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**Date:**

12 January 2011

Mr Simon Fuller  
Legal Specialist, Scrutiny Unit  
House of Commons  
7 Millbank, London SW1P 3JA

Dear Mr Fuller,

**Localism Bill – Chapter 1: General Power of Competence for Local Government**

Further to our recent correspondence, in respect of the above, I confirm that the Bar Association supports the Association of Council Secretaries & Solicitors' recent Press Release and submission on this Chapter of the Localism Bill. The only additional points that I, on behalf of the Bar Association, would make are as follows:-

1. **Clause 1** – Sub-Clauses (2) and (3) appear to be superfluous, in my opinion, and sub-clause (1) could have been better expressed by the Parliamentary Draftsmen if it simply said:-  
“Subject to subsections 2 to 4, a Local Authority has the power to do anything that an individual, with full capacity, may do”.
2. **Clauses 3 and 4** – these appear to be unnecessary, in my opinion, as the ‘limitations’ and ‘restrictions’ are already adequately addressed in Clause 2. Furthermore, Clauses 3 and 4 are unduly restrictive with regard to the General Power and confusing, to say the least. For example, it appears to me that Clause 3(1) will be covered by Clause 4(3), in any event, and, as such, it would have been far better for the Parliamentary Draftsmen to say that;  
“where a Local Authority is under a statutory duty to provide services free of charge, it cannot charge for such services. Otherwise, a Local Authority is empowered to charge for services on a best value (or commercial) basis.”
3. From my perspective, Parliament giving a General Power of Competence to Local Authorities, on one hand, should not then, on the other hand, subject it to unnecessary limitations and restrictions, which would have the effect of stifling innovation and creativity in public service delivery – the same innovation and creativity that the Government is seeking to engender through its public service reform. The rationale, therefore, for limiting charges to “not exceed the cost of provision” (Clause 3(3) refers) in today's harsh economic and budgetary realities facing Local Government becomes totally unnecessary and a positive affirmation of the State's inherent desire to continue to impose controls over Local Government. Likewise, linking such innovation and creativity - however 'limited' under the new rules - to just a 'company' structure (as defined in the Bill) is also too restrictive and unnecessary.

4. **Clauses 5 and 6** are also further indication of the State's continuing desire to impose controls over Local Government and very much evident of the "existing regime" and not the one that the Government is seeking to create with the General Power of Competence. Having said that, I accept that Central Government – of all political persuasions - will want to retain "some" degree of control over Local Authorities with regard to the exercise of the General Power, but such control must not only be necessary and appropriate, but proportionate to the general aims of furthering - not restricting at birth - the General Power of Competence to Local Government.
5. On a more general note, it is clear to me that: -
- a. the Government appears to be missing a golden opportunity provided by this Chapter of the Bill to include a General Power of Competence for all public sector organisations that work with or seek to work in partnership with Local Authorities;
  - b. all public bodies should be placed under a statutory duty to work collaboratively with each other and Local Government, in particular, to ensure that all public expenditure within the Local Authority's area (and in partnership with any neighbouring authority areas) are spent in a cost effective and efficient manner, as a whole; and
  - c. such provisions are not only necessary in terms of "community based budgeting", but such provisions will serve to avoid the need for further legislation and should mean that other public bodies will not need to "search" for their own general powers of competence to enter into arrangements, with Local Government and others, for the public good.

I hope the above contributions are of some assistance to you and the Parliamentary Committee. Should you or the Committee require any clarification of the above, please do not hesitate to contact me.

The 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 1945, and of the Bar Association of Local Government, which had been formed in 1977. We currently have a membership database that exceeds 110 members.

Yours sincerely,



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

cc. Susan Tovey, President of the Association of Council Secretaries & Solicitors  
Steve Turner, Chairman of Solicitors in Local Government.