruption are:

- A clear tone from the top and supportive institutional environment;
- Ownership and clear assigning of responsibilities;
- Effective assessment of corruption risks;
- The independence of the units or authorities whose duty is to prevent or investigate corruption;
- A supportive legal environment;
- Visible and effective whistleblowing mechanisms;
- The institutional will to mount effective investigation and prosecution of corruption;
- Strong sanctions implemented against those who are caught – both legal and other;
- A commitment to transparency.

At national level, there is an apparent vacuum of ownership that needs to be filled

Some of these factors, such as ownership of the problem, need to exist both within individual councils and at national level.

RECOMMENDATIONS

Action now, following the recommendations below, will help to reverse the descent into a situation in which local government corruption is likely to increase, and perhaps increase substantially. The Government's changes, without apparent consideration of the consequences for corruption, are likely to have unintended consequences. The effect of the changes has been to create a situation in which corruption could thrive. Swift action is required to prevent this happening. We do not believe that these recommendations will be sufficient to address all of the weaknesses in the system, new and historic. We do believe that they are a good starting point.

Key recommendation

The Government needs to review the changes that are taking place in local government to ensure that they do not inadvertently create an enabling environment for corruption. This will require – at a minimum – a corruption risk assessment, strengthened whistleblowing systems, enhanced audit procedures, extension of the Nolan Principles and Freedom of Information obligations to private sector services contracted out by local authorities, re-introduction of a common ethical standard and a willingness to adjust or amend other recent changes if that should prove necessary.

The effect of the changes has been to create a situation in which corruption could thrive. Swift action is required to prevent this happening

1. A clear tone from the top and supportive institutional environment

Recommendation 1: Nolan Principles. Private companies, when operating services in the public interest, should be required to comply with the Nolan Principles.

Recommendation 2: Protection of anti-corruption officials. Legal employment protections should be maintained for key anti-corruption officials, including Chief Executives and Monitoring Officers, to prevent them being targeted by corrupt officials or elected members.

Recommendation 3: Audit Committees. It should be a statutory requirement for a local authority to have an audit committee as a dedicated full committee, with a specific remit to oversee corruption risk assessments and corruption investigations.

Recommendation 4: Creation of an auditors' forum on corruption. There should be a forum for private audit firms involved in local authority audit to share macro risks in the sector, identify trends, understand good and poor practice examples and, critically, draw attention to specific corruption issues – where evidence is below a Crown Prosecution standard – in a similar manner to Public Interest Reports under the previous system.

Recommendation 5: Research. Further research should be undertaken by the Government to give a clear picture of the prevalence and scale of corruption in UK local government.

2. Ownership and clear assigning of responsibilities

Recommendation 6: Corruption accountability. Each local authority should have a nominated individual responsible for counter-corruption who conducts a regular corruption risk assessment and liaises closely with law enforcement authorities.

Recommendation 7: Central oversight. Notwithstanding the localism agenda, it is critical that some element of central oversight is restored. At a minimum, this should involve data collection and consistent standards.

3. Effective assessment of corruption risks

Recommendation 8: National risk assessment. The Government should conduct a national-level assessment of corruption risk in local government, and take this into account when designing legislation, policies and procedures.

Recommendation 9: Local risk assessment. Each local authority should undertake a periodic corruption risk assessment in relation to its own functions and operations.

Recommendation 10: Reporting of procurement risks. There should be strict procedures requiring officers always to report (i) major price discrepancies among procurement bids and (ii) details of contract variations to the council's Audit Committee and senior management.

4. The independence of the units or authorities whose duty is to prevent or investigate corruption

Recommendation 11: Independence of auditors. Firms providing an audit function for local authorities should not be allowed to provide other commercial and consultancy services to the same local authority.

Recommendation 12: Internal audit teams. Internal investigations need to be adequately resourced and sufficiently independent. Internal audit teams are vulnerable to manipulation by the corrupt, and this vulnerability increases if they are under-resourced, unsupported by the leadership or have their terms of reference and freedom to investigate curtailed.

5. A supportive legal environment

Recommendation 13: Regulating the revolving door. The rules should be tightened for 'revolving door' employment in the private sector, notably when officials and elected members have had access to confidential public service information. Each local authority should be required to publish appropriate details of officials or elected members involved in the revolving door.

Recommendation 14: Consistency of ethical standards. A consistent and compulsory set of codes of conduct should be re-introduced to cover local authorities and other local services such as school boards and Fire & Rescue service boards, on which councillors often also sit.

6. Visible and effective whistleblowing mechanisms

Recommendation 15: Whistleblowing mechanisms. Whistleblowing has been more effective than audit, internal monitoring, or police investigations in revealing corruption in local government. Given the decline in other oversight mechanisms, confidential whistleblowing from local authority workers, as well as other reporting channels for citizens, elected officials and the private sector will play an even more important role. Suitable mechanisms should be established to provide an easy-to-use and confidential channel for reporting corruption suspicions or incidents.

7. The institutional will to mount effective investigation and prosecution of corruption

Recommendation 16: Police investigative prioritising and capacity. Guidance and resources should be provided to ensure that there is sufficient police investigative capacity to monitor and investigate corruption issues at a local government level, including as part of any organised crime strategy.

Recommendation 17: Creating a centre of expertise. The police forces in England & Wales should consider creating a joint Public Sector Counter Corruption Unit, similar to the unit recently created in Scotland.

Recommendation 18: Greater monitoring of elected officials' interests. Elected members' declared interests must be subject to monitoring and, where appropriate, investigation.

Recommendation 19: Enforcement of Section 106 criteria. Section 106 criteria, which provide developers an opportunity to develop land in exchange for commitments to develop community projects, should be routinely enforced and any failure to enforce should be published in local authority audits. This research indicates that developers may be corrupting local authority officers to overlook their obligation to meet Section 106 commitments.

8. Strong sanctions implemented against those who are caught – both legal and other

Recommendation 20: Sanctions for ethical breaches. Political parties should commit to a clear sanctions process for local politicians who have been identified as having breached ethical standards, recognising that even the appearance of impropriety can cause substantial damage to that party and the local authority in question.

9. A commitment to transparency

Recommendation 21: Access for auditors to private contractors. Auditors should be allowed to access documents from significant private contractors that a local authority has used.

Recommendation 22: Freedom of Information. Private companies, when operating services in the public interest, should be required to comply with the Freedom of Information Act with regards to those services. For example, and specifically, audit reports from local authorities should be covered under the Freedom of Information Act or published directly as public documents.

1. INTRODUCTION

Local government in the United Kingdom controls around one-quarter of public spending, contracts out an increasing amount of services to private providers, and is responsible for making decisions about a number of areas where the interests of private companies are often in tension with the wishes of the electorate. For all these reasons, local government is inherently exposed to a large number of corruption risks. Yet the accountability of local authorities is patchy. There is little scrutiny of their work by a largely emasculated local media, and the ballot box provides only feeble discipline given that turnout is low and in many areas one party dominates or seats go uncontested. Corruption scandals over the years have revealed that individuals are sometimes able to capture local politics, exercising informal power over the local party and their political group as well as council officers, so that they can shape policy to serve their own interests unchallenged by their peers.

Moreover, recent legislative reforms under the Localism Act 2011 – and likely to pass in the Local Audit and Accountability Bill currently in Parliament – have removed key institutional defences to ensure resilience against these corruption risks, replacing them with arrangements that are highly likely to be inadequate to protect the public interest and the public purse. Under the new standards and audit frameworks, corruption is likely to increase while policy makers, the public and police will have much less information about how and where corruption is occurring in local government.

Transparency International defines corruption as “the abuse of entrusted power for private gain”. In local government, the public trusts elected council members and appointed council officers to carry out their duties in a way that serves the public interest. Corruption occurs when they use their power to influence decisions or policies or allocate funds in ways that they are not supposed to do and in order to achieve a private benefit. Corruption need not involve the exchange of money through explicit bribes. Individuals might be influenced to breach their duties by gifts or the promise of favours, or by the prospect of being rewarded in future, perhaps by a job offer or preferential treatment.

Fraud is different to corruption. It is “the act of intentionally deceiving someone in order to gain an unfair or illegal advantage (financial, political or otherwise)”. Anyone can commit fraud regardless of whether they have been entrusted with power. However, when elected members and council officers collude in fraud, or are influenced to turn a blind eye to fraud, they act corruptly.

According to one widely used model, corruption is most likely to occur in conditions where public officials have the opportunity to exercise discretion in a decision-making process or are the sole person responsible for a particular decision (they have discretionary and monopoly power), and when they perceive that their misconduct will not be detected or punished (there is a lack of accountability)². When accountability is absent, public officials are able to exercise their power for private ends unchecked by scrutiny, complaint, or the threat of punishment. Transparency plays an important role in countering corruption, because when the public and the media are able to see how

Under the new standards and audit frameworks, corruption is likely to increase while policy makers, the public and police will have much less information about how and where corruption is occurring in local government

2. Klitgaard, Robert (1998) Controlling Corruption, University of California Press.

officers and councillors make decisions, with whom they interact, and how they spend public money, it is easier to identify corruption and, in turn, more likely that individuals will be deterred from engaging in it.

In this report, we identify **twelve areas where there is a risk that corruption will occur because individuals have excessive discretionary or monopoly power and sixteen areas where accountability structures have been gravely weakened** as a result of recent and ongoing reforms.

The inherent corruption risks relate to procedures for awarding public contracts and overseeing their implementation, as well as to new risks arising from the growing tendency to outsource service provision and the transfer of personnel between public and private roles that this entails. Planning decisions remain highly discretionary and are vulnerable to corruption in several areas. Councillors and officers have opportunities to collude in social housing fraud. And the new system of individual electoral registration will bring new opportunities for corruption.

It will be much harder to hold officers and councillors to account in future because the Government is abolishing the Audit Commission, and has replaced its broad responsibilities for public audit with a requirement for local authorities to contract out external audit to private providers. In addition, it has proposed removing statutory employment protection for key council officers in safeguard roles. The Government has also abolished the Standards Board regime, removed the statutory requirement for councils to have standards committees, and ended local authorities' power to suspend members as a sanction for poor behaviour.

While the Government may have good reasons for devolving powers to deliver services to the local level, **relying on self-regulation of professional standards in local government is risky**. In the local context, it is especially important that institutions and individuals with formal responsibilities to act as a check on the power of elected members are empowered to fulfil this role in practice. Individuals should not feel beholden to superiors or peers because they fear for their status in the local party, their jobs or their promotion prospects. They need resources to carry out their responsibilities and the support of a robust framework so that they are not deterred from challenging concentrated and informal power networks. In addition, there are practical difficulties to decentralising the regulation of standards. The regulation of conduct requires specialist skills, knowledge, and legitimacy, and in some local areas there is a dearth of well-qualified or experienced people willing to engage in monitoring standards. Smaller councils in particular may lack the member and officer capacity to ensure that standards are upheld.

The recent and proposed changes fundamentally erode the powers and independence of the bodies responsible for monitoring conduct. By doing so, they reduce our ability to deter, detect and punish misconduct. Without proper accountability, there is a risk that more members and officers in local government will exploit – and perhaps even seek out – opportunities to behave corruptly. There are also increased risks of organised and fraud focused criminals exploiting weaknesses in the system and actively seeking to induce corruption. The overall effect of the recent legislative reforms to local government oversight is likely to reduce the ability to prevent corruption at the local government in England.

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The Government has also argued that formal and central institutions can be replaced by informal and local forms of accountability – for example, ‘armchair auditors’. Yet there is no evidence that this will emerge. Given the decline of the local press and the patchy nature of civil society activity on local issues, it cannot be taken for granted. The public does scrutinise some of the work of local government, particularly making use of Freedom of Information requests, and this scrutiny almost certainly helps to deter corrupt activity. However, the public does not by and large have the interest or capacity to monitor the conduct of local government to the depth necessary to hinder or detect fraud and corruption. Moreover, even if the public detects suspicious conduct, it does not have the investigative capacity to probe whether standards or rules have really been violated or any institution to which it can turn to make a formal objection or allegation (which would previously have required a response, in the form of either an investigation or a reason why no further action was required).

It is too early to assess the impact of the new system. However, many experts interviewed for this project argued that local government will be more vulnerable to corruption under the new arrangements. The latest report from the Committee on Standards in Public Life considered the new arrangements for standards in local government, and concludes that,

“The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely.”³

This report is not based on investigations of corruption cases and does not attempt to measure the amount or cost of corruption in local government. Such tasks would require extensive resources, and corruption is by its nature difficult to research since the perpetrators have an interest in concealing it and often the power to do so as well. Our approach is rather to identify risk areas where corruption might easily occur and go undetected or unpunished. We do this by examining the robustness of institutional structures and analysing known cases studies of corruption, misconduct, allegations and scenarios informed by experience of real life events in local government, predominantly in England. This research is based on a review of relevant parliamentary debates, committee reports, government consultations, academic and international organisation research, and on 24 interviews conducted in person or by telephone with local government experts and stakeholders, including elected members, senior officers, auditors and academics.

3. Committee on Standards in Public Life (2013) Standards Matter.

Local government standards reform in the 2000s

Following a number of corruption scandals in the 1990s, the Committee on Standards in Public Life undertook an investigation into corruption in local government in 1997.⁴ Although the report uncovered isolated instances of corruption, it concluded that the majority of local councillors observed “high standards of conduct” and that very few had misused their positions to further their own ends. However, the Committee made a number of recommendations aimed at preventing local government corruption in the future. Many of these were taken up in the Local Government Act 2000, which introduced a framework for improving accountability in local government through a set of standards and procedures for checking the conduct of members.

The Act established:

- A statutory code of conduct covering elected and co-opted members who serve on a range of authorities.
- Independently chaired statutory standards committees for each principal local authority, with the power to suspend members for up to six months.
- An independent regulator of local authority standards, the Standards Board for England (later Standards for England), responsible for overseeing the code of conduct, maintaining an independent national overview of local investigations into allegations against members, and for investigating some allegations itself.
- A separate independent body, the Adjudication Panel for England, to which the most serious cases could be referred; this body was able to disqualify members for up to five years.

The Committee on Standards in Public Life took the view that these arrangements did much to improve the conduct of elected members of local councils.⁵

However, the system attracted considerable criticism. One problem was that it was vulnerable to being used for petty or politicised complaints, potentially wasting public money on unnecessary investigations. Subsequent reforms therefore gave local standards committees and monitoring officers responsibility for filtering complaints in an effort to focus the system’s resources more strategically.⁶ Although it is difficult to assess the impact of the reforms on conduct, research suggests that ethical issues were taken more seriously in local authorities in the years after the changes above were introduced⁷.

4. ‘Nolan Committee’s Third Report 1997’, http://public-standards.gov.uk/Library/OurWork/3rdInquiry_summary.pdf, [Accessed 22 February 2013]

5. Committee on Standards in Public Life, *Standards Matter: A review of best practice in promoting good behaviour in public life*, 14th Report Cm 8519, January 2013.

6. The role of ‘monitoring officer’ was established under the Local Government and Housing Act 1989. This officer is responsible for advising the council on the legality of decisions as well as providing guidance to councillors on the council’s constitution and its powers. The role was established with a number of statutory functions, and these were augmented in the Local Government Act 2000 as well as by subsequent regulations governing local investigations into members’ conduct.

7. Cowell 2011, BMG 2008, BMG 2007

TYPOLOGY OF LOCAL GOVERNMENT CORRUPTION

Type of corruption	Definition ⁸	Example of proven or alleged corruption of this type in UK local government
<p>Bribery</p>	<p>The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust.</p> <p>Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc.)</p>	<p>In March 2013, East Devon County councillor Graham Brown was suspended from the East Devon Conservative Party after claiming to undercover reporters posing as overseas investors that he could obtain planning permission in return for payment. Mr Brown, himself the owner of a planning consultancy business, was filmed telling newspaper reporters that, <i>"I don't come cheap. If I'm turning a greenfield into a housing estate and I'm earning the developer two or three millions, then I'm not doing it for peanuts – especially if I'm the difference between winning and losing it"</i>. Cllr Brown vehemently denied the claims and stated that his duties as a councillor were appropriately declared and "completely separate" from his business role.⁹</p>
<p>Collusion</p>	<p>A secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain. The parties involved are often referred to as 'cartels'.</p>	<p>In 2009, the Office of Fair Trading (OFT) imposed penalties on 103 companies worth a total of £129.5 million after an investigation into bid-rigging during the 2000-06 period. Competitors in the construction industry had colluded in bidding for building contracts, meaning that their customers – many of whom were local authorities – were at risk of being overcharged.</p> <p>Most of the offences involved 'cover pricing', where bidders arranged for competitors to put forward high bids intended to mislead clients about the level of competition. In eleven instances, the OFT found the lowest bidder faced no genuine competition at all as all other companies involved in the tender had put down cover bids. In six instances, money changed hands between the firms, with the successful bidder paying 'compensation' amounting to £60,000 to its unsuccessful rivals.</p> <p>The investigation was sparked in 2004 by a complaint from an NHS auditor in Nottingham. It uncovered evidence of cover pricing in more than 4,000 tenders involving more than 1,000 companies. Kier Group was fined £19.9 million, Balfour Beatty £5.2 million and Carillion £5.4 million (for contracts tendered by Mowlem, which it had acquired in 2006).</p>
<p>Conflict of interest</p>	<p>A situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, faces a conflict between the duties and demands of one or more positions that they hold and their private interests.</p>	<p>In 2004, former leader of Lincolnshire County Council Jim Speechley was imprisoned for 18 months for misconduct in public office, after seeking to influence the council decision on the route of a new bypass so as to divert it through his own land, increasing the land's market value. He failed to publicly declare his personal interest in the route until the police were brought in to investigate some 18 months later.</p>

8. Most definitions are taken from the Anti-Corruption Plain Language Guide, Transparency International, Berlin July 2009.

9. BBC News Devon, 'Councillor Graham Brown suspended over planning claims', <http://www.bbc.co.uk/news/uk-england-devon-21739780>.

Type of corruption	Definition	Example of proven or alleged corruption of this type in UK local government
Cronyism or nepotism	Form of favouritism whereby someone in public office exploits his or her power and authority to provide a job or favour to a family member (nepotism), friend or associate (cronyism), even though he or she may not be qualified or has not gone through the appropriate application procedures.	Reported allegations in 2013 surrounded a council leader in the North West of England that had replaced the planning committee Chairman, allegedly, because the committee had failed to approve a development that would have benefitted the council leader's long-term friend. The replacement Chairman had previously supported developments put forward by that same development company, led by that same individual with close links to the council leader. ¹⁰
Fraud	To cheat. The act of intentionally deceiving someone in order to gain an unfair or illegal advantage (financial, political or otherwise).	In May 2012, Ross Knowles, head of energy procurement for the Local Authority South East Region, an organisation known as LASER which buys gas and electricity for Kent County Council (KCC) and 120 other local authorities, was convicted of fraud. Knowles had asked British Gas to add an extra charge to their contract as a "comfort blanket", which would be reclaimed by KCC and LASER at the end of the year. However, instead of claiming a rebate, he forged invoices and diverted the money to his own bank account, for a personal gain of around £400,000.
Gifts & Hospitality	The provision of gifts, entertainment or other hospitality that could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide. ¹¹	In 2011, the Managing Director of Mayflex alleged that his firm had been treated unfairly when bidding for a Birmingham City Council library contract. Birmingham's hospitality register recorded the council Chief Executive, Stephen Hughes, having accepted extensive hospitality from the winning bidder, Capita-led Service Birmingham, including dinner and overnight accommodation at Billesly Manor hotel, tickets for a concert at Symphony Hall and a dinner at Cardiff city hall. However, Birmingham City Council dismissed the complaint that it broke procurement laws and, following an investigation, the Chief Executive (himself) concluded that the council had acted properly.
Lobbying	Any activity carried out by companies, associations, organisations and individuals to influence a government or institution's policies and decisions in favour of a specific cause or outcome. Even when allowed by law, these acts can become distortionary if influence is disproportionate or non-transparent.	In March 2013, the Telegraph newspaper secretly recorded Cllr Greg Stone, who was employed by planning lobbyist firm Indigo Public Affairs, claiming to know "the tricks of the trade" needed to help a planning application succeed for development projects. He also told undercover reporters that many fellow employees at the planning consultancy also worked as councillors. Cllr Stone denied any wrongdoing. ¹²

10. <http://www.chesterchronicle.co.uk/news/chester-cheshire-news/suspensions-lead-crisis-cheshire-west-6060431>

11. Transparency International (2009), Business Principles for Countering Bribery.

12. <http://www.telegraph.co.uk/news/politics/9921008/Councillor-explains-tricks-of-the-trade-for-planning-approval.html>

Type of corruption	Definition	Example of proven or alleged corruption of this type in UK local government
Revolving Door	An individual who moves back and forth between public office and private companies, exploiting information or connections gained in government service for the benefit of companies.	The late Sir Simon Milton, an influential figure in local government politics and former Chairman of the Local Government Association, founded the UK branch of a US lobbyist firm in 1995. In 2000, as leader of Westminster Council, he claimed to have left the firm in order to focus on his work at the council and to pursue personal business interests. However, he failed to declare the same lobbyist firm remained a listed client of his. He also claimed that the lobbyist firm had a policy of not undertaking any work relating to Westminster Council, however clients of that firm went on to win major development planning permissions from Westminster Council. ¹³
Abuse of authority or trading in influence	Abuse of knowledge of council in exchange for personal benefits.	In March 2013, Elmbridge Borough council planning committee member and paid planning consultant, Cllr David Archer told undercover reporters that he was the go-to man for securing planning approval. He explained that he could not argue in favour of a development at planning committee if he was advising the project, but indicated there might be other ways he could help, saying <i>“There’s more than one way to skin a cat”</i> . In April the council Audit and Standards Hearings Panel found Cllr Archer breached the Member Code of Conduct and he stood down from his post on the planning committee. ¹⁴
Vote rigging	Abuse of power to influence council decisions and policies with a view to affecting voting behaviour. While this may not involve tangible personal benefits for the individual exercising influence, the benefits are ‘private’ in that they accrue to the political party or group rather than serving the public interest.	In the 2004 Birmingham local elections, more than 1,500 votes cast were subsequently identified as fraudulent, relating to six seats. The scheme exploited weaknesses in postal ballots, with councillors handling unsealed postal ballots in a deserted warehouse “vote-rigging factory” in the city. ¹⁵

13. Private Eye Issue: 1173, pg.13 2006

14. <http://www.telegraph.co.uk/news/politics/9920986/Surrey-councillor-and-planning-consultant-They-call-me-Mr-Esher.html>

15. http://news.bbc.co.uk/1/hi/england/west_midlands/4406575.stm

2. INHERENT CORRUPTION RISKS

In 2014, total public spending is projected at £712.9 billion, of which 24% is spending by local government.¹⁶ With control of around one-quarter of total public spending, increasingly distributed through outsourced contracts to private providers, local government is inherently exposed to corruption risk. We identify twelve key risk areas:

1. public procurement at needs assessment stage;
2. public procurement at bid design stage;
3. public procurement at award stage;
4. public procurement at contract implementation stage;
5. control and accountability over outsourced services;
6. the revolving door of personnel between local authorities and private companies bidding to provide services;
7. planning discretion and influence regarding 'permissions to build' decisions;
8. planning discretion and influence regarding 'changes of use' decisions;
9. failure to enforce section 106 agreements;
10. the conflict of interest where councils make planning decisions about property they own;
11. collusion in housing fraud or deliberately ineffective monitoring of housing fraud; and
12. manipulation of electoral registration.

2.1 THE PUBLIC PROCUREMENT PROCESS

Public procurement, which often involves high-value and complex transactions with lucrative opportunities for corruption, is inevitably vulnerable to cronyism, and favouritism as well as outright bribery. It is difficult for anyone without considerable knowledge and expertise of the area to hold those involved accountable.¹⁷

Whistleblowers tend to play an important role in identifying possible instances of corruption in public procurement, since they are best placed to know enough about the details and complexity of contracts to identify suspicious behaviour.

Local authorities have always bought, or procured, goods and services from the private sector, but in recent years they have increasingly used private-sector providers to deliver services which they formerly provided themselves with their own employees, equipment and facilities. Sometimes the contractors are entirely separate companies, perhaps with a long history of providing such services in the private sector. On other occasions, the companies have been established because of the opportunity provided by local authority outsourcing and they might hire across a whole cohort of staff from the council to do the job. These structural changes have altered the powers and responsibilities of members and officers, with a potential impact on the opportunities to engage in corruption.

16. See www.ukpublicspending.co.uk

17. Ware, G., Moss, S., Campos, E. (2007) 'Corruption in Public Procurement: A Perennial Challenge' (2007) in Campos J.E, S. Pradhan (ed.) (2007) *The Many Faces of Corruption*, Washington DC, The international Bank of Reconstruction and Development / The World Bank www.igac.net/pdf/publications_adb_manyfacesofcorruption.

Public procurement, which often involves high-value and complex transactions with lucrative opportunities for corruption, is inevitably vulnerable to cronyism, and favouritism as well as outright bribery

According to some estimates, public sector outsourcing could be worth £101bn by 2014-15

Local government accounted for 63% of total public sector outsourcing in 2012, a 7% rise from 2008, with the total value of council contracts let to the private sector increasing by 140% to £12.9bn over the period 2008-12. Nearly half of waste management services in local government are currently outsourced, amounting to contracts worth £1.13bn, while more than 20% of council transactional finance, human resource and payroll services are outsourced.¹⁸ According to some estimates, public sector outsourcing could be worth £101bn by 2014-15.¹⁹

2.1.1 The impact of procurement corruption

When public officials corruptly subvert the correct process to award contracts not on the basis of merit or price but motivated by the promise of personal gain, the consequences may be costly and dangerous. As well as meaning that taxpayers get poor value for money, corruption in procurement can mean that infrastructure is built to poor safety standards and services are delivered unfairly or to an inferior quality. Meanwhile, firms offering better value services may be pushed out of the market if they repeatedly fail to win contracts.

2.1.2 The procurement cycle: needs-assessment, bid design and award phases

The procurement cycle has five main stages, each of which brings different types of corruption risk.²⁰ In the **needs-assessment phase**, the local authority assesses its need for goods or services, makes a decision on what to purchase and prepares a budget for the planned purchase. Corrupt individuals can manipulate the system by falsely inflating needs, or deliberately skewing the cost estimates or provision for errors. In the **bid-design phase**, the tender documents are prepared, specifying the requirements, including any conditions regarding quality or safety standards. Corruption can occur if requirements are drafted so as to favour or disadvantage particular suppliers, if unclear selection and award criteria are used, or when non-competitive procedures (such as exaggerated emergency) are invoked without proper justification.

Case study: Procurement fraud in the South East

In May 2012, Ross Knowles, head of energy procurement for the Local Authority South East Region, an organisation known as LASER which buys gas and electricity for Kent County Council (KCC) and 120 other local authorities, was convicted of fraud. Knowles had asked British Gas to add an extra charge of £0.04 per unit of energy to their contract as a “comfort blanket”, which would be reclaimed by KCC and LASER at the end of the year. This was said to be a ‘float’ balance to iron out any price fluctuations. Andrew Penhale, CPS Central Fraud Group said, “At the year-end reconciliation, instead of claiming a rebate which would have benefited all the public services that were part of the consortium, he forged invoices and diverted the monies to his own bank account.” Knowles received a personal gain of around £400,000.²¹

18. Localgov.co.uk, ‘Outsourcing boom in local government, says report’, 1 February 2013.

19. The Guardian, ‘This obsession with outsourcing public services has created a shadow state’.

<http://www.guardian.co.uk/commentisfree/2013/feb/07/public-sector-outsourcing-shadow-state> [Accessed 25 March 2013]

20. See Transparency International (2006) Handbook on Curbing Corruption in Public Procurement – Experiences from Indonesia, Malaysia and Pakistan; and Heggstad, K., M. Froystad and J. Isaksen (2010) The Basics of Integrity in Procurement, Version 3, Christian Michelsen Institute. <http://www.cmi.no/file/?971>

21. Kent Online, ‘Energy boss Ross Knowles jailed for seven years for fraud’, 3 May 2012. http://www.kentonline.co.uk/kentonline/home/2012/may/3/council_boss_ross_knowles_jail.aspx

During the **award** phase, a procurement notice is published, bidding documents are issued and proposals are requested. Bidders submit their proposals to the procurement officer, who subsequently evaluates all proposals and decides on the award of the contract. Corruption can include the drafting of evaluation criteria to favour – or emphasize the weaknesses of – a particular supplier, failure to give adequate public notice (benefiting insiders), collusive bidding, soliciting offers known to be inferior to a favoured supplier, accepting late proposals or rejecting legitimate proposals, or making biased decisions at the evaluation stage.

Bid-rigging proven in construction contracts

In 2009, the Office of Fair Trading (OFT) issued £129.5 million' worth of penalties to 103 companies after an investigation into bid-rigging during the 2000-06 period. Competitors in the construction industry had colluded in bidding for public-sector building contracts, meaning that their customers – many of whom were local authorities – were at risk of being overcharged.

Most of the offences involved 'cover pricing', where bidders arranged for competitors to put forward high bids intended to mislead clients about the level of competition. In eleven instances, the OFT found the lowest bidder faced no genuine competition at all as all other companies involved in the tender had put down cover bids. In six instances, money changed hands between the firms, with the successful bidder paying 'compensation' amounting to £60,000 to its unsuccessful rivals.

The investigation was sparked in 2004 by a complaint from an NHS auditor in Nottingham. It uncovered evidence of cover pricing in more than 4,000 tenders involving more than 1,000 companies, although the OFT was forced to focus on instances where the evidence was strongest. Kier Group was fined £19.9 million, Balfour Beatty £5.2 million and Carillion £5.4 million (for contracts tendered by Mowlem, which it acquired in 2006).

In order to reduce the risk of corruption and ensure the best value for money for the community, strict guidelines have been developed around these stages of the procurement procedure. These are intended to ensure that contracts are awarded on a truly competitive basis under a system that is transparent, efficient, fair and accountable. A competitive process is widely recognised to lessen integrity risks because it removes – or at least reduces – the opportunity to engage in favouritism towards friends and family. Competition also increases the transparency of the process, creating pressure to explain any apparent irregularities either in the tender process or in the subsequent delivery of the services, such as evidence of low-quality results or abnormally high prices.

The needs-assessment, bid design and award phases of procurement are relatively tightly regulated nowadays, not least because of the EU Directive on Public Procurement, which determines the types of procedure that must be used for contracts of a certain value, sets out the number of quotes that must be solicited, and ensures the

competitive nature of the process in other ways.²² These regulations apply to the whole public sector and create a strong framework for local government procurement (at least for contracts that are above the EU threshold for scrutiny; contracts below the threshold are much less subject to scrutiny and hence probably more vulnerable to corruption).

However, there are reasons for concern that internal controls in these areas are weakening. Although local authorities typically have professional in-house procurement teams that are experts in the pre-tender and tender process, and the procurement process is further monitored by the internal audit team which can check processes and, if necessary, call in particular tenders for closer scrutiny or recommend re-tendering, these teams are vulnerable to spending cuts. Moreover, changes to the audit regime mean that it will be more difficult for the public to gain access to information about services delivered by private providers in future.

2.1.3 The procurement cycle: contract implementation phase

Moreover, research suggests that the **contract implementation phase** of the procurement process – in which the winning bidder must provide the agreed goods and services according to the conditions and timing agreed in the contract and the local authority should monitor the fulfilment of the contract – is much less tightly controlled than the earlier phases. Corruption can arise if favoured sub-contractors are not held accountable, or the use of sub-standard goods is overlooked, or if a corrupt company and corrupt supervising official collude to agree on price increases or changes in specifications.

There is a key weakness in the governance of this area because the contract implementation phase is often managed by the local authority department which uses the procured goods or services, rather than by the central procurement function. This department may be unaware of the precise terms of the contract and may not notice if corners are cut. One procurement expert noted,

“There might be a disconnect between a procurement department that does this first part [pre-tender and tender] and the ‘client’, for example, the council’s IT dept. It is the IT department that is supposed to monitor the contract, and see how it is performing, but the disconnect reduces accountability. The supplier might be able to provide sweeteners to the IT department to re-negotiate the contract without going back through the procurement department.” [Interview 18]

Another procurement expert argued that relatively few resources are devoted to contract management:

“The central functions in local authorities often focus on contract letting and not contract management. Many of the same skills are involved, but less resources are devoted to contract management. And departments are often left to manage contracts – raising risks not just of corruption but also of inefficiency.” [Interview 22]

Contractors often make their profit by bidding low and then negotiating variations – including increases in the price or the use of cheaper inputs – across the life of the project:

“...the number of variations – that’s where people make money. The profit is often determined by the award of work under the framework contracts, particularly where the pricing basis is not clearly defined, so that you can end up with charging for extra work by hourly rates.” [Interview 22]

22. More information is available here: http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

Corruption can arise if favoured sub-contractors are not held accountable, or the use of sub-standard goods is overlooked, or if a corrupt company and corrupt supervising official collude to agree on price increases or changes in specifications

There is a risk that the local authority's procurement team could collude in that strategy. If contracts are written with a view to such re-negotiations of terms and rates, or with provisions for charging extra for unforeseen eventualities or errors, this may be corrupt.

One construction-sector executive noted,

"The sharp operator in terms of the outsourcing contractor company will have agreed a contract based on a lump sum, invariably based on a local authority which, at the time that the contract was let, was much larger. If you have a company which provides HR, IT and admin, where can it make its savings? If they are prepared to make the investment, they can usually make significant savings for themselves, that's where they are legitimately making some of their profit, but if the local authority has downsized over the years, then there is less to provide. So if it's a 20-year contract, every 5 years there is a review and renegotiation based around head count. But normally councils are not very good at negotiating soft-side deliverables."[Interview 1]

Local authorities are frequently involved in high-value, complex, long-term procurements, where monitoring is inherently difficult and likely to involve many discretionary judgements on the part of officers and members. High staff turnover and a lack of project management expertise also lead to weaknesses in personal responsibility and accountability for major projects. A lack of control over major projects can lead to cost overruns and delays, but can also mean that it is difficult to detect instances of corruption. Some authorities clearly struggle to manage such large-scale contracts, as this example from Wirral demonstrates (see box overleaf).

2.1.4 Does outsourcing reduce accountability?

When services are outsourced, local authorities retain a statutory obligation to ensure that all of the rules that would have applied to them are equally followed by the external providers. However, the extent to which that obligation is fulfilled varies. Overall, the route for making complaints may be much less clear to members of the public, and there are concerns that local government officers do not adequately monitor contract performance or respond to complaints. Councils sometimes seek to claim that decisions made by contractors on long-term contracts are beyond their control. Without the Audit Commission to exert pressure and with the decline of local investigative journalism, there is a risk that corruption in this area will become more common. The Institute for Government's 2012 report, *Commissioning for Success*, argues that decisions about when to outsource need to be made on a more robust basis, that monitoring and stewardship of outsourced services needs to be strengthened, and that accountability arrangements need to be clarified.²³

In theory, competition should exert discipline on companies to perform and provide for accountability, because competitors have an incentive to scrutinize the fairness of procurement processes and the performance of their competitors. However, the outsourcing market in the UK is dominated by five large firms. This has led some to argue that the companies are effectively an oligopoly, and are not subject to the stiff competitive pressure that would facilitate accountability.²⁴ Commercial confidentiality further inhibits scrutiny of their work. Information about services provided by local

23. Blatchford, Kate and Tom Gash, 'Commissioning for success: how to avoid the pitfalls of open public services', Institute for Government, 2012.

24. Social Enterprise UK, *The Shadow State*, 2012; available here: http://www.socialenterprise.org.uk/uploads/files/2012/12/the_shadow_state_3_dec1.pdf

High staff turnover and a lack of project management expertise also lead to weaknesses in personal responsibility and accountability for major projects

Wirral Council –Highways and Engineering Services contract

In June 2012, a Public Interest Report by the Audit Commission on Wirral Council's letting of a contract for the provision of highway and engineering services raised concerns about conflicts of interest and weak governance in the procurement process.

The successful contractor had quoted and confirmed rates for some elements of electrical work for street lighting and traffic signs that were only 2% of the average of the other contractors' estimates. The council's Contract Evaluation Team had queried the rates but subsequently accepted that they were genuine and did not report the issue to senior officers or elected members. After the award of the contract in October 2008, a dispute emerged with the contractor arguing that the council was responsible for making payments, over and above the rates tendered, directly to a sub-contractor. In October 2010, the council paid out an additional £640k to the sub-contractor – an amount which had not been taken into account in the original tender. Moreover, the council then agreed a contract variation to increase the rates to include the higher costs to the sub-contractor for the remainder of the contract, a further cost increase of £855k. Even with the additional £1.495m, the overall cost was below that of the next lowest bidder. However, the Audit Commission found that "the subsequent variation to the rates for electrical works casts doubt on the robustness of the tender evaluation process".

Although corruption was not proven, the Audit Commission found considerable evidence of conflicts of interest and governance failures:

- A meeting held in the pre-tender period between the council's director of technical services, another council officer and a representative of a contractor, in which the contract and sub-contract arrangements were discussed, was in contravention of council procedures.
- The director of technical services failed for some time to declare his relationship with the contractor's representative.
- The declaration of interest that was eventually made was incomplete and inconsistent with other evidence.
- The required approval for contract variations from the relevant council cabinet member or committee had not been obtained, and the interim director had ignored explicit advice from Internal Audit to report the largest variation to elected members.
- Internal Audit had rated the level of assurance for the contract as 3-star (good) despite identifying a number of high-priority risks and recommendations in key areas of the contract management and monitoring systems.
- The council's response to an anonymous whistleblower regarding a significant claim against the council by the contractor was inadequate.

government in-house teams is subject to Freedom of Information Act requests, but private-sector companies that provide outsourced services are not automatically covered by the Act. The public's ability to hold local government to account for outsourced services depends on what is covered by the contractual relationship, where the Freedom of Information Act does apply. This is not always sufficient to allow full scrutiny of service provision. The contract might, for example, narrowly define the information to be treated as held 'on behalf of the local authority', thus limiting the public's right of access to information.²⁵

Allegations of corruption in outsourcing: the case of SouthWest One

In September 2012, Iain Liddell-Grainger MP levelled accusations of corruption at SouthWest One, an outsourcing joint venture between Somerset County Council and IBM. SouthWest One was set up in 2007 to carry out back-office tasks for Somerset council, Taunton Deane Borough Council, and the Avon and Somerset police. But Liddell-Grainger claimed, in a parliamentary speech in which he was protected by parliamentary privilege, that the deal will lose the council £13.7m over five years.

SouthWest One took legal action against Somerset County council after the Council complained that it was not delivering promised savings. The contract dispute came to an end with an out-of-court settlement in July 2013 in which Somerset paid £5.9million to the company, instead of the £25 million plus costs bill that it would have faced if it had lost.

In his September 2012 speech, Liddell-Grainger accused the councillors and local government officers, who agreed the £500m deal with IBM in 2007, of corruption. He said Somerset officials had been "reckless" in signing the deal and its councillors had been "dim" and tired when the contract was signed at 2am.

It was that, or "The only other explanation is that palms were being greased," according to Liddell-Grainger.²⁶

2.1.5 Transparency risks

Transparency is key to increasing accountability in procurement. Indeed, some corruption might have been uncovered more quickly – or indeed deterred – if there was more transparency around public procurement. For example, the construction cartels benefited from the opaque environment surrounding procurement at the time. In an effort to improve transparency, the Localism Act requires local authorities to publish details of all spending activity over £500. There is a hope that this will make it easier

25. See comments by Lord Wills, made in the debate on the Local Audit and Accountability Bill, 24 June 2013, column 199; <http://www.publications.parliament.uk/pa/ld201314/dhansrd/text/130624-gc0001.htm#13062411000219>.

26. See the debate at <http://www.theyworkforyou.com/debates/?id=2012-09-18a.827.0&s=liddell-grainger+and+greased#g829.0> and 'Southwest One contract dispute cost council £5.9m', BBC News, 17 July 2013, <http://www.bbc.co.uk/news/uk-england-somerset-23339493>; and 'SouthWest One accusations of corruption aired again by local MP', Public Technology, 20 September 2012 <http://www.publictechnology.net/news/southwest-one-accusations-corruption-aired-again-local-mp/37174>.

for civil society to scrutinise public spending, potentially adding an informal avenue for detecting corruption.

However, greater transparency over public spending can be a mixed blessing. It also brings the risk of increased fraud by ‘armchair fraudsters’ or organised criminal groups. For example, the publication of supplier invoices led to an increase in fraudulent requests whereby offenders telephoned a local authority pretending to represent the supplier and asking the authority to change the details of the bank account into which payments were made. Fortunately, the National Anti-Fraud Network (NAFN), which acts as a hub for the collection and circulation of intelligence alerts on fraud against Local Authorities, was able to alert other authorities to this fraud relatively quickly. Such intelligence sharing is vital to countering fraud and organised crime, but it requires institutional support.

Overall, transparency remains an essential part of a robust system for holding local government to account, but the unintended risks that it raises should be taken into consideration and external fraud controls, as well as internal corruption controls, need to be robust.

2.2 REVOLVING DOOR RISKS

Local authorities increasingly outsource the provision of services that they would once have provided internally. Frequently, the new supplier of those services also hires local authority employees to carry out the job. This makes sense, in that the expertise about how to provide a service in a certain locality is maintained and there is greater continuity in service provision, which should benefit residents. One executive from a service-providing company praised the benefits:

“We have taken on management contracts and taken in-house the employees. It was a great source of really talented people. They brought great understanding of local government and they’ve been able to translate that into work that we’ve been doing for local government in different parts of the country.”[Interview 1]

However, it also creates a risk of corruption. If local authority employees abuse their access to insider information or their ability to shape policy or contracts whilst in office in order to create opportunities for themselves, their friends, or for private-sector companies for which they will later work, this is corrupt. In addition, it might have consequences in terms of services being provided at low quality or poor value for money.

The transfer of individuals from government to private-sector roles, sometimes known as the ‘revolving door’, has been associated with many apparent conflicts of interest at the national level.²⁷ Several distinct types of conflict of interest can arise:

1. **Abuse of office.** An official might use his or her power while in office to shape a policy or decision in favour of a certain company, with a view to ingratiating himself or herself with that company and thus opening up a path to future employment. The temptation might be exacerbated by the risk of redundancy, providing a greater incentive for officers to use their position to build a network with a view to future employment.

This type of conflict-of-interest offence is abuse of office – occurring while the official is still in public employment. The private benefit accrues to the official, who

27. Transparency International UK, *Cabs for Hire? Fixing the Revolving Door Between Government and Business*, 2010.

However, greater transparency over public spending can be a mixed blessing. It also brings the risk of increased fraud by ‘armchair fraudsters’ or organised criminal groups

gains employment, and also to the company, which secures some kind of privilege as a result of the official's altered behaviour, although companies are increasingly concerned about the risks to their reputation of hiring through the revolving door:

"We've been approached by individuals who are retiring from local government but don't want to stop working. They come to us and say they can help us, they have a lot of experience. We look at it very carefully and err on the side of caution if we are going to be working with that council." [Interview 1]

2. **Undue influence.** A former officer now employed by a private company might influence his or her former colleagues to make a decision in a way that favours the company. In this case, he or she (and the company) is exercising undue influence. Undue influence over the formation of policy or legislation in such a way as to benefit a certain company or interest group is known as 'state capture'.
3. **Profiteering.** An individual might profit from public office by drawing on information, knowledge or stature derived from his or her public role in order to profit financially. This profiteering could occur while an official is still in public office or after they have left it.
4. **Switching sides.** An individual might leave public office to take up employment with a private-sector organisation in a role that requires him or her to oppose the government's position on an issue, where he or she had previously represented the government. This is known as switching sides. It can be regarded as problematic because the individual may have had access to privileged information in government, which could now be used to frustrate the government's aim.

Research conducted for this report suggested that revolving-door type corruption is difficult to prove, but may not be uncommon and is certainly creating suspicions which, in themselves, undermine public confidence. One respondent explained:

"There are situations where local authority staff end up working for contractors and implicit agreements to scratch backs in return for contracts will arise." [Interview 4]

'Back-scratching' might involve the provision of bribes or favours, or the promise of future employment or kickbacks from contracts. The research for this report uncovered one case where a council officer had written the specification for a tender for a particular contract, resigned from the council, and then successfully bid for the contract as a private-sector supplier.

It is very difficult to identify or prove corruption in such cases. Often accountability depends on the local press asking questions about why a particular contractor has been brought in despite lacking relevant experience etc. However, damage to the public interest can occur even if no actual distortion of public policy takes place, but simply if the appearance of impropriety exists. This can gravely undermine trust in local government and make it more difficult for it to perform its role. It is critical that the issue is recognised, that requirements to declare conflicts of interest are observed, and that individuals are immediately removed from related work once a move to the private-sector is planned. Remaining staff could also be put on notice to take care in dealing with individuals who will transfer from being their in-house colleagues to being employees of a bidding firm, and could be required to log all contact with such individuals in the same way as meetings with outside firms are recorded.

Revolving-door type corruption is difficult to prove, but may not be uncommon and is certainly creating suspicions which, in themselves, undermine public confidence

Conflicts of interest and revolving door

An individual who founded the UK branch of a major US lobbyist firm in 1995, moved into local government and became leader of a London council in 2000. He claimed to have left the lobbyist firm in order to focus on his work at the council and to pursue personal business interests. However, he failed to declare that the same lobbyist firm remained a listed client of his. He also claimed that the lobbyist firm had a policy of not undertaking any work relating to that council, however clients of that firm went on to win major development planning permissions from the same council.²⁸

2.3 DISTORTED PLANNING DECISIONS

Local authorities' power to grant planning permission can make them vulnerable to corruption from developers who stand to make large profits from building retail outlets or business units. Alternatively, councillors themselves may seek to benefit directly from buying land and distorting associated planning decisions. Corruption risks are evident in several parts of the process.

2.3.1 Applications for planning permission

Planning officers are responsible for making recommendations to the planning committee (comprising elected members) as to whether to approve applications for planning permission. In doing so, they should ensure that an application is complete, that the plans comply with the law, and that the plans are in line with the area's planning or development strategy. Once a planning officer has made a judgement, he makes a recommendation to the planning committee, which makes the final decision. Corruption risks may occur in at least three areas in the processing of applications for planning permission.

First, planning officers have considerable discretion to make judgements and hence are potentially vulnerable to developers' attempts to exert pressure on them. Interviews with experts conducted for this report suggested that it is not uncommon for planning officers to be offered bribes, kickbacks and favours in return for facilitating an application's path. They may also be subject to extortion, with corrupt individuals threatening that if the officer does not accept a bribe, he or she will nevertheless report them for having done so. Research on organised crime suggests that such tactics are a common way of drawing individuals into criminal or corrupt activity, and may be particularly effective if an individual is already compromised, such as in a scenario where a planning officer had accepted hospitality from a developer or had failed to declare an interest.

Second, there is potential for corruption to occur if one or more of the elected members on the planning committee seeks to influence the committee's decision with a view to achieving a private gain (for himself or for a third party who has induced him to act in such a way). The recent case in East Devon, albeit the result of a sting operation, suggests that some councillors are willing to influence planning decisions so as to favour a particular developer – or indeed their own company – in return for monetary payment. The Bribery Act should allow such instances to be dealt with, although it is not always straightforward to find evidence of favours having been provided. Preventing such influence is preferable to seeking to punish it after the fact.

28. Private Eye Issue: 1173, pg.13 2006

Third, in all local authorities, there are some planning permission decisions that can be decided at the officer level and do not require committee approval, thus undergoing much weaker scrutiny. While in theory only minor decisions concerning low-value projects should be delegated in this way, there is no national requirement or standard about which types of decision are delegated, and many different degrees of delegation exist in different local authorities. Thus, situations might arise where one planning officer, perhaps at a low level in the hierarchy, is solely responsible for a decision regarding a high-value planning application (he has monopoly power), making him vulnerable to attempts to corruptly influence the outcome.

It is important that safeguards are put in place to provide additional layers of scrutiny if, for example, a planning committee overturns a planning officer's recommendation. However, corrupt influence is not always easy to spot. Demonstrating that someone has been influenced to make a judgement or cast a vote in a particular way is difficult, while proving that they have received money or some other benefit in return is even harder. Systems for monitoring and detecting corruption should be frequently reviewed and should not be overlooked under pressure to speed up the handling of applications.

Scenario: Councillors abuse power to profit from change of use

Councillors can collude on decisions in an effort to facilitate corrupt gains. Suppose that the owner of a rundown hotel requests permission to turn the building into a block of apartments. The planning committee rejects the application, but some of the councillors then approach the hotel owner and offer to purchase the hotel. He agrees. Subsequently, the new owners make another application for change of use which is accepted by the planning committee (on which they sit).

2.3.2 'Change of use' planning applications

Another corruption risk in the area of planning relates to applications for 'change of use'. All land under the control of local authorities is categorised as being suitable for certain types of usage, such as 'green belt' or 'residential', but local authorities have the authority to grant permission for a change of use. Such change-of-use permissions are particularly valuable in the United Kingdom where 'development gain' – the increase in the value of land as a result of change of use – is not taxable. Thus, developers may seek to corrupt planning officers or committee members to approve an application for change of use.

2.3.3 Section 106 commitments

Another corruption risk in planning results from the fact that local authorities are able to grant planning permission for the development of land in exchange for agreements – known as Section 106s – to provide assets in kind that are beneficial to the community, such as schools, social housing, libraries, playgrounds, roads or other transport infrastructure. Section 106 agreements are often welcomed by local authorities, which otherwise lack the capital to make such investments themselves. However, they are not always competently managed once the agreement has been struck, raising concerns about corruption relating to the monitoring of such deals – or its absence. In particular, local authorities sometimes fail to register the mortgages related to these agreements correctly under the Land Registration Act 2002; this constrains the public's ability to hold local authorities to account if a developer fails to fulfil its commitments. Some experts

Demonstrating that someone has been influenced to make a judgement or cast a vote in a particular way is difficult, while proving that they have received money or some other benefit in return is even harder

interviewed for this report expressed suspicions that councillors or officers might be receiving bribes in return for negotiating Section 106 agreements on terms that are favourable to developers at the expense of the public interest, or for not monitoring or following up on Section 106 promises.

Research conducted by Unlock Democracy has found that, while councils in England and Wales have entered into commitments related to Section 106s worth around £90 million, in around two-thirds of cases, they have failed to register the deals with the Land Registry.²⁹ This effectively nullifies the agreements. It is very difficult to hold local authorities to account in this area because data is held by around 350 different organisations and reporting arrangements are not standardised.

2.3.4 Councils as property owners

The final area where corruption risks arise in the area of planning concerns instances where local authorities are in the position of judging planning permission applications regarding their own assets. In such cases, there is a risk that they may act in their interests as a property owner rather than as a granting entity. In theory, the Secretary of State should call in such applications for review, and this certainly happens in the case of major big developments. However, smaller cases may slip through the net – for example, where a waste development site is developed on council land and the council is a joint venture owner of the company which holds the contract for managing the waste. It is critical that decisions in such cases are highly transparent and that the rationale behind them is clearly set out, making reference to the dual roles of the council.

2.4 COLLUSION IN HOUSING FRAUD

Fraud and corruption are often closely related in the area of social housing – for example, if a tenant sub-lets social housing, this is technically fraud. However, it might become corruption if the estates officer colludes with the tenant to ensure that the sub-letting remains concealed. According to 2013 National Fraud Authority estimates, tenancy fraud within the local authority-controlled social housing sector costs taxpayers around £845 million each year, and affects around 4% of all tenancies in the London area and around 2% outside London.³⁰

The role of local authorities in providing and managing social housing has declined steadily in the last 20-30 years as housing stock has been sold to private owners and housing associations. Local authorities now provide around 40% of social housing while another 10-15% is managed on their behalf. Local authorities have influence over who is considered for social housing within their area, and can use the rent collected on the homes they own for improvements.

Officers responsible for allocating housing play an important role in determining which applicants are eligible and how quickly they receive a council house. Corrupt individuals can abuse their position by accepting cash payments in return for speeding up the progress of a candidate's application, or allocating housing to an individual who is not eligible. There have been cases where senior officers have allocated properties to themselves – or family and friends – by increasing an individual's points on the scoring

29. Unlock Democracy – unpublished research notes

30. Tenancy fraud in social housing controlled by housing associations is estimated to cost taxpayers £919 million per year. Audit Commission, Protecting the Public Purse 2012.

Corrupt individuals can abuse their position by accepting cash payments in return for speeding up the progress of a candidate's application, or allocating housing to an individual who is not eligible

system by which houses are allocated. Interviews conducted for this research indicated that, in some cases, local authorities have known that people were adjusting the points and did not necessarily recognise this as fraud or corruption. In more elaborate frauds, the individuals submit Right to Buy applications shortly after being allocated a house, thereby enabling them to obtain the discount and buy a property cheaply. Such fraud might increase following the recent increases in Right to Buy discounts, which have led to a major increase in applications.

Councillors can also collude in schemes whereby tenants sub-let to other individuals or by overlooking cases of fraud in return for bribes or favours. In one case, former Tower Hamlets councillor Shelina Akhtar was found guilty of illegally sub-letting her housing association property for £1,000 a month whilst living in private accommodation of her own. Organised crime gangs have on occasion been associated with fraudulent sub-letting, often forcing tenants to move out before sub-letting to fellow criminals and using the properties for illegal activity.

Data matching and analytics are not always effective for detecting fraud and corruption in social housing, not least because records about the housing stock and tenancies are poor in many areas. Moreover, Housing Associations typically have even less capacity to detect fraud than local authorities, and few take part in data-matching exercises which can help detect fraud. One more common way of detecting fraud and corruption in social housing is through the housing officer or estates officer, accounting for more than one-half of detected frauds, according to one study.³¹ However, these individuals tend to have huge monopoly power and little accountability and hence may themselves be vulnerable to corruption. One key preventive measure is to rotate estates officers so that they take responsibility for different areas at different times, or ensure that they work in teams; this is a way of reducing the monopoly power of any one officer and hindering the establishment of corrupt relationships between individual officers and tenants.

This is another area where a lack of investigative capacity means that there is very little knowledge about how much fraud and corruption takes place. According to the Audit Commission, in 2011-12, more than half of non-London councils did not detect a single tenancy fraud. Targets for service delivery may even disincentivise the discovery of tenancy fraud. Councils are required to focus on three targets in housing: fast allocation; the collection of rent; and justified need. However, councils have tended to prioritise fast allocation and rent collection. This can mean that they have little incentive to investigate because fraudulent landlords are 'good tenants' in that they pay rent and do not demand much house maintenance, for fear of being caught if officials gain access to the premises. Research on investigations into tenancy fraud has found that local authorities are ten times more likely to detect fraud if they employ specialised staff trained in counter-fraud techniques.³² Social housing fraud might also be taken more seriously if it were made a criminal offence.

According to the Audit Commission, in 2011-12, more than half of non-London councils did not detect a single tenancy fraud

31. In around one-quarter of cases studied, the detection was the result of a public referral; data-matching accounted for less than 10%. See Bryce, A. 2012. 'The nature and extent of housing tenancy fraud', MSc Dissertation, University of Portsmouth.

32. Bryce, A. 2012. Op. cit.

Nottingham City Council – 2009 Public Interest Report

In January 2009, the Audit Commission published a PIR on Nottingham City Council's provision of accommodation to council tenants between 2003 and 2005. Prior to this report, the Audit Commission had released a report in 2006 which examined Nottingham City Homes, a management organisation established by Nottingham Council.³³ The 2006 report identified a number of issues relating to the Council's housing allocation process, describing it as "poorly managed", "neither demonstrably fair nor effectively controlled" and "[lacking] accountability". Following the 2006 report, the Audit Commission was made aware of further claims regarding misallocation of council housing in Nottingham. This led to the publication of the PIR in 2009.

The 2009 report focused on two specific areas which had been at the heart of recent allegations: the manner in which housing was provided to tenants and the practice of council employment agency First Call, in their attempts to hire Housing Department staff.³⁴ The report found that, between 2003 and 2005, Nottingham City Council had failed to allocate housing in line with its own rules. It exposed wide abuse of the housing system, whereby individuals related to or affiliated with a councillor had obtained council properties ahead of those in more urgent need.³⁵ In addition, this housing was often refurbished and sold on to tenants at heavily discounted prices, despite the fact that they were not eligible to reside in the properties.³⁶ The report revealed that over the two-year period, 10% of council properties in Nottingham had been allocated without regard for the waiting list points system. Even housing offers that were made in line with the points system were "applied incorrectly by some officers". With regards to the appointment of housing officers, the report also explained how managers often used 'special request' procedures to avoid the official recruitment process. This resulted in the allocation of 38 placements between 2003 and 2005.

The report concluded that wrongdoing by Nottingham Council was "a reflection of failings in the culture, systems and management of the Service". Housing Management was deemed to have failed in its "responsibility to operate proper systems of controls". Senior officers were accused of providing limited information to Councillors regarding allocation policies, which in turn prevented them from successfully carrying out their duties.

The report recommended that the council: "put in place adequate and proportionate audit arrangements to prevent allocations being made inappropriately in future, ensure that the procedures governing manual allocations were operated in a proper manner and that adequate records were maintained in support of allocations decisions, ensure that procedures prevent inappropriate restrictions on offers of housing being entered into the computerised allocations system and ensure that mechanisms were in place to require councillors to register any potential conflicts of interest when seeking to advocate on behalf of local constituents".

2.5 CORRUPTION RISKS IN ELECTORAL REGISTRATION

Electoral fraud is by and large very low in the United Kingdom, and much of it represents genuine mistakes, according to a March 2013 report from the Electoral Commission.³⁷ Moreover, the Government's plans to introduce a new system of individual electoral registration (IER) in 2014 are likely to further curb the risks of electoral fraud. However, IER also introduces a new corruption risk. This is because the new system will require far greater effort by registration officers to maintain the register.³⁸ Since central government funding for electoral registration not ring-fenced, local authorities – particularly those seeking to make spending cuts – might cut corners on electoral registration, either arbitrarily or in order to gain electoral advantage. Powerful politicians might seek to ensure that registration officers devote more resources to electoral districts where they are likely to benefit from high registration, while neglecting less politically supportive or strategically important areas. Whilst this would clearly be corruption, it would be very hard to prove that it was such.

33. Audit Commission, 'Report under Section 8 of the Audit Commission Act 1998, <http://archive.audit-commission.gov.uk/auditcommission/SiteCollectionDocuments/PublicInterestReports/pir09nottingham.pdf> [Accessed 19th February 2013], p.3.

34. Ibid, p.4.

35. This is Nottingham, 'Nottingham home scandal: Report given to police', <http://www.thisisnottingham.co.uk/City-council-tenants-let-housing-failure/story-12271956-detail/story.htm#axzz2LL0CxZCD>. [Accessed 19th February 2013]

36. Audit Commission, 'Report under Section 8 of the Audit Commission Act 1998, <http://archive.audit-commission.gov.uk/auditcommission/SiteCollectionDocuments/PublicInterestReports/pir09nottingham.pdf> [Accessed 19th February 2013], p.4.

37. <http://www.electoralcommission.org.uk/news-and-media/news-releases/electoral-commission-media-centre/news-releases-donations/perceptions-of-electoral-fraud-do-not-match-available-evidence,-study-shows>

38. Electoral registration is entirely the responsibility of local authorities, with no central record kept. The Electoral Commission monitors the accuracy and completeness of the electoral register, but it has no way of sanctioning councils which have a poor registration record.

3. THE EROSION OF THE AUDIT SAFEGUARD

The new arrangements for audit in England, together with the impact of spending cutbacks, raise the potential for the erosion of audit safeguards against corruption. We identify eight risk areas where accountability may be weakened:

1. Local authorities have reduced internal capacity to investigate fraud and corruption.
2. The responsibility for investigating and detecting fraud and corruption is being delegated to lower-level officers with lesser expertise.
3. Audit committees have been weakened and may disappear because there is no longer a statutory requirement for an audit committee to be a full committee in its own right.
4. External auditors appointed under the new arrangements may be less able to withstand pressure when undertaking investigations or raising concerns about suspicions of fraud or corruption.
5. The independence of internal and external audit, and of monitoring officers, financial officers and chief executives, is weakened because the Audit Commission no longer acts as a backstop or provides support.
6. Powers of public audit have been eroded.
7. The capacity to collect nationwide data on fraud and corruption, or analyse trends has been greatly weakened.
8. External audit is not adequately covered by Freedom of Information Act.

3.1 INTERNAL AUDIT AND COUNTER FRAUD DEPARTMENTS WEAKENED BY CUTS AND GOVERNANCE CHANGES

Our research suggests that **the internal audit function is being weakened because local authorities are responding to the need to reduce spending by reducing these back-office functions**. A recent national survey by the Local Authority Investigation Officers Group found a 15% reduction in the number of fraud managers, as well as an 8% reduction in senior investigators, a 15% reduction in regular investigators, and a 19% reduction in intelligence officers.³⁹ Cutting counter-fraud staff might be less politically controversial than cutting frontline services, but it is likely to be a false economy in the longer term, since internal auditors will be less able to save the council money by identifying fraud and inefficiency. Local government will have significantly less internal capacity to investigate fraud from 2014, mainly because of austerity measures.⁴⁰

A related problem is that **the responsibility for investigating and detecting fraud and corruption is being delegated to lower-level officers** who may have less awareness of corruption risks and be less willing to challenge peers and superiors.

39. Gibbons, Debbie. 'Research paper 2: The Reducing Counter-Fraud Capability in Local Government 2013', LAIOG, June 2013.

40. Another reason is the transfer of benefit fraud investigators from LA control to AFIs from April 2014. Councils previously used these benefit fraud investigators to tackle some non-benefit fraud issues, including corruption.

Good governance boosts the clout of internal audit

Internal audit reports to the senior management, the corporate management team and to elected members through the audit committee. Reporting to the management team can be problematic if suspected corruption refers to conduct by one of the members of that team, but any risks in this area can be mitigated as long as there are several recipients of the information – hence no one manager has monopoly power over information received from the internal audit team. Simon Maddocks, Head of Governance at Croydon council, explained *“inevitably you’re in a situation where you’re dealing with people who are above you in the hierarchy; there is potential for them to exert pressure. The saving grace is that there are several people and more than one avenue.”*

Nevertheless, in a situation where a chief executive exerts informal influence over other managers and there is a weak or ineffective audit committee, there is a risk that issues raised by internal audit will not be treated seriously. In such a situation, the internal auditor must put his own career on the line. Maddocks reflected, *“As Head of Audit you need to be robust and you need to be prepared to blow the whistle and if necessary walk away.”* Several audit professionals interviewed for this research had found themselves in such a position at least once in their career. However, with the resources for internal audit being cutback and in the absence of an institution such as the Audit Commission to set the ‘tone at the top’, individuals may feel less able to uphold such professional integrity.

3.2 AUDIT COMMITTEES CANNOT PROVIDE ADEQUATE SCRUTINY

We are also concerned that audit committees lack the will or power to fulfil the function of reducing corruption risks in many councils. It is not a statutory requirement for an audit committee to be a full committee in its own right. In some local authorities they are simply sub-committees of other committees. This can mean that risks picked up by audit slip through the net and are not adequately considered. Audit committees should be committees of the main council, reporting directly into full council to ensure maximum scrutiny and accountability of audit findings and recommendations.

3.3 THE APPOINTMENT OF EXTERNAL AUDITORS

However, our main concerns relate to the changes in the arrangements for external audit, which are the main focus of the Local Audit and Accountability Bill. We argue that both the current transitional arrangements and the new legislation will constrain external auditors from conducting comprehensive investigations, undermine their independence and create incentive structures that introduce new risks.

The critical role of the Audit Commission in detecting and investigating corruption in local authorities, by appointing and supporting independent external auditors, was eloquently described by Lord Scott of Foscote in a December 2001 speech following the Homes for Votes scandal:

“When detected and exposed it must be expected, or at least it must be hoped, that political corruption will receive its just deserts at the polls. Detection and exposure is, however, often difficult and, where it happens, is usually attributable to determined efforts by political opponents or by investigative journalists or by both in tandem. But, where local government is concerned, there is an additional very important bulwark guarding against misconduct. The Local Government Finance Act 1982 [...] required the annual accounts of a local authority to be audited by an independent auditor appointed by the Audit Commission [...] [These] statutory provisions [...] provided an institutional means whereby political corruption consisting of the use of municipal powers for party political advantage might be detected and cauterized by public exposure.”⁴¹

After the abolition of the Audit Commission, local authorities will be responsible for appointing their own external auditors. We are currently in a transitional period, with five-year contracts starting from 2012-13 having been let to private auditing firms. The contracts have been let at a much reduced rate, representing a 40% cut in the audit fees paid by local public bodies.⁴² However, it is not clear that the cuts will bring better value for money for the public. The Government claims that it will save £250 million over five years, but this should be weighed against how much money might be lost through increased fraud and corruption if the new system proves inadequate.⁴³ Moreover, there are concerns that the procurement process for the external auditors prioritised low prices over high quality.⁴⁴

There is also pressure on local government to reduce the amount that is spent through ‘variations’ in the negotiated contract of auditors. Yet such variations can be critical where there is a suspicion of misconduct, since the auditor needs to request additional resources to conduct an investigation. In the new climate, external auditors might consider that it is not worthwhile to investigate allegations of misconduct. One interviewee commented,

“As an external auditor, if you suspect that something is going amiss, normally you would negotiate a variation in the fee in order to be able to investigate it. But now your economic incentive is to turn a blind eye, because the [Audit] Commission decides on whether you are allowed the variation, and the Commission is under pressure to contain variations in fees. The incentive structures created under the new system don’t favour going the extra mile.”[Interview 17]

Together, the cuts and the focus on price competition suggest a worrying tendency towards less thorough audits, which might create a more fertile or forgiving environment for corruption in the future. Lord Beecham, who served as LGA chair from its inception in 1997 until 2004, has called the Bill “bad” and “unworthy”, warning that it will hand the large accountancy firms an “effective oligopoly” of local audit.⁴⁰ The risk is that by creating an oligopoly, companies will informally set prices or share out the work

41. Judgement on *Magill v. Porter* *Magill v. Weeks*: <http://www.publications.parliament.uk/pa/ld200102/ljudgmt/jd011213/magill-6.htm>

42. <http://www.audit-commission.gov.uk/aboutus/future/pages/timetable-for-outsourcing-process.aspx>

43. <http://www.communities.gov.uk/news/newsroom/2099373>

44. Although the procurement process purported to be 50% determined by price and 50% by quality, the scoring mechanism for quality was such that there was little incentive to obtain a score above adequate. The advantage of having an ‘excellent’ score over an ‘adequate’ score was only a six percentage point advantage on price. Hence, if a company that scored ‘adequate’ was 7% cheaper than a company that scored excellent, it won the contract.

The Government claims that it will save £250 million over five years, but this should be weighed against how much money might be lost through increased fraud and corruption if the new system proves inadequate

among themselves, reducing competition and its beneficial effects. Another former LGA chair, Baroness Eaton, has also criticised aspects of the Bill, arguing that “national procurement of external audit is the most efficient way of procuring audit, at the best possible cost to local councils.”⁴⁵

When local authorities are able to appoint their own external auditors, from 2017, the independence of auditors may be compromised further. They may feel even less able to act without fear or favour, moderating their behaviour with a view to having their contract renewed and ensuring that their bill is paid. Auditors may also be deterred from undertaking additional investigations for fear that the extra costs incurred will be disputed or go unpaid.⁴⁶

Audit professionals interviewed for this report saw these as serious concerns. One commented, *“If you come down tough on a client, and it creates ruffles, you’ve got an eye to what will happen when it goes to open competition.”* [Interview 22] Another said *“external auditors now have nominal independence but they will probably feel pressure to keep their clients happy so as to avoid losing this contract, future contracts, or non-audit contracts with the local authority.”* [Interview 17]

The Audit Commission also used to play an intangible role in offering institutional protection to external auditors, which empowered them to pursue investigations without fear of being sued or losing future contracts with local authorities. If auditors complied with the Audit Commission’s quality standards, they could carry out a piece of work confident that they would not get sued (at least nobody had been successfully sued) and confident that they were appointed by the Audit Commission, not the finance director of the local authority that they were investigating.

Several experts interviewed for this research took the view that, in the case of past corruption scandals, auditors had only been able to investigate because they were appointed by the Audit Commission, rather than the council itself, and benefited from the support provided by the Commission. For example, in the Homes for Votes case, the auditor John Magill was from a private-sector audit firm, but his independence was guaranteed by the fact that the Audit Commission appointed him and supported his investigations.⁴⁷ Under the new arrangements, no institution will provide such support.

An external auditor may be less able to resist attempts to sue the company for opening an investigation. In addition to this having a chilling effect on investigations, there is also a concern that the increased risk is feeding through into higher fees and increasing the price of audit, as auditors need to price in the cost of professional insurance.

The new arrangements may also generate inequalities in audit services, since auditors may start to charge more for providing services to rural local authorities that are distant from their head office. While the Local Government Association is seeking to engage in group-buying so as to avoid such problems, it once again raises questions as to whether the quality of audit will suffer and whether the apparent cost savings will pay off when the greater risks of fraud and corruption are taken into account.

An external auditor may be less able to resist attempts to sue the company for opening an investigation

45. ‘Former LGA leaders slam Audit Bill’, Public Finance, 23 May 2013

<http://www.publicfinance.co.uk/news/2013/05/former-lga-leaders-slam-audit-bill/>

46. The Local Audit Bill recently introduced in the House of Lords provides for auditors to recover reasonable costs in some circumstances, such as in considering whether to issue a public interest report.

47. The House of Lords judgement panel, when it gave the judgement on the Porter case, included was a ringing speech about the independent auditor being the bulwark.

3.4 LOW APPETITE AND CAPACITY FOR CRIMINAL INVESTIGATION OR COUNTER-FRAUD ACTIVITY

The Audit Commission used to set standards against which local authorities' counter fraud and corruption arrangements were assessed, helping to create national standards. However, because the Audit Commission is being abolished, many local councils no longer regard these criteria and benchmarks as important. Local authorities have no legal requirement to investigate or measure fraud, and many are seeking to lower costs by reducing their internal audit function.

The Audit Commission previously provided specialist professional skills in counter-fraud and corruption that were not available to many local authorities, working with them to identify risks and encouraging good practice. With the Commission abolished, many local authorities will lack access to such capacity. Under pressure to cutback spending, and with the message from the centre that investigating fraud is not a priority, some local authorities will retain very little investigative power. This could have serious implications for the future ability to detect and deter fraud, corruption and organised crime.

Moreover, research conducted by the Centre for Counter Fraud Studies at Portsmouth University suggests that there was a marked decline in the counter-fraud culture in local government over the period 2010-12:⁴⁸

- 65% of local authorities surveyed indicated that they had a clear programme of work to create an anti-fraud culture in 2012, compared to 74% in 2010.
- 81% of local authorities indicated that they had made it clear that their organisations had a 'zero tolerance' approach to fraud and corruption in 2012, down from 92% in 2010.

This may reflect the fact that the Audit Commission no longer undertakes its 'Use of Resources' tracking exercise, which monitored counter-fraud resources in local government and, by frequently asking local authorities to report on their counter-fraud structures, set the standard and the tone for what was expected.

3.5 LACK OF PUBLIC AUDIT

The replacement private regime for the former role of the Audit Commission in England is insufficient in a number of ways.⁴⁹ Private sector audit provides an audit opinion on the financial statement of the audited organisation. However, historically, public audit has gone further to examine regularity, propriety, probity and value for money as well. Neither internal audit teams nor external auditors have the range of powers that the Audit Commission had. Ian Carruthers, CIPFA's Director of Policy, has expressed significant concerns about the fact that the Bill does not discuss the wider scope of public audit:

48. 'The resilience to fraud of the local government sector', Jim Gee, Dr. Mark Button and Dr. Graham Brooks, Centre for Counter Fraud Studies at Portsmouth University, <http://www.port.ac.uk/departments/academic/icjs/centreforcounterfraudstudies/documents/filetodownload,168551,en.pdf>

49. Public audit still exists in Scotland, Wales and Northern Ireland.

Historically, public audit has gone further to examine regularity, propriety, probity and value for money as well

“Although the Bill does provide some clarity on the future shape of local public audit in England, one of its worrying features is that the wider scope of public audit is not strongly embedded, an omission which might actually serve to weaken rather than strengthen public accountability.”⁵⁰

The police often find corruption difficult to investigate because it is challenging or costly to find conclusive evidence. Under the former regime, Public Interest Reports were able to highlight corruption risks and issues, without the need for the detailed evidence required by the Crown Prosecution Service. This would often trigger a process of internal investigation, leading to public scrutiny and police action where appropriate. Auditors can still issue Public Interest Reports, however, following changes in external audit in the NHS the numbers of Public Interest Reports reduced dramatically. There is now a risk that an external auditor could be sued for undertaking a similar role, even if they had the appetite to do it – which they may not because of the commercial disincentives.

The Audit Commission also played a critical role in collecting and publishing data, allowing it to trace patterns and trends in corruption and fraud. Once it has been abolished, we will not have data to know whether councils are detecting more or less corruption and fraud, or engaging in better or weaker monitoring and prevention activities.⁵¹ Simon Maddocks, head of Governance at Croydon Council, commented,

“The great thing that the Audit Commission had was an overview. [...] They were able to identify trends, good practice, specific councils that were out of line. That was valuable. It helped identify shortcomings and to raise standards. That is gone at a stroke.”

It is often difficult to find evidence that confirms a particular instance of corruption, meaning that much corruption could go unprosecuted. However, the Audit Commission was able to use public interest reports to reveal misconduct and hence trigger a process of media scrutiny and internal investigations which might eventually lead to an officer being fired or a member being disgraced. In this way, it played a critical role in policing and deterring corrupt misconduct – a role which no institution will provide in the new framework.

Some public-service providing institutions have already been removed from public audit in England, for example, foundation schools and hospitals. The emergence of high-profile scandals in such organisations suggest that some individuals took advantage of the lack of public audit to engage in elaborate schemes of fraud and corruption (see box overleaf).

50. <http://www.cipfa.org/About-CIPFA/Press-Office/latest-press-releases/CIPFA-responds-to-Draft-Local-Audit-and-Accountability-Bill>

51. The government is making some efforts to collate anti-fraud intelligence, but the new arrangements are much less substantial than under the previous regime. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62522/HMG-Fraud-and-Error-Report-Feb-2011-v35.pdf

Governance Weaknesses in Schools

In 2002, a whistleblower made allegations about governance irregularities including nepotism at a high school in Manchester. Under the audit regime at the time, with a district auditor appointed by the Audit Commission, this led to the publication of a Public Interest Report in October 2005. This found that the school had suffered a significant “breakdown in appropriate standards of governance and accountability”. The district auditor was critical of, among other things, “serious errors of judgement made by the head teacher on staffing matters, particularly relating to the role and remuneration of her sister” and “payments to staff on termination of employment which are contrary to law”, as well as “inappropriate use of school funds”.

In 2003, Colleen McCabe, headteacher of a London school that had been removed from Local Education Authority control, was convicted of fraud and deception after using school funds for lavish personal expenditure.⁵² Without Local Education Authority control, the school had been able to appoint its own auditors, as is the case for local authorities under new and proposed arrangements. The Daily Telegraph reported, “police criticised the independent accountants who audited the school for six years and failed to notice any irregularities. When the school returned to local authority control, the fraud was noticed immediately.”⁵³

The cases reveal the importance of whistleblowers in revealing inappropriate practices, as well as the need for external auditors to be sufficiently independent, motivated and resourced to investigate any allegations of misconduct.

3.6 LACK OF TRANSPARENCY OF AUDIT

A further problem with the new system is that **the audit process will be much less transparent**. Previously, the work of the Audit Commission was covered by the Freedom of Information Act and even some information held by external auditors was regarded as being held by the Commission in certain circumstances – for example, when it was investigating a complaint against a specified auditor, conducting quality control of their work, or when it had required an auditor to provide information for the discharge of wider Audit Commission functions, such as making judgments on local authorities’ use of resources. This information was also subject to the Freedom of Information Act, meaning that it was possible for the public to scrutinise the work of external auditors where there were suspicions of misconduct.

However, no public authority has inherited those responsibilities from the Audit Commission, and hence under the new framework, information held by external auditors about the activities of local authorities will no longer be automatically covered by the Freedom of Information Act, but rather the details of what is covered by the FoI Act will

52. <http://www.lgcplus.com/significant-breakdown-in-appropriate-standards-of-governance-and-accountability-at-school/521434.article>

53. <http://www.telegraph.co.uk/news/uknews/1440317/Five-years-for-headmistress-who-stole-500000-from-school.html>

54. <http://www.theyworkforyou.com/lords/?id=2013-07-15a.549.2&s=corruption#g577.0>

depend on the terms of contracts. Citizens retain a right to gain access to other relevant information through the courts, but this represents an unnecessary cost and ultimately a barrier to public accountability.

In the Lords debates on the Local Audit and Accountability Bill, the Government has argued that it would be too costly to require Freedom of Information Act compliance from external auditors, and that these costs would be passed on to the taxpayer. However, Lord Wills has estimated that Fol compliance would cost less than 1% of revenue for accountancy firms, whilst potentially bringing major gains to the public interest in terms of reduced fraud and corruption.⁵⁴ Given the dismantling of public audit in England, it would be unacceptable if steps were not taken to extend full public accountability over the private audit of local government functions and service provision.

4. WEAKENED OVERSIGHT OF ELECTED MEMBERS

Given the erosion of the audit regime, rules and tools to regulate the conduct of elected members are increasingly important. Such rules should establish how members can use expenses or allowances, how to respond if offered gifts or hospitality, as well as requiring them to register interests, disclose potential conflicts of interest and, where necessary, recuse themselves from debates or decisions where conflicts arise. And to be meaningful, the rules should be enforced. They should be supported by a way of *monitoring* members' compliance, *investigating* complaints or allegations of misconduct, and imposing *penalties* on those who violate the rules. The institutions responsible for this monitoring and enforcement need significant powers, independence and determination to challenge entrenched local power networks that often seek to evade scrutiny.

Such institutions were, by and large, established in 2000 and, whilst not always working perfectly, were valued by those working in local government (see box overleaf). However, since the passage of the Localism Act, the standards framework for local government in England has been weakened considerably. We identify eight areas where the new system is deficient:

1. There is no longer a universal national code of conduct, although authorities are required to have a code based on the Nolan principles. This potentially allows local authorities to relax the rules for elected members, creates confusion about which rules apply, and sends a signal that the code is less important.
2. There is no longer a specific requirement for members to declare gifts and hospitality, and no legal requirement for either a standards committee or the monitoring officer to check any register on a regular basis. Such tools are an important deterrent to corruption and a significant way for the public to monitor potential conflicts of interest.
3. There is no longer a statutory requirement for a council to have a standards committee.
4. There is no longer any sanction for members that violate their local authority's code. Again, this is harmful partly because of the signal that it sends that standards are not important. Reliance on party discipline to punish misconduct is haphazard.
5. Without Standards for England, there is no national standard-setter, or national external body that can investigate allegations of misconduct. This important supervisory role is delegated to the local authorities themselves, placing huge trust in their ability to self-regulate.
6. Some local authorities may struggle to appoint independent persons of the appropriate calibre and legitimacy to perform the new role that has been created under the self-regulation system.
7. The system relies too heavily on the new offence of failure to declare pecuniary interests, despite serious concerns that the offence is unenforceable and misses the point that transparency does not necessarily deter corruption.
8. The ability of chief executives, financial officers and monitoring officers to challenge elected members would be compromised by proposals to abolish their statutory employment protection and to remove the requirement for a Designated Independent Person to investigate in the event of allegations being made about their conduct.

The institutions responsible for this monitoring and enforcement need significant powers, independence and determination to challenge entrenched local power networks that often seek to evade scrutiny

In England, the tools for regulating the conduct of elected members are assessed to be insufficient to ensure accountability and deter corruption. Arrangements for regulating the conduct of elected members are different in Scotland, Wales and Northern Ireland, and are unaffected by the Localism Act.

4.1 THE ACCUMULATION OF INFORMAL POWER

Most councillors act with great integrity and generously invest their time to serve the public interest, but some of the worst cases of corruption in councils have been perpetrated by elected members. Council leaders, in particular, can in certain conditions accumulate substantial formal and informal powers, such that officers and fellow councillors become reluctant to challenge them. The Committee on Standards in Public Life has commented that,

“Past history suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit for tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.”⁵⁵

Council leaders have considerable patronage power, which can facilitate corruption. They are able to appoint the members of their cabinet and award chairmanships – all roles which bring financial gain for the recipients in the form of ‘special responsibility allowances’. This may lead to situations where councillors are unwilling to challenge a leader because they fear losing one of these roles, or where they feel obliged to provide informal favours, such as offering information or ‘turning a blind eye’ to misconduct.

Old standards framework built public confidence, deterred misconduct, and empowered officers...

Recent research has found that local government professionals valued the codes and institutions set up under the Local Government Act 2000 for several reasons, for example, as ways of building public trust:

“The code of conduct assures the public, the taxpayer and most importantly the voter that their councillor is behaving in the way they would hope that they behave”

“There is value in having a process for investigating and adjudicating on complaints”

“The public wants to know there’s somebody there, minding the shop”

They also saw them as deterrents to misconduct:

“There needs to be a controlling influence. There has to be something in place – when the wheels do come off the media have a field day”

55. CSPL, 2013, Fourteenth Report: Standards Matter.

56. One prosecution was initiated against a council officer, but the case collapsed when witnesses spoke to one another.

57. <http://www.bbc.co.uk/news/uk-wales-politics-12768030>

58. <http://www.bbc.co.uk/news/uk-wales-north-west-wales-19718873>; and <http://www.dailypost.co.uk/news/north-wales-news/anglesey-council-future-lie-local-2649365>

Council leaders have considerable patronage power, which can facilitate corruption

Anglesey council: Eradicating endemic corruption

Misconduct at Anglesey council in the late 1990s and throughout the 2000s demonstrates how formal and informal power can be wielded in a local community. Although none of the councillors were members of established political parties, there was an elaborate informal system of patronage in operation. Almost one-half of the councillors were in receipt of special responsibility allowances, which increase the pay of a councillor by around £10,000 per annum. Control of the special responsibility allowances translated into control over the council, in a classic conflict of interest problem in politics known as the 'payroll vote'.

However, the informal power network also provided a basis for more elaborate scams. Many of the councillors were alleged to have been collectively abusing the planning system. Examples of allegations included deliberately rejecting planning applications with the intention to buy the (accordingly low value) property and then securing planning permission to develop the plot. Similarly, councillors that wanted to build a house in the green belt were accused of typically granting permission, while most applications from the public were rejected. Such malpractice appears to have persisted in a close-knit community where many individuals might have feared that drawing attention to misconduct would risk their own livelihoods or status. Moreover, early reports into allegations, conducted by a QC and by the Welsh Audit office, refrained from naming and shaming individuals, referring only obliquely to the behaviour of "senior councillors".

Despite these allegations, the police did not find evidence of misconduct and no prosecutions resulted.⁵⁶ It is difficult to prove that individuals have been influenced to vote in a particular way, particularly if it is not possible to find evidence of money changing hands. Most of the councillors were independents and hence not subject to party discipline; they also frequently changed groups, making it even harder to hold them to account while many held seats that were uncontested – for example, in the 2008 local elections, seven of the 40 councillors were elected unopposed.

Pressure was eventually brought to bear on Anglesey by the Standards Board and the Audit Commission and in 2009, a temporary managing director and a recovery board were appointed to oversee the authority. But it took a huge amount of public criticism to end the practices. Without these institutions, it is not clear that such malpractices will be identified and curbed in the future.

Moreover, it took a sustained effort over time to turn the council around. Following a highly critical report from the Welsh Audit Office, in March 2011 the Welsh Assembly Government (WAG) stepped in to remove the powers of elected councillors and appointed commissioners to replace them for a temporary period.⁵⁷ Their powers were returned to them gradually over a period from September 2012 until the May 2013 elections.⁵⁸

This was the first time that executive power has been transferred away from elected members in the United Kingdom. It is not clear that such an intervention could be made in England in the future without the benefit of the Audit Commission to provide an independent but authoritative account of misconduct or bring pressure to bear. Moreover, the case demonstrates that, even under the old standards framework, it can be extremely difficult to investigate and prosecute misconduct by elected members.

Moreover, it was felt that standards frameworks empower officers to hold members to account:

*“The situation before the [previous standards] framework as an officer was that you either colluded with what was going on or you left. Those were the two options. If you sought to bang heads together you were thrown out, to put it crudely”.*⁵⁹

Homes for votes

Perhaps the most heinous example of corruption orchestrated by an elected member in recent history is the Westminster Homes for Votes scandal. While dated, the incident is illustrative about the risks of abuse of power and was not finally resolved until the 2001 Law Lords case concluded.

In 1987, Westminster Council, led by Shirley Porter, the Conservative leader of the council, devised a policy of manipulating the sale of council houses in marginal wards in an effort to improve the Conservative Party’s chances in the next local elections.⁶⁰ The designated properties were sold at heavily discounted prices to tenants in areas perceived to be favourable to the Conservatives.

In 1989, at the request of Labour councillors, Porter’s housing policy was referred to District Auditor John Magill to verify its legality. The extent of corruption was finally exposed by Magill in 1996 after thorough investigations.⁶¹ Magill accused Porter and five others on Westminster City Council of “wilful misconduct” and “disgraceful and improper gerrymandering”, estimating the cost to Westminster Council at more than £30 million. At the time, Porter and Weeks could be held individually responsible for their misconduct and sanctioned with the ‘surcharge’, through which the local authority could reclaim its losses.

In 1997, three judges ruled that Magill was correct in his assertion that Porter and her deputy, David Weeks, were liable for the surcharge, which was decreased to £27 million. However, in 1999, the Appeal Court overturned this decision, clearing Porter and Weeks of wilful misconduct and overturning the surcharge. This led to Magill taking the case to the Law Lords in 2001, where Porter’s £27 million surcharge was reinstated. After much negotiation, Porter eventually agreed to repay £12.3 million.

4.2 REMOVAL OF THE NATIONAL CODE OF CONDUCT

Under the Localism Act, local authorities are still required to adopt a code of conduct for elected members, but there is no longer a standardised code which applies to all local authorities. Local authorities may draft their own codes, as long as they accord with the Nolan principles and a short set of criteria detailed in the Localism Act (Section 7,

59. ‘Comparing standards frameworks’, Teesside University Business School, SBE 088, January 2010; p. 32.

60. The Independent, ‘Dumping the poor’, <http://www.independent.co.uk/news/uk/dumping-the-poor-nick-cohen-unravels-the-homesforvotes-scandal-engulfing-dame-shirley-porter-and-reveals-that-her-successors-on-westminster-council-are-still-1407226.html>. [Accessed 21 February 2013]

61. BBC, ‘Q&A: Dame Shirley’s downfall’, http://news.bbc.co.uk/1/hi/programmes/bbc_parliament/3656465.stm. [Accessed 22 February 2013]

paragraph 28). The criteria include the need for the authority to have provisions in place to investigate allegations and to have rules on declarations of pecuniary interests, where failure to declare carries a potential criminal sanction.

Confusion over multiple Codes of Conduct

Many councils have chosen to re-write their codes as a result of the changes in the Localism Act. The loss of a universal code that applies nationwide threatens to create a great deal of confusion over which rules apply and to whom. Take the area of Leicestershire. The County Council has re-written its code, partly to accommodate the changes in the Localism Act and partly to reflect a recent update of the Nolan principles as a consequence of the work of the Committee on Standards in Public Life. They have maintained a number of features of the old Code, including the definition of pecuniary interests (although authorities are able to adopt a new definition if they wish).

However, many of the other local authorities in Leicestershire have re-written their codes in different ways. Authorities with different political complexions have, for example, varied in their willingness to embrace the localism agenda by slimming down their Codes to a very brief document.⁶² This variation in Codes becomes problematic because so many members have dual mandates. Almost three-quarters of the County's members serve on both county and district councils. Some also serve on the Fire & Rescue service, a separate authority, and on parishes. Thus, one individual might face as many as four different sets of rules pertaining to his or her different roles.

The kinds of dilemmas that might face a dual-hatted member are not insignificant, for example, if a member was dealing with a matter where a son/daughter/friend/business partner has a financial interest, the definition of pecuniary interest might differ among different codes, with correspondingly varied implications for how he or she should act. The lack of consistency over the rules creates a greater risk of confusion and arguably reduces the impact of codes in terms of preventing misconduct.

4.3 GIFTS AND HOSPITALITY

Under the Localism Act, there is no longer a requirement for members to declare gifts and hospitality and no legal requirement for either a standards committee or the monitoring officer to check any register on a regular basis. Councils could thus decide to cease requiring gifts and hospitality to be registered. Although there is a new offence of failure to declare an interest, it is not specified that a gift or hospitality might represent such an interest; it is up to local authorities to define what constitutes an interest. Without transparency about gifts and hospitality, there can be no serious scrutiny of an important channel through which individuals or interest groups might seek to corruptly influence members.

62. Leicestershire County Council is taking the lead with another eight authorities in trying to arrive at a common code. Yet even if this succeeds, there will be at least three codes in operation in the area.

4.4 REDUCED MONITORING, ENFORCEMENT AND SANCTIONS

The Localism Act has also removed supporting institutions which made it possible to monitor and enforce compliance with codes of conduct.

First, there is no longer a statutory requirement for a council to have a standards committee. Whereas allegations of misconduct by a member would, under the old system, have been referred to Standards for England to conduct its own investigation, it is now the responsibility of the council to constitute a member conduct panel, for which normal committee rules of political balance apply. Members of the majority party may be advantaged in this new system by the fact that the majority of members on any panel investigating their conduct will be their political allies. One monitoring officer commented that, “this instantly causes party politics to be played.”[Interview 20]

Second, there is no longer any sanction for members that violate the non-criminal parts of the code. They cannot, as was previously the case, be suspended from office for violating the rules set out in the code. The only formal sanction for violating the code is now censure, which is far less likely to deter misconduct. The absence of sanctions sends a signal that the code need not be taken seriously.

In cases where allegations of misconduct arise repeatedly and are extensively covered in the press, political parties sometimes threaten to impose sanctions through de-selection or a vote of no confidence. Even the threat of such actions can prompt an individual to resign (see box below). However, party discipline is unreliable for several reasons, for example:

- Parties may not wish to draw attention to their own members’ misconduct, since this could damage the party’s reputation;
- Different parties may have different expectations of their members;
- Not all councillors are members of political parties; and
- Parties might abuse the power to de-select and seek to remove a member for political reasons. Party discipline is not a substitute for formal sanctions imposed as consequence of a formal investigation.

The absence of sanctions sends a signal that the code need not be taken seriously

Resignation of Leicestershire County Council Leader David Parsons

In July 2012, after nine years in office, Leicestershire County Council leader David Parsons resigned from his position amid controversy concerning his travel expenses to EU meetings.⁶³ He had been accused of failing to repay money that he had spent to fund his travel to Brussels, where he stood on the Committee of Regions.⁶⁴

The standards committee found that Parsons had violated the code of conduct four times with regards to honesty, integrity, accountability and leadership. The committee revealed that, although Mr Parsons was authorised to claim expenses for his Committee of Regions trips to Brussels, he had failed to reimburse East Midlands Council as was expected. In addition, the Committee outlined how Mr Parsons had refused to change the manner in which he received funds from East Midlands Council, despite the Chief Executive strongly advising him to do so. Finally, the Committee found that Mr Parsons' uncooperative behaviour in a previous investigation had hindered its progress, and noted his failure to register an interest in his consultancy firm Probert-West.⁶⁵

Despite finding clear evidence of code violations, the recent reforms meant that the Standards Committee no longer had the power to dismiss Mr Parsons from his position. The Committee instead issued a statement expressing strong disapproval for his actions, required him to write a letter apologising for his breaches of conduct and sent him on a training course on standards and ethics.

Eventually, the Conservative group announced a vote of no confidence in Parsons, prompting him to resign from his position. However, the party only took this step when Parsons' reputation had become badly damaged by extensive and sustained media coverage of both the allegations and the evidence uncovered by the standards committee. Under the new standards framework, it is questionable whether such allegations against a leader would even have been investigated, for several reasons:

- A Chief Executive in the same position in future might be less willing to challenge council leader if his/her position is not subject to statutory protection. The same would apply to the Monitoring Officer.
- The majority of members on the Conduct Panel, responsible for investigating such allegations in future, will be from the same party as the leader and might therefore be unwilling to challenge him or her.
- The new code of conduct might not set out clear rules for the handling of expenses and reimbursements.

62. Leicestershire County Council is taking the lead with another eight authorities in trying to arrive at a common code. Yet even if this succeeds, there will be at least three codes in operation in the area.

63. BBC, 'Leicestershire County Council: Rushton elected as new leader', <http://www.bbc.co.uk/news/uk-england-leicestershire-19737973>. [Accessed 21 February 2013]

64. This is Leicestershire, Leicestershire County Council leader cost taxpayer £1m in five years, <http://www.thisisleicestershire.co.uk/Leicestershire-County-Council-leader-cost/story-15532448-detail/story.html#axzz2LWp8tZ29>. [Accessed 21 February 2013]

65. This is Leicestershire, 'Leicestershire County Council leader David Parsons censured over cash claims', <http://www.thisisleicestershire.co.uk/Leicestershire-County-Council-leader-David/story-16420523-detail/story.html#axzz2LWp8tZ29>. [Accessed 21 February 2013]

4.5 REPLACING A NATIONAL STANDARDS INSTITUTION WITH LOCAL INDEPENDENT ADVISERS

Previously, local standards committees were supported by a national body, Standards for England, which had a mandate to ensure that elected members were held accountable for misconduct. Critics argued that the institution was too frequently drawn into trivial, personal, or politicised disputes, becoming overburdened and often embroiled in lengthy investigations that yielded little.

However, Standards for England played an important role as a national standard-setter, providing clarity on what was expected from elected members. Moreover, its status as an external and national body meant that it had greater authority and independence to judge the conduct of senior members and council leaders than local standards committees, whose independence might well be compromised by the reliance of committee members on political support from the individuals under investigation.

In the absence of a nationwide standards body, it is much more difficult for anyone to raise concerns about the leader of the council. The Localism Act provides for a substitute to fulfil this role. In the event of any allegations being made about misconduct, local authorities must appoint an independent person to advise as to whether the standards committee should open an inquiry. This assumes that local authorities will be able to find and appoint a suitably qualified and independent person for this role. Some authorities may struggle with finding persons of the appropriate calibre and legitimacy to perform the role with care.

The new system also places great importance on the body that recruits the individual to this role. The appointments procedure must be independent, and it must meet the appearance standard – it must be seen to be independent. Otherwise, the authority would be open to accusations that it had fixed the system by appointing a loyal crony to this critical role. Again, it is not always easy to find skilled and independent individuals to sit on such a panel. The Committee on Standards in Public Life has taken the view that the new arrangements are unlikely to be sufficient to “provide assurance that justice is being done and, equally important, that it is seen to be done.”⁶⁶

In Wales, the ombudsman plays a role in regulating the conduct of elected members and has been proactive in promoting high standards across councils, as well as issuing good guidance. He has avoided the problem of being drawn into investigating vexatious complaints by setting a high standard for commencing an investigation. Scotland also has an independent body whose remit extends to investigating complaints against individual members, the Commissioner for Ethical Standards in Public Life.⁶⁷

However, the English Ombudsmen will not fill the gap left by the Standards Boards. Their remit focuses on the corporate behaviour of the council and its adverse impact on individuals, but in England there is no other external body responsible for regulating the conduct of individual councillors. This appears to leave an important gap in the English system, not least because research suggests that the public is more inclined to trust a more centralized body to undertake investigations, seeing them as more impartial and objective than more localized solutions.⁶⁸

66. Committee on Standards in Public Life, 2013. Fourteenth Report: Standards Matter, p. 55.

67. Committee on Standards in Public Life, 2013. Fourteenth Report: Standards Matter, p. 56.

In the absence of a nationwide standards body, it is much more difficult for anyone to raise concerns about the leader of the council

The Localism Act introduces a new criminal offence for one specific type of misconduct, failing to declare or register a pecuniary interest

Scenario: Misuse of council resources for political purposes

Suppose that one political group on the council uses council offices for a party political meeting ahead of elections. Such behaviour is unlawful, but might not be investigated by the local council itself, particularly if the dominant party was responsible. Previously, this could have been reported to the Standards Board for investigation. Under the new system, the only external body that can investigate is the police, who seem unlikely to spend time on such a relatively minor – albeit important – matter.

4.6 OVER-RELIANCE ON THE NEW CRIMINAL OFFENCE

The Localism Act introduces a new criminal offence for one specific type of misconduct, failing to declare or register a pecuniary interest. It is punishable with a fine of up to £5,000 and disqualification from office for up to five years. The Government has described this as the key mechanism by which it will “ensure that corruption in local life is prevented”.⁶⁹ Councillors should declare that they have an interest before a relevant debate or decision occurs, and may decide to recuse themselves from the debate or decision entirely. They should also register any pecuniary interests in a formal register on an ongoing basis, so that the public can check for conflicts of interest after decisions have been taken. This transparency enables the public to trust elected members to take decisions on the basis of merit.

There is, by and large, a strong culture of declaring interests in local government. However, a number of recent scandals suggest that some councillors are failing to declare interests, either because they are unaware of the rules or because they seek to deliberately contravene them. Interviews conducted for this research revealed one case where a councillor had failed to declare that he stood to inherit property from a developer whose application for planning permission he was judging, and another case where a councillor had failed to declare that his daughter stood to benefit from a planning permission decision in which he was involved. The Speechley case (see box overleaf) also demonstrates that sometimes, when councillors fail to declare an interest, it is because they hope to gain corruptly from the conflict of interest that they are seeking to cover up.

Conflict of interest in the Speechley case

In 2004, former leader of Lincolnshire County Council Jim Speechley was imprisoned for 18 months for misconduct in public office, in relation to an incident where he sought to influence the route of a new bypass so as to divert it through his own land, increasing the land’s market value. He failed to declare publicly his personal interest in the route until after the police were brought in to investigate some 18 months later.⁷⁰

68. Comparing standards frameworks’, Teesside University Business School, SBE 088, January 2010, p. 21.

69. <https://www.gov.uk/government/news/new-reforms-will-stop-town-hall-corruption-and-culture-of-malicious-complaints--2>

70. BBC News, ‘Former council leader is jailed’, 2 April 2004; <http://news.bbc.co.uk/1/hi/england/leicestershire/3594421.stm>

However, while the new offence seeks to address an important risk of corruption, it is almost certainly inadequate for the purpose. There are three problems:

1. **Narrow definition.** The definition of disclosable pecuniary interests is drawn very narrowly. Critically, it does not apply to a member's relatives, other than his or her spouse or civil partner. Although this does not mean that members face no accountability for decisions taken in matters where a son, daughter, friend or business partner has a financial interest, since the decision would still be subject to judicial review, it does mean that the offence has no purchase on this important set of potential conflicts.
2. **Weak enforcement.** The capacity for enforcing the law – detecting, investigating and punishing violations – will be very weak under the Localism's Act new standards framework. While in the past the external auditor might have conducted a Public Interest Report, the new system for appointing external auditors will compromise their ability and willingness to take on such a role (since it might reduce their chances of having their contract renewed, winning work elsewhere, or getting paid). The Monitoring Officer could conduct an initial investigation, but again, his or her independence will be compromised by the loss of statutory employment protection. Whereas the Audit Commission might have previously provided support and an external sounding board for the Monitoring Officer, once it is abolished, no institution will exist to fulfil that role.

In England, this leaves the police as the main body able to investigate. Yet there are serious reasons to doubt that the police will devote resources to investigating possible violations or that the Crown Prosecution Service will consider it worthwhile to prosecute. The police may not be able to justify an investigation as a good use of their limited resources. One senior local government expert described the likely lack of will to investigate on the part of the police as “the main hurdle to this [new offence] being effective” [Interview 2]. The police's capacity to investigate fraud and corruption has in general declined considerably in the current era of spending cuts. Moreover, the magnitude of corruption and fraud at the local government level involves financial amounts that the police often consider insignificant. If the allegations are severe, the potential crime is likely to be a more serious one, such as bribery or mal-administration. In Scotland, a country-wide Public Sector Corruption Unit has been established within Police Scotland to prioritise corruption. In comparison, no such dedicated and coordinated investigative resource for corruption exists in England.

3. **Transparency alone does not prevent corruption.** By focusing on the declaration rather than actual conflicts, the offence misses the point. Transparency can only reduce the risk of corruption if there is adequate scrutiny of registers and declarations and if members are held to account when conflicts become apparent. Rules about transparency and disclosure should ideally help the public to assess whether corruption has occurred. However, for this, a register is insufficient. Proper scrutiny requires that the details of the interests and relationships involved in any apparent conflict can be investigated, and that requires the cooperation of a number of supporting institutions. If these institutions or the individuals occupying them are themselves conflicted, or their independence is compromised by informal alliances or power structures, then it can be very difficult to establish the facts of a case. The example described below illustrates some of these difficulties.

There are serious reasons to doubt that the police will devote resources to investigating possible violations or that the Crown Prosecution Service will consider it worthwhile to prosecute

Declaration without investigation in a local authority

The following scenario was derived from interview testimony. The case concerns a small unitary local authority where one political party had been very dominant for nearly a decade. The council owned a local leisure institution whose management was contracted to a private company. It emerged that the management company had awarded thousands of pounds of business to another local company, which was owned by the Lead Member for Leisure, who happened to be the individual with primary responsibility for the first company's management contract.

The councillor concerned had declared an interest and followed the requirement to leave the room when the first company's management contract was discussed. Moreover, there was nothing necessarily wrong in the councillor winning business from the company. Councillors are not paid a salary and they need to earn a living.

However, it was clear that the appearance of a conflict of interest could undermine trust in the councillor's impartiality. There remained a suspicion that the councillor might have influenced his colleagues in their decision about awarding the contract to the management company. Such influence might not have been overt or even intended. The councillor was very powerful in his local party and arguably exercised a great deal of informal power over his colleagues, simply because they all had an interest in maintaining good relations with him. Moreover, even if the councillors had all behaved entirely properly, the management company might have improperly sought to curry favour.

In this case, the best way to scrutinize the councillor's conduct, with respect to their relationships with the private sector, and to allay any concerns would be to ascertain whether a proper procurement process had been followed – for example, to ask whether the management contract was put out to tender and, if so, how many companies were invited to tender, and on what grounds was the contract given to the company associated with the councillor.

However, the public was ill-equipped to investigate these questions. The management company, as a private company, was not governed by the Freedom of Information Act and hence was under no legal obligation to provide details of the contract with the councillor's company. The chief executive of the council conducted only a cursory investigation, and only after sustained pressure. Once again, this raises a suspicion that the chief executive was compromised in his judgement, not necessarily by explicit influence or collusion, but simply because he has a strong interest in maintaining good relations with the elected members, particularly those in the dominant ruling group.

The case reveals the difficulty of assessing whether corruption has occurred, but also the inadequacy of simple transparency arrangements, such as declarations of interest, in the face of complex informal power networks. In order to deter corruption and build public confidence in the integrity of local authorities, transparency rules should allow the public to scrutinize council decisions and check that due process has been followed.

Time to change the rules about what interests can be held?

Perhaps it is not just greater transparency and accountability that we need, but stricter rules about the interests that members can hold whilst in office. A recent scandal in East Devon (see box) raises questions as to whether it is advisable for elected members to be allowed to simultaneously earn income from employment or consultancies, for example.

Bribes for Planning Permission in East Devon?⁷¹

In March 2013, Conservative councillor Graham Brown was suspended from the East Devon Conservative Party after making claims to undercover reporters posing as overseas investors that he could obtain planning permission in return for payment. Mr Brown, himself the owner of Greygreen Planning Ltd, a planning consultancy business, was filmed telling Daily Telegraph reporters that,

“I don’t come cheap. If I’m turning a greenfield into a housing estate and I’m earning the developer two or three millions, then I’m not doing it for peanuts – especially if I’m the difference between winning and losing it”.

This led to allegations that Mr Brown was abusing his position as a councillor to benefit his business interests. These claims were vehemently denied by Mr Brown, who stated that his duties as a councillor were appropriately declared and “completely separate” from his business role. However, his comments were deemed to have brought his office and authority into disrepute, resulting in his suspension from the party.

Following Mr Brown’s suspension, his case was referred to East Devon District Council’s Standards Committee and its Monitoring Officer, Denise Lyons, to investigate whether his actions had violated his councillor code of conduct. Shortly after Mr Brown’s suspension from the Conservative Party he resigned from his role on East Devon Council.⁷² He stated that his resignation was not a result of any unlawful activity but was rather due to “unbearable media pressure”.⁷³ Following his departure, the Council reported that Mr Brown’s remarks had been referred to Devon and Cornwall Police as a possible violation of the 2010 Bribery Act.

71. BBC News Devon, ‘Councillor Graham Brown suspended over planning claims’, <http://www.bbc.co.uk/news/uk-england-devon-21739780>.

72. ‘Former councillor Graham Brown resigns as the chairman of the East Devon Business Forum’, This is Devon <http://www.thisisdevon.co.uk/councillor-Graham-Brown-resigns-chairman-East/story-18424282-detail/story.html#axzz2Nt843Kv3>

73. ‘Councillor resigns after secret filming’, ITV, <http://www.itv.com/news/westcountry/story/2013-03-11/east-devon-councillor-denies-cash-for-planning-influence/>

4.7 ABOLITION OF STATUTORY EMPLOYMENT PROTECTION

Council leaders can be extremely powerful individuals, able to appoint members to positions of special responsibility, exercising influence through the party over who gets selected to stand in elections, and sometimes holding office for long periods unchallenged. This means that council leaders often have great monopoly and discretionary power, while accountability is weakened by the fact that people around them may be disinclined to challenge their authority. The consequent risk that council leaders will be involved in corruption is underlined by research findings that misconduct often involves the leadership of local authorities. For example, research on nine local authorities found that

“in those case studies which had experienced ongoing conduct issues, and large numbers of complaints under the code, we found that the leadership was often involved.”⁷⁴

In addition,

“in those councils where leaders had neglected issues of conduct [...] member-to-officer relations were often poor, and this created a difficult environment for monitoring officers and other senior managers to address councillor conduct or attract respect.”⁷⁵

It is therefore essential that key personnel among the officers – such as the Chief Executive, the Chief Financial Officer and the Monitoring Officer – have the independence to scrutinise the conduct of leaders of local authorities and the confidence to challenge them if necessary. To this end, several important officer roles in local government have statutory protection, meaning that it is not possible for council members to decide to fire them without an external investigation by a designated independent person. These protections have been in place since 1989. In terms of central administrative functions with responsibility for ensuring professional standards of conduct and investigating allegations of misconduct by senior officers, there are three roles to which this applies:

- the Chief Executive, who is responsible for a number of probity issues relating to appointments;
- the Chief Financial Officer or Section 151 Officer, who is responsible for financial probity and audit; and
- the Monitoring Officer, who is responsible for standards of conduct.⁷⁶

However, the Government in January 2013 launched a consultation on removing that statutory protection, threatening to make these roles much less independent and more vulnerable to political, social or personal influence.⁷⁷ The DCLG consultation included a proposal to remove the requirement for a designated independent person (DIP) to

74. Cowell, 2011, p. 445

75. Cowell, 2011, p. 445

76. The same person cannot hold more than one of these roles.

77. See 12 March 2013 letter from Joanna Killian, Chair of the Society of Local Authority Chief Executives and Senior Managers (SOLACE), to Secretary of State for Communities and Local Government Eric Pickles Letter http://www.solace.org.uk/press/SOLACE_Letter_to_Eric_Pickles/#sthash.9fN3HtYo.dpuf

The Government in January 2013 launched a consultation on removing that statutory protection, threatening to make these roles much less independent and more vulnerable to political, social or personal influence

investigate allegations of misconduct by senior officers. This would see the removal of a key defence for senior officials from dismissal without referral to an independent review. As of writing, we have found no further information published by the government on this important issue.

Rob Whiteman, incoming Chief Executive of CIPFA, has argued that this could radically alter the relationship between senior council officials, elected council members and the public, and has raised major concerns about the implications of the proposal:

“What the change would achieve is a dilution of good governance and an erosion of the long-held duty of the chief financial officer within local authorities to represent the interests of the ‘rate payer’ by speaking truthfully and robustly to council members when they have reason to believe the policies being pursued are financially unsustainable. Without that safety net, it will place pressure on many CIPFA members to think twice before giving their considered advice in the public interest without a fear of dismissal by the administration of the day for so doing.”⁷⁸

Our research suggested that this statutory protection and the requirement for DIPs to investigate allegations are particularly valuable for Monitoring Officers, who do not necessarily have high status in the administrative hierarchy,

“Statutory protection gives you the psychological confidence to act independently of their political masters. You are like an independent watchdog within the authority. Monitoring Officers generally have the respect of members and members comply with what they say. But statutory protection helps their status within the organisation. This [proposed change] is a further weakening of the role. [...] Without this [statutory employment protection], the MO will feel less secure. There is a lot of professional judgement involved about how you take something forward. It is important that the MO feels confident, independent, supported.”[Interview 6]

SOLACE has staunchly criticised the proposal, arguing that the removal of this protection will reduce openness and transparency across local government, inhibit the raising of governance concerns, increase the cost of senior officer disputes to the local authority and taxpayer (from employment-related challenges), and compromise the ability of these roles to perform effectively and independently, which is given significant importance in the DCLG Accounting Officer Accountability Statement.

The move may also reduce the “already limited attraction” of a career in local government, according to SOLACE, particularly in councils which are already struggling or have a history of difficult political relationships. Such councils will therefore struggle to recruit to key posts and may have to resort to appointing either inadequate staff or experienced but expensive interim staff on short-term contracts.

78. See <http://opinion.publicfinance.co.uk/2013/09/local-government-dont-ditch-the-dips/#sthash.0YGvzA02.dpuf>

Understanding the risks: How might past cases have unfolded?

Joanna Killian has commented that,

“It is unlikely that successful criminal proceedings for corruption, as in the 2004 Lincolnshire County Council Councillor Speechley case, would have been successful if employment protection was not afforded to the Chief Executive or Monitoring Officer”⁷⁹

David Bowles, Chief Executive of Lincolnshire County Council at the time when council leader Jim Speechley’s misconduct was revealed, recalls that both the public interest report from the auditor and the criticism from the Standards Board were critical to convincing the police to investigate. Although there had previously been many allegations of bullying and harassment, and evidence that Speechley had short-circuited the decision-making process, Speechley’s party, the Conservatives, did not seek to intervene or discipline him. Even when the auditor and the Standards Board found evidence of misconduct, the party did not act, and the Chief Executive was powerless to remove Speechley, because he was an elected member. It was essential to bring in the police to investigate the allegations that he had influenced a council planning decision to site a road in a different location so as to increase the value of his own property.

As Chief Executive, Bowles called in the external auditors to conduct a public interest report – in this case, the auditors were a private company, KPMG, appointed by the Audit Commission. Bowles reflected,

“When I did this, I had statutory employment protection, which meant that if the members wanted to get rid of me, I would be protected. If they try to sack you a designated independent person would be brought in to investigate and it would make it far more difficult, although they could always do deals, pay-offs. But they knew that if they went down that route, all of the information would come out. The person appointed as the outsider would have to be appointed in agreement with the minister. So the statutory employment protection was very important security for me.”

79. Ibid.

5. GUARDIANS OF ACCOUNTABILITY? VOTERS, WHISTLEBLOWERS AND JOURNALISTS

With the weakening of so many of the institutions for holding officers and members in local government to account, the role of the electorate, local government employees (potential whistleblowers) and the media in scrutinising their conduct becomes ever more important. However, these channels of accountability need to be strengthened if they are to fill the gap.

Local democracy and citizen accountability were major themes in the Government's local government reform programme. Indeed, research by Transparency International indicates popular support in the UK for the fight against corruption. In 2013, the Global Corruption Barometer found that 67% of UK respondents either agreed or strongly agreed that ordinary people can make a difference in the fight against corruption.⁸⁰ In the same survey, 91% of UK respondents declared that they would do at least one out of a number of options to report or address a corruption issue if they found one. However, the low quality and accessibility of open government data, as well as time pressures on local residents, work against the opportunity for citizens to provide a powerful check against corruption or monitor fraud risks. The investigative capacity of citizens and civil society groups is generally very low.

5.1 ELECTORAL ACCOUNTABILITY

While the ultimate source of accountability in local government is the ballot box, an informed choice requires both information on the issues, which is reduced under the new arrangements, and genuine choice among candidates, which does not exist in a number of local authorities given the prevalence of one-party councils and uncontested seats.

One-party councils. There are a number of councils in the United Kingdom where only one political party is represented on the council or is highly dominant – such as Newham in East London and Mosley in Merseyside are 100% Labour, while Bracknell Forest has 40 out of 42 councillors from the Conservative Party. The number of such one-party councils is also on the increase, particularly in the north of England where the decline of the Liberal Democrats sometimes means that there is very little opposition to Labour. This creates a situation where there is much reduced accountability: the actions of councillors are not subject to the degree of scrutiny and criticism that would otherwise be provided by the opposition party.

There used to be a high number of one-party councils in central Scotland, which were troubled by organised crime. Some commentators argue that the change to a more proportional electoral system has helped to change the dynamic. For example, in

80. UK respondent data from http://www.transparency.org/whatwedo/pub/global_corruption_barometer_2013

In 2013, the Global Corruption Barometer found that 67% of UK respondents either agreed or strongly agreed that ordinary people can make a difference in the fight against corruption

Glasgow city, Labour traditionally won around 90% of the seats until the introduction of proportional representation in 2007. Labour's share of seats then dropped to 57%, still leaving it with a comfortable majority. However, when a scandal subsequently emerged involving the Labour council leader, the threat of electoral competition arguably prompted the new Labour leader to clean up his party's act. He de-selected around one-third of the party's councillors and made efforts to bring in new talent.⁸¹

Uncontested seats. Electoral accountability is unlikely to be effective in situations where there is no competition for a particular seat; when the seat is uncontested. In the 2011 local elections, this was common in local government in England and Wales. In 24 local authorities, at least one in 10 councillors were elected unopposed. The proportion rose as high as one-half of winning councillors in Eden District Council in Cumbria. In some wards of Eden, local elections have not been contested since 1997, and there are other wards where opposition is very weak.⁸² Such a lack of accountability provides ideal conditions for corruption. Moreover, some argue that the pattern may be the result of corrupt collusion among candidates from different parties to distribute the wards among themselves.

Electoral account-ability is unlikely to be effective in situations where there is no competition for a particular seat; when the seat is uncontested

Authority	Uncontested Seats	Uncontested Seats	Uncontested %
Eden	19	38	50.0%
East Dorset	12	36	33.3%
South Northamptonshire	13	41	31.7%
Waverley	16	57	28.1%
North Kesteven	12	43	27.9%
Ryedale	8	29	27.6%
Wychavon	11	44	25.0%
Rochford	3	13	23.1%
Hambleton	9	40	22.5%
Malvern Hills	8	38	21.1%
St Edmundsbury Rutland	9	45	20.0%
Tewkesbury	5	26	19.2%
Derbyshire Dales	7	38	18.4%
South Kesteven	6	38	15.8%
East Devon	8	55	14.5%
Maldon	8	59	13.6%
West Devon	4	31	12.9%
Allerdale	4	31	12.9%
Richmondshire	7	56	12.5%
East Hampshire	4	34	11.8%
Lichfield	5	44	11.4%
East Northamptonshire	6	56	10.7%
Northamptonshire	4	40	10.0%
Ribble Valley	4	40	10.0%

Source: Electoral Reform Society

81. <http://www.economist.com/node/21553491>

82. See Electoral Reform Society, English Local Elections 2011. Available here: <http://www.electoral-reform.org.uk/publications/>

In addition to some seats being officially uncontested, many other seats are contested by only two candidates, or saw parties running ‘paper’ candidates who neither campaigned nor expected to win.⁸³ The Electoral Reform Society suggests that a change in the electoral system might increase electoral competition. In Scotland, for example, the average number of candidates per seat increased from 3.4 to 7.4 between 2003 and 2007, a period during which proportional representation was introduced.

5.2 WHISTLEBLOWERS

Whistleblowing is one of the main ways of detecting corruption and fraud in both the public and private sectors. This is because the employees of an organisation typically have much more information and more opportunities to witness misconduct than external enforcement agencies. A good framework for whistleblowing can thus play a key role in reducing fraud and corruption.

Whistleblowers frequently raise concerns about individuals who are more powerful than they are in the organisational hierarchy. If they do not have good internal processes with realistic external options for raising concerns, and were not protected by law in doing so, they would be disinclined to reveal the misconduct for fear of rebuke or reprisal. In the United Kingdom, the 1998 Public Interest Disclosure Act protects whistleblowers from victimisation and dismissal, and has formed the basis for whistleblowing in the public and private sectors.

Indeed, even with this legal protection, whistleblowers often face high personal costs as a result of their actions. Research conducted recently by Public Concern at Work (PCaW – a UK whistleblowing charity) and the University of Greenwich analysed 1,000 calls to PCaW’s whistleblowing advice line. The study found that, of the 40% of callers who reported receiving a response to their actions, in one-fifth of cases the individuals were subsequently dismissed. A further 21% of those who received a response experienced some form of informal reprisal, including ostracism by co-workers, verbal harassment or unreasonably close monitoring by superiors. These forms of retaliation often result in individuals leaving their jobs, suffering stress and anxiety as well as isolation. Whistleblowers can often find it difficult to gain new employment in the same sector.

Whistleblowing is only effective if there is an appropriate culture of support for whistleblowers, as well as the legal protection. It is therefore cause for concern that the PCaW research found that, of all those surveyed, *“those working in local government have the lowest expectations that the wrongdoing will be stopped and that the investigation will be satisfactory throughout the process of raising a concern”*.

Local authorities need to put in place clear procedures for disclosing suspicions of misconduct, risk or malpractice internally; tools such as whistleblowing reporting and advice lines that are independent and can protect the identity of the person raising the concern, together with a supportive culture, in which individuals in the organisation see that they are encouraged to speak up and, when they do, they are protected and their concerns are taken seriously and acted upon.

83. <http://www.electoral-reform.org.uk/blog/the-best-of-the-worst-of-2011s-local-elections>

Whistleblowing is only effective if there is an appropriate culture of support for whistleblowers, as well as the legal protection

Local media is in decline, weakening this form of public scrutiny

5.3 THE MEDIA

The local media has in the past been a powerful force for accountability in local government, both through investigations to uncover corruption and by exerting pressure on local authorities or political parties to respond to corruption allegations. However, the local media is in decline, weakening this form of public scrutiny. Just between May 2008 and May 2009, the National Union of Journalists (NUJ) documented the closure of 60 local newspapers and more than 1,500 job losses in local newspapers, while a 2010 Culture, Media and Sport Select Committee inquiry into the future of the media heard evidence that up to half of 1,300 local media titles were likely to close between 2010 and 2015. This appears realistic given that, in 2012, it was estimated there were only 1,100 local newspapers left in the UK.⁸⁴ Circulation of local newspapers dropped by one-quarter between 2007 and 2012⁸⁵, with all but two regional dailies seeing a year-on-year drop in circulation in the second half of 2012.⁸⁶ And with advertising revenues in freefall⁸⁷, there are also risks that the scrutiny function of local press may be compromised, with journalists being unwilling to criticise local authorities or local companies because they rely on them to buy advertising.

Moreover, in recent years, Freedom of Information requests have often been the primary tool for local media investigations, as was the case for BBC Radio Leicester and corruption allegations around Leicestershire County Council Leader David Parsons. Government suggestions to restrict the Freedom of Information regime are thus also cause for concern.⁸⁸

Social media and various communication applications, in theory, provide an opportunity for greater social accountability, citizen awareness and promulgation of concerns and, potentially also, user-friendly tools for understanding open public data and financial information behind public services. However, the effectiveness of this form of accountability as a check on corruption, independent of more traditional media, has yet to be proven in practice.

84. The Economist, 'local man makes good', <http://www.economist.com/news/21567429-tabloid-cost-cutter-trying-revive-britains-flagging-local-papers-local-man-makes-good>. [Accessed 12 March 2013]

85. BBC News 'Can local newspapers survive in the internet age?', <http://www.bbc.co.uk/news/uk-england-18032555>. [Accessed 12 March 2013]

86. HoldTheFrontPage.co.uk, 'Circulation drop for all but two UK regional dailies', <http://www.holdthefrontpage.co.uk/2013/news/circulation-drop-for-all-but-two-uk-regional-dailies/> [Accessed 12 March 2013]

87. Advertising and circulation revenues fell from £3.1bn in 2004 to £1.6bn in 2010 according to The Guardian, 'MPs like local papers – so what? Saving a dying industry won't help journalism', <http://www.guardian.co.uk/media/greenslade/2012/dec/06/local-newspapers-leveson-inquiry> [Accessed 12 March 2013]

88. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217298/gov-resp-justice-comm-foi-act.pdf

CONCLUSION

This report identifies twelve areas in which local government is particularly vulnerable to corruption; identifies sixteen recent changes that Transparency International believes increase corruption risk for local government; and makes twenty-two recommendations that will help to mitigate these risks.

We are aware that local authorities are under pressure financially and that any solutions need to reflect this. At the same time, that means it is easy to overlook the threat from corruption in the face of other pressures – but this in itself creates the enabling environment for corruption.

Measuring corruption is hard to do, and our research has shown that without further detailed enquiry, it is not possible to establish the current scale and prevalence of corruption in UK local government.

Whether current levels are high or low, public concern is high and this matters in itself. A relatively few cases can have high impact, and this affects trust in local government and in politics more generally.

Whatever the benchmark levels of corruption at present, this report shows the safety net is being greatly reduced. That may mean a bad situation is about to get worse; or it may mean that we have a proud record of fairly low levels of corruption which we are about to throw away. Either way, the outcome is undesirable.

The cumulative affect of the sixteen recent and proposed changes we have identified, added to other trends such as the decline in local media, is to increase corruption risk. While each individual change may be sensible or justifiable in its own right, they appear to have been planned and implemented without an overview of their cumulative effect relative to corruption.

The changes fundamentally erode the powers and independence of the bodies responsible for monitoring conduct. By doing so, they reduce the ability to deter, detect and punish misconduct. Without proper accountability, there is a risk that more members and officers in local government will exploit – and perhaps even seek out – opportunities to behave corruptly. Moreover, one of the greatest aids to prevention is the fear of being found out. The new framework removes vital pieces of the local government counter-corruption architecture. The risk of being found out is reduced as a result.

Many of the Government's recent changes apply only to England. However, we believe that much of our report's analysis and many of the recommendations are relevant to local government throughout the UK. They should also act as a warning signal to other parts of the UK to ensure that corruption risk is assessed before making any changes similar to those instituted in England.

Overall, we conclude that the corruption risk for local government in the UK has increased, and that as a result corruption in UK local government is likely to increase. We may not see the consequences for a decade. Many changes, such as those to the audit regime and ethical standards, are recent, and the precise consequences are not possible to predict. However, a lesson Transparency International has learnt across the world is that it is better to take notice of emerging risks and to act early, because once corruption takes root it can be very hard to eradicate.

Our key recommendation is therefore:

The Government needs to review the changes that are taking place in local government to ensure that they do not inadvertently create an enabling environment for corruption. This will require – at a minimum – a corruption risk assessment, strengthened whistleblowing systems, enhanced audit procedures, extension of the Nolan Principles and Freedom of Information obligations to private sector services contracted out by local authorities, re-introduction of a common ethical standard and a willingness to adjust or amend other recent changes if that should prove necessary.

LIST OF ABBREVIATIONS AND ACRONYMS USED

CIPFA	Chartered Institute of Public Finance and Accountancy
DCLG	Department for Communities and Local Government
DIP	Designated Independent Person
FoI	Freedom of Information
IER	Individual Electoral Registration
KCC	Kent County Council
LASER	Local Authority South East Region
LGA	Local Government Association
NAFN	National Anti-Fraud Network
NFA	National Fraud Authority
NFI	National Fraud Initiative
NHS	National Health Service
NUJ	National Union of Journalists
OFT	Office of Fair Trading
PCaW	Public Concern at Work
PIR	Public Interest Report
SOLACE	Society of Local Authority Chief Executives
WAG	Welsh Assembly Government

APPENDIX 1: LOCAL GOVERNMENT REFORMS IN A NUTSHELL

- 1850:** District Audit function established.
- 1983:** Audit Commission established by the Conservative Government to regulate the audit of local government and NHS bodies.
- 1996:** The Audit Commission sets up the National Fraud Initiative (NFI), a sophisticated data-matching exercise to prevent and detect fraud.
- 1997:** The Committee on Standards in Public Life reported on corruption in local government.
- 2000:** Local Government Act passed, introducing a framework for improving accountability in local government through a set of standards and procedures for checking the conduct of members.
- 2008:** National Fraud Authority (NFA) established.
- 2010:** Secretary of State for Communities and Local Government announces plans to disband the Audit Commission and put in place a new local audit framework.
- 2011:** The Localism Act receives Royal Assent.
- 2012:** Outsourcing of audit of large public bodies to private firms announced in transitional phase as part of the abolition of the Audit Commission. The Standards Board for England is formally abolished, and all standards matters become the responsibility of local authorities.
- 2013:** Statutory protections Designated Independent Persons consultation
- 2013:** August, Local Audit and Accountability Bill passes through to the House of Commons, which is due to abolish the Audit Commission and further establish the new local government audit regime in law.

APPENDIX 2: KEY CHANGES TO ANTI-CORRUPTION FUNCTIONS

Several of the key functions of an effective anti-corruption regime are lacking in the new Localism Act and Local Audit and Accountability Bill measures. The table below sets out a summary of the key points made in relation to these gaps and provides context information about the role of the mechanisms that were formerly in place.

Function	Gaps in the Localism Act & Local Audit and Accountability Bill regime	Context
<p>Effectiveness of internal investigations</p>	<p>Local authorities have no legal requirement to investigate or measure fraud, and many are seeking to lower costs by reducing their internal audit function.</p> <p>Targets for service delivery may disincentivise the discovery of fraud and corruption, with no national audit authority to highlight and compare detection rates.</p> <p>Evidence received indicates that responsibility for investigating and detecting fraud and corruption is being delegated to lower-level officers with lesser expertise.⁸⁹</p> <p>The government is consulting on removing statutory employment protection for key council officers in safeguard roles.</p> <p>Audit committees have been weakened and may disappear because there is no longer a statutory requirement for an audit committee to be a full committee in its own right.</p> <p>Internal audit and counter fraud departments weakened by cuts and governance changes.⁹⁰</p> <p>There is now a reliance on self-regulation for investigations into allegations of misconduct.</p>	<ul style="list-style-type: none"> • With the resources for internal audit being cutback and in the absence of an institution such as the Audit Commission to set the 'tone at the top' and provide support, individuals may have less support in withstanding pressure around uncovering misconduct. • The Audit Commission 'Use of Resources' tracking exercise formerly monitored counter-fraud resources in local government and set the standard for what was expected. • The Audit Commission also previously provided specialist professional skills in counter-fraud and corruption that were not available to many local authorities. With the Commission abolished, many local authorities will lack access to such capacity. • Effective internal investigations require confidence to expose misconduct at senior levels. Losing employment protection would damage that confidence.

89. Research conducted by the Centre for Counter Fraud Studies at Portsmouth University suggests that there was a marked decline in the counter-fraud culture in local government over the period 2010-12.

90. A recent national survey by the Local Authority Investigation Officers Group found a 15% reduction in the number of fraud managers, as well as an 8% reduction in senior investigators, a 15% reduction in regular investigators, and a 19% reduction in intelligence officers.

<p>Effectiveness of external private audit</p>	<p>External auditors appointed under the new arrangements may be less able to withstand pressure when undertaking investigations or raising concerns about suspicions of fraud or corruption.</p> <p>When local authorities are able to appoint their own external auditors, from 2017, the independence of auditors may be compromised by concerns about contract renewal and other non-audit services the firm supplies the local authority with.</p> <p>Recent legislation, transitional arrangements, and an emphasis on cost-cutting may constrain the quality of external audit.</p> <p>There is pressure on local government to reduce the amount that is spent through 'variations' in the negotiated contract of auditors. Yet such variations can be critical where there is a suspicion of misconduct, since the auditor needs to request additional resources to conduct an investigation. In the new climate, external auditors might consider that it is not worthwhile to investigate allegations of misconduct.</p> <p>The new arrangements may also generate inequalities in audit services, since auditors may start to charge more for providing services to rural local authorities that are distant from their head office.</p>	<ul style="list-style-type: none"> • The Audit Commission used to play an intangible role in offering 'protection' to external auditors, which empowered them to pursue investigations without fear of being sued or losing future contracts with local authorities. • There are concerns that the procurement process for the auditors prioritised low prices over high quality. The contracts have been let at a much reduced rate, representing a 40% cut in the audit fees paid by local public bodies. However, it is not clear that the cuts will bring better value for money for the public. • Audit professionals interviewed for this report saw these as serious concerns. One commented, "If you come down tough on a client, and it creates ruffles, you've got an eye to what will happen when it goes to open competition." • Neither internal audit teams nor external auditors have the range of powers that public audit had to examine regularity, propriety, probity and value for money
<p>Robust and clear requirements on conduct</p>	<p>There is no longer a specific requirement for members to declare gifts and hospitality, and no legal requirement for either a standards committee or the monitoring officer to check any register on a regular basis.</p>	<ul style="list-style-type: none"> • Such tools have been an important deterrent to corruption and a significant way for the public to monitor potential conflicts of interest.
<p>Credible sanctions for breaches of ethics</p>	<p>Local authorities' power to suspend members as a sanction for poor behaviour has been removed.</p> <p>There is no longer any sanction for members that violate non-criminal aspects of their local authority's code.</p> <p>The Localism Act introduces a new criminal offence for one specific type of misconduct, failing to declare or register a pecuniary interest. It is punishable with a fine of up to £5,000 and disqualification from office for up to five years. However, the system relies too heavily on this new criminal offence of failure to declare pecuniary interests, despite serious concerns that the offence is unenforceable.</p>	<ul style="list-style-type: none"> • The absence of sanctions sends a signal that codes of conduct need not be taken seriously. • The Local Government Act 2000 had established independently chaired statutory standards committees for each principal local authority, with the power to suspend members for up to six months; an independent regulator of local authority standards, the Standards Board for England (later Standards for England), responsible for overseeing the code of conduct, maintaining an independent national overview of local investigations into allegations against members, and for investigating some allegations itself; and a separate independent body, the Adjudication Panel for England, to which the most serious cases could be referred; this body was able to disqualify members for up to five years.

	<p>The only formal sanction for violating the code is now censure, which is far less likely to deter misconduct.</p> <p>The emphasis in the new regime on party discipline is likely to prove unreliable as parties may not wish to draw attention to their own members' misconduct, since this could damage the party's reputation; different parties may have different expectations of their members; not all councillors are members of political parties; and parties might abuse the power to de-select and seek to remove a member for political reasons. Party discipline is not a substitute for formal sanctions imposed as consequence of a formal investigation.</p>	
<p>Accountability</p>	<p>External audit is not adequately covered by the Freedom of Information Act. Citizens only have the right to gain access to information as defined in individual contracts. Other information can be accessed through the courts, but this represents an unnecessary cost and ultimately a barrier to public accountability.</p> <p>There is limited evidence of the effectiveness of citizen 'armchair auditors'.</p> <p>The resource and influence of local press is in decline.</p> <p>The nature of civil society activity on local issues is patchy.</p>	<ul style="list-style-type: none"> • Previously, the work of the Audit Commission was covered by the Freedom of Information Act and even some information held by external auditors was regarded as being held by the Commission in certain circumstances- for example, when it was investigating a complaint against a specified auditor, conducting quality control of their work, or when it had required an auditor to provide information for the discharge of wider Audit Commission functions, such as making judgments on local authorities' use of resources. This information was also subject to the Freedom of Information Act, meaning that it was possible for the public to scrutinise the work of external auditors where there were suspicions of misconduct. • The power for local citizens to formally challenge the accounts of a local authority have been removed. They could previously ask the external auditor to investigate financial misconduct and issue a public interest report .The auditor had to provide reasons to the citizen if he/she decided not to take such action and these reasons could also be challenged.
<p>Understanding and awareness of fraud and corruption</p>	<p>The capacity to collect nationwide data on fraud and corruption, or analyse trends has been greatly weakened.</p> <p>It is unclear how corruption risks will be brought to public debate and to encourage police investigations, when they are required. The police often find it difficult to initiate corruption investigations because of a lack of a victim report, and the difficulty or cost of finding conclusive evidence – all for sums of finance that the police may consider small.</p>	<p>The Audit Commission collected and published data, allowing it to trace patterns and trends in corruption and fraud. Once it has been abolished, it will be difficult to know whether councils are detecting more or less corruption and fraud, or engaging in better or weaker monitoring and prevention activities.</p> <p>Under the former regime, Public Interest Reports were able to highlight corruption risks and issues, without the need for the detailed evidence required by the Crown Prosecution Service. This would often trigger a process of internal, leading to public scrutiny and police investigations where appropriate.</p>

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