

CHAIRMAN:

Dr Mirza F N Ahmad, LLD (Hon), LLM MBA Barrister
Corporate Director of Governance,
Birmingham City Council,
Ingleby House, 11-14 Cannon Street,
Birmingham B2 5EN
DX : MDX 13053
Tel: 0121-303 9991, Fax: 0121-303 1312
E-mails : Chairman@balgps.org.uk;
Mirza.Ahmad@birmingham.gov.uk

Your ref.:



Our ref.:

MFA/JA

HONORARY SECRETARY:

Robert Posner MBA, Barrister
Electoral Commission,
Trevelyan House,
Great Peter Street, London,
SW1P 2HW
T: 020 7271 0500
E-mail: bposner@electoralcommission.org.uk

Date:

5 January 2011

To: Reform@hmtreasury.gsi.gov.uk

Strategy, Reform and Productivity Team
1/E2, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Sir / Madam

Cabinet Office and HM Treasury: Call for evidence on public service reform

Our Bar Association represents barristers employed in local government and the public services. The Bar Association is a direct successor of the Society of Local Government Barristers, which had been in existence since about 1945, and of the Bar Association for Local Government, which had been formed in 1977. We currently have a membership database that exceeds 110 members.

With reference to your call for evidence on public service reform issued on 26 November 2010, with a closing date for responses of 5 January 2011, our Bar Association is pleased to offer its comments on it for your consideration and action, as necessary. In summary, our Bar Association is supportive of the Government's actions to reform public service provision and, in particular, delighted that the Government is taking the time to listen to the collective voice of the various interested associations, bodies and individuals.

Attached to this e-mail is the "cover sheet for responses" and our Bar Association has no objection to the publication of this submission. We look forward, therefore, to working with the Government to ensure that the necessary legislative changes are made to liberate Local Government from unnecessary legislation and encourage innovation and creativity in public services for the benefit of citizens.

The following paragraph numbers relate to the questions raised in the call for evidence:-

1. What is important in relation to this question is the need to avoid "old compulsory competitive tendering" prescriptive rules and regulations. This is essential so as to avoid local authorities using the legislation to avoid tendering of their in-house services. It must also be recognised that local authorities are voluntarily doing many of the things necessary for the transformation of public services - because of the tight financial/budgetary constraints facing the nation – and, as such, it is difficult to see how a Government imposed proportion (whether that be in relation to indicating "at least x%" or "no more than y%" of in-house services being retained in-house), will actually make a difference.

3. The key for Government must be to ensure and encourage open market forces and to allow local authorities and other public bodies to determine the most relevant services for transformation / external service provision. A prescriptive framework will not secure the Government's long-term objective to promote independent provision in public services.
4. Giving public employees "rights to provide" services across different parts of the public sector will be made easier if employees are actually incentivised, along with local authorities and public bodies, through, for example, tax incentivisation or reliefs so as to make private (as opposed to public) employment more appealing. Reducing the "risk of failure" from the perspective of the public employees will, therefore, encourage them to take the opportunities and incentives on offer. Making ring-fenced funds available to public bodies specifically for such purposes will also make such transition more manageable.
5. Local authorities, banks and insurance institutions must be provided direct financial support by the Government to support public manager / employee buy-outs so as to make real the Government's intentions re public employees "rights to provide" public services. Without the appropriate tax incentives and reliefs, it is difficult to see how the Government's objectives in this area will actually materialise quickly enough to see any tangible benefits in public service provision.
6. In moving to open market forces, the role of the State must, by definition, be limited and, as such, it is essential to leave open market forces to deal with failures in public service provision. Imposing an artificial bottom line safety net for the emerging public sector organisations or manager / employee buy-outs could risk increasing poor services. Accordingly, the Government will need to accept a certain level of failures in accordance with open market forces. With regard to vulnerable adults and children, the Government may wish to consider some limited and appropriate safeguards. These should, however, be kept to an absolute minimum as unnecessary regulation will detract from encouraging or developing an open market.
7. As indicated in response to question 5, banking and insurance sectors, including local authorities and other public bodies, should be incentivised to provide funds and other financial business support to help managers / employees in the public sector to buy out and / or run public services. This "new private sector" will not be developed or developed sufficiently or fast enough without such essential "seed funding" by Government. Such "seed funding" could, of course, be limited to 3/5 years so that the new organisation is clear that such funding will come to an end and it must be driven by open market forces thereafter.
12. The role of Government under this new scenario must, by definition, be a limited one and, as such, it is essential that there is not too much prescription in the new arrangements. Accordingly, the relevant public sector service commissioners must be held responsible for putting in place effective performance arrangements – including determining their own proportions of services or activities to be paid by results / outcomes. The Government should resist setting unnecessary constraints on that open market (or "**open public services**").

13. One of the greatest hurdles currently facing community budgets is the inability or unwillingness of various public sector organisations - including some local authorities - to work collaboratively together and to pool community budgets. Accordingly, the Government could encourage all local authority and their partner organisations and institutions by imposing a statutory duty on all of them to integrate and to pool community budgets so as to obtain the best value for money for the public good as a whole and so as to encourage innovation and creativity of all public services delivery, not just service delivery by individual public bodies.
14. The Government, obviously, recognises that many national regulatory bodies providing an audit or oversight of local authorities should be abolished or radically streamlined to save public funds. The key for Government must be to ensure that any remaining national regulatory body continues to “add value” to the front line public service delivery. This must, however, be supported by demonstrable evidence of tangible service improvements in delivery. If any national regulatory body remains, it must only do so if it delivers a positive net benefit in relation to the public pounds spent on its existence. Accordingly, an appropriate formula could be devised to calculate “**the positive net public benefit**” delivered by such organisations on an individual and annual basis. The Government could then rapidly trigger the abolition of a national regulatory body in the event of any such body falling below a predetermined “positive net public benefit” threshold. This would also prove to be a more open and transparent arrangement and help to ensure that national regulatory bodies continue only if they demonstrably “add value” to the public good.
- 19/20. Local authorities are best placed to govern their localities and it is not the role of Central Government to govern localities. If there is a role for Central Government re localities, it is one of Central Government supporting, with appropriate finances, local authorities efforts relating to their localities. The Government should not, therefore, seek to build new (or replace old) controls over local authorities, as such controls will, undoubtedly, increase Central Government bureaucracy and costs. Which would, of course, run counter to the Government’s stated aims of reducing the role of the State.

I trust you will find the above comments helpful to your deliberations. If our Bar Association can be of any further assistance, please do not hesitate to contact me.

Yours faithfully



**Dr Mirza Ahmad LLD (Hon), LLM, MBA, Barrister
Chairman**