

**The 2006/07 DCLG Process for
Creating New Unitary Authorities in England**

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This is a reasonably final version of the material presented but is subject to possible amendment and correction. However, it is incomplete because there has not been the time, at this stage, to draft material on some key aspects of what has been happening over the last year or thereabouts.

Two topics in particular stand out:

- 1. The lack of reference to past experience, in particular the reorganisation in the 1990s and the work done by the County Councils' Network in 2004 on the six northern counties. This silence is evident in the October White Paper, the submissions to the DCLG and the decision letters issued in July 2007.*
- 2. The parallel process for Pathfinder improvements to two-tier working.*

An extended final version, with an executive summary, will be posted on the website as soon as it has been compiled.

Introduction

We are deeply concerned about the **process** that is being employed by the DCLG and the **outcomes** that are in prospect. This concern has been set out briefly in a recent paper that examines the 16 decision letters on the unitary proposals which went forward for consultation. This paper leads to the following conclusion: ‘The process is so flawed that it corrupts the body politic’ (Chishohn and Leach 2007, p. 17). Our present purpose is to set out more fully than was possible in the *Municipal Journal* the reasons leading to our pessimistic conclusion.

Whether this fuller account will have any impact upon the final outcome of the present process it is impossible to know. However, whatever the final outcome of the re-structuring that is expected, there can be no doubt that there will be pressure for further structural change in shire England in the foreseeable future. Indeed, Mr John Healey is reported as saying that the door should be open for the Government to consider further requests from local authorities to become unitary councils (*Municipal Journal* 11 October 2007, p. 3), with the implication that this would be done in the manner currently being employed. Whatever arrangements there may be for the future, there are lessons from the present that ought to be learned and applied. Consequently, in examining the present we are looking to the future.

The analysis that follows should be viewed in the light of two recent developments in particular. The first of these is the publication of a report by the Public Accounts Committee of the House of Commons (*Telegraph* 11 October 2007). This report examines the Treasury’s 2006 claim that Gershon savings in annual public expenditure have been made to the sum of £13.3 billion. Of this sum, almost £10 billion (74%) must be treated as unproven for various reasons, including variations in the reference dates from which savings have been calculated. Quite evidently, claims about financial savings cannot be accepted at face value.

The second development is the speech given by the Prime Minister at the University of Westminster (*Telegraph* 26 October 2007), at the launch of a number of consultation documents. As reported, Mr Brown wishes to throw off the authoritarian image that the Labour government has acquired and to launch a new chapter in civil liberty, offering the possibility of a Bill of Rights and Duties and even a written constitution. In part, he is seeking to build upon ministerial pronouncements that there needs to be devolution of power from central government and that communities need to be empowered, the latter aspiration having been proclaimed in the October 2006 White Paper, *Strong and Prosperous Communities*.

Unfortunately, the policy direction now being espoused is at variance with the practice currently pursued by the DCLG with respect to new unitary authorities. On the one hand, dodgy financial data have been accepted with inadequate scrutiny. On the other, the DCLG has been highly selective in its approach to evidence about the attitudes of stakeholders and the public to unitary proposals; indeed, there seems to be scant concern for what ordinary people think.

The fundamental problem is that the new rhetoric does not match practice, a fact that raises some basic issues not just for local government but for the governance of the country in general. We believe that the present process for establishing unitary councils is so deeply flawed that it has the effect of corrupting the body politic, and we set out below the reasons which lead us to this conclusion. In setting out the grounds for concern, it is our hope that corrective action will be taken so that matters are dealt with in a proper way in future.

The powers under which the Secretary of State has been acting

The Local Government Act 1992 as amended

This Act sets out the process by which structural change could be effected but has been ignored by the Government. Under the Act, the Secretary of State has the power to direct the Boundary Committee of the Electoral Commission to undertake a review of a specified two-tier area for the purpose of recommending whether there should be change to a unitary structure for part or all of the area and, if change is recommended, what the unitary structure should be. The Secretary of State can accept the recommendation (with or without modification) but cannot substitute a different unitary structure. The Committee is responsible for seeking proposals and comments thereon, formulating draft proposals and consulting before coming to a conclusion. In so doing, the Committee must have regard to any advice or guidance that may be issued by the Secretary of State, and may employ consultants as appropriate. The Act makes it clear that the Committee **must** provide information to, and consult with, 'persons **who may** be interested in proposals for an area' (our emphasis). This obligation is stated three times in the Act.

The Local Government and Public Involvement in Health Bill

This Bill was finally enacted at the end of October 2007, by which time almost all of the steps towards creating new unitary authorities had been completed. For this reason, we will refer to this legislation as a Bill rather than as an Act, because this was the situation at the material time for the issues to be raised in the present document.

Section 21 of the Bill makes the following general provision regarding any invitation issued for the receipt of proposals for creating one or more unitary authorities:

'It is immaterial that the invitation or guidance was given, the proposal made, or the consultation carried out, before rather than after ' [the commencement of Chapter 1].

In this way, retrospective authorisation would be granted for the actions of the Secretary of State if the Bill were enacted.

Twentyfive bids were received by the Secretary of State, of which sixteen were accepted for public consultation, the remainder being rejected. In July 2007, sixteen decision letters were issued: seven proposals were rejected; nine were accepted, subject to qualifications in some cases. In formal terms, decisions can only now be taken, after the passage of the Bill into law at the end of October, and can only become effective with the placing of Orders before Parliament.

The Bill contained some interesting references to consultation. Section 4(2) stated that:

'The Secretary of State **must** consult the following about the proposal:
(a) every other authority affected by the proposal; and
(b) any person he **believes** to have an interest.'

However, if there were unanimity among the local authorities involved and a joint submission had been made, then Section 4(3) provided that:

'The Secretary of State **may** consult any other person he **believes** to have an interest.'

Note that our emphasis has been given to certain words in the texts quoted above.

The Bill as now enacted is much weaker about consultation than the 1992 Act. However, it is difficult to imagine that the Secretary of State could fail to believe that members of the public have an interest in proposals for their area. Nevertheless, the DCLG, which handled the whole exercise, itself took no steps to consult the public directly.

Retrospective legislation is pernicious

The principle of retrospective legislation is sufficiently abhorrent that the device should only ever be used at a time of national emergency and for the purpose of dealing with that emergency. At all other times, the basic problem with retrospection is the uncertainty that is introduced into the lives of citizens and all organisations, both public and private. How is anyone to know whether their perfectly legal actions today may become illegal at some future date with retrospective effect, which could cost them dear financially or even result in prison sentences? Personal and corporate planning becomes ever harder under such circumstances.

The retrospective provisions of the Local Government and Public Health Bill are not unique. During the course of 2007, the Government proposed to claim a proportion of accumulated reserves held by schools at the end of the 2006/07 financial year, this proposal being made after the tax year had ended. Another example is the October 2007 proposal by the Chancellor of Exchequer to change the rules for capital gains tax with effect April 2008, the provisions applying to assets disposed after that date which had been purchased under the rules applying up to that date. In this case, an asset purchased ten or twenty years ago under one tax regime would be treated under the new one, making a nonsense of long term planning and presenting individuals and institutions with large and wholly unexpected tax liabilities. Yet another example is the 'windfall' tax that was levied on the petroleum industry in the late 1990s. Operating in this manner, the Government creates uncertainty and injustice, thereby undermining society and the economy.

The recent proposals for school reserves and capital gains tax have raised storms of public protest. There was no equivalent outcry in relation to the Local Government Bill but that does not diminish the objectionable nature of this way of proceeding.

However, there are further reasons why this Bill is damaging and dangerous. The Secretary of State has chosen to ignore the statutory procedures set out in the Local Government Act 1992, instead following an entirely different process all the way to the announcement of final, or near final, decisions which were in fact conditional, in that they could not be implemented until the Bill reached the statute book.

Attention has focussed on whether the Secretary of State has exceeded her powers in proceeding in the chosen manner. At the time of writing, that issue is unresolved. Shrewsbury and Atcham BC, supported by other District councils, initiated judicial review proceedings, alleging, *inter alia*, that ministerial powers had been exceeded. The judgment was in favour of the Government but has been appealed. But this issue of the legality of the process is not the only matter to be considered.

The Secretary of State embarked on the present process in the confident expectation that the Bill would be passed into law, as has indeed happened. Part way through the process, Mr Brown replaced Mr Blair as Prime Minister, and speculation quickly mounted that there would be an election in the autumn of 2007. Had an election been called, then the Bill might have been a casualty. Even if political horse trading had permitted it to reach the statute book, it might have been significantly amended in the process. Consequently, there was the real possibility that the Secretary of State would have been without the power to implement the decisions that were announced in July 2007, and the new Administration and Parliament might or might not have proceeded with new legislation to provide those powers. In other words, there was the possibility that a substantial number of local authorities, and also other public bodies, would have incurred costs to no avail, with no means of financial redress.

However legal that might be, it is symptomatic of an arrogant approach by the Government towards other bodies and the public at large, something that is not helpful in trying to construct 'partnership' working, the 'empowerment' of citizens and communities, and the devolvement of powers.

But there is another feature of these events that is a matter for concern. The Government has acted on the assumption that the Bill it presented to Parliament would be enacted, with the critical parts intact by which the process used by the Secretary of State would be validated and power given to implement decisions taken. To put matters bluntly, Parliament was taken for granted, the view being that it is little more than an adjunct to the Executive. It is an example of what others have called an 'elective dictatorship'. If Parliament were genuinely independent of the Government, and if ministers could not be confident of getting legislation through the two houses of Parliament, then they would surely not have set about matters in the way that they have.

The wider constitutional matters noted above need to be addressed - they must not be overlooked. In addition, as is shown below, the process followed by the Secretary of State has been handled in a manner that compounds the corruption of public life.

The five criteria for unitary proposals

The October 2006 invitation to submit unitary bids set out five criteria to which bids were expected to conform. One would hope that these criteria:

- a) Would be framed with reference to clear objectives for the reorganisation process, in a manner consistent with other relevant central government objectives.
- b) Would make clear the rules to be followed, and that they would be applied consistently throughout the process.

Unfortunately, these basic requirements for the good conduct of public business have not been met.

The original five criteria, October 2006

So that the matter can be followed step by step, it is appropriate to reproduce the five criteria set out in the October 2006 invitation to councils to submit unitary bids (para. 3.1). The emphasis that is given to certain words has been added:

'The criteria with which any **proposal must conform** are:

- i) the change to the future unitary local government structures **must be**:
 - affordable, i.e. that change itself both represents value for money and can be met from councils' existing resource envelope; and
 - supported by a broad cross section of partners and stakeholders; and
- ii) those future unitary local government structures **must**:
 - provide strong, effective and accountable strategic leadership;
 - deliver genuine opportunities for neighbourhood flexibility and empowerment; and
 - deliver value for money and equity on public services.'

There are several features of these five criteria that are immediately apparent. As set out, the clear intention is that any **proposal** must meet all five criteria. This is a manifest impossibility for the first stage of the process, the submission of the original bids, which had to be lodged with the DCLG by 25 January 2007. Although drafts of some of the bids were in circulation before the deadline, the opportunity for comment thereon was extremely limited. It was impossible for any proper assessment of support to be made in January 2007. The

most that could be expected would be clarification of the level of support by the time the consultation period (March to June) had ended.

The first and the last of the criteria include the phrase 'value for money'. In other words, the financial assessment appears twice. This is slovenly drafting and, as will be seen, gives rise to some oddities in the stated evaluation process.

Amplification of the criteria is provided in the invitation document. Affordability means that there must be value for money, so that the cost of the change would be self-financing in no more than five years. As for the level of support by partners and stakeholders, this is amplified to read 'key partners, stakeholders and **service users/citizens**' (emphasis added), with the further statement that: 'The Government will consult on proposals that it is minded to implement prior to taking any final decisions.' The third elaboration to note relates to neighbourhood empowerment, of which it is said that 'there needs to be devolution of power down to local communities', with 'a strong citizen focus'. Finally, the last issue to note is the inclusion in the fifth criterion (value for money and equity) of the requirement for communities to play 'an active role in influencing and shaping both planning and delivery of services.'

With these amplifications, the five criteria become even more muddled and overlapping than was initially apparent. Another thing that becomes clear relates to public attitudes to proposed changes. In the summary statement of the criteria reproduced above, a proposal must have a broad cross section of support from partners and stakeholders, but members of the public are not mentioned. It is only in the amplification that public opinion and the attitudes of service users are mentioned, with the clear implication that their assessments are less important than those of 'partners and stakeholders'. On the other hand, the fourth criterion emphasises 'neighbourhood flexibility and empowerment', a phrase that is then expanded to include improvement of 'the quality of life for citizens', 'citizen focus' and several other similar phrases. As set out in October 2006, public opinion regarding proposed unitary structures would appear to be recognised as an important consideration in assessing bids.

March 2007: sixteen bids selected for consultation

In March 2007, the DCLG announced that sixteen of the twentyfive bids would go forward for consultation. For each of these bids, the five criteria were scored on a three-point scale, on the basis of the likelihood (probability) that the proposals would achieve the outcomes specified, the terms used being 'high', 'reasonable' and 'low'.

The single most important feature of the March assessments is the following. The previous October, it appeared that a bid **must** conform to all five criteria, but this requirement was evidently no longer deemed to be essential. This change could be justified on the following grounds. The DCLG could have concluded that some bids had the potential to be successful but displayed weaknesses on one or more of the criteria, and that these doubts might or might not be allayed during the consultation process. However, as will be shown below, a more sceptical interpretation is also possible and appears to be more realistic.

The consultation process, March-June 2007

There are two features of the consultation process to be noted. The DCLG received a large number of written submissions from local authorities and others, and had numerous meetings, including with representatives of local authorities and Members of Parliament. This procedure can be deemed to have been appropriate for eliciting the opinions of 'partners and stakeholders', being bodies such as NHS Trusts and the Police. However, this is not an

appropriate procedure for finding out what members of the public/service users might think about proposals for their area. At paragraph 3.5 in the October invitation document, the DCLG explicitly stated that, in respect of 'a broad cross section of support', it would undertake consultation prior to taking decisions. No steps were taken by the Department to test public opinion, whether by organising focus groups, leaflet drops or by commissioning opinion surveys. The Department completely failed to honour the undertaking given in October 2006.

The consultation was flawed for another reason. The DCLG website for reorganisation provided no links to websites that had material hostile to unitary bids, most notably those of local authorities. This is despite the fact that the Bill then before Parliament made the following express provision for cases where there is not unanimity among the local authorities in an area: the Secretary of State 'must consult ... every other authority affected by the proposal' (Section 4(2)). At the hearing of the judicial review brought by Shrewsbury and Atcham BC, the Crown argued that it had no duty to provide links to any antagonistic website, even if the number of websites were limited to just the local authorities affected by a proposal. Although Mr Justice Underhill apparently felt obliged to accept this argument as a correct statement of the law, at the hearing he was acerbic about the DCLG's failure. The only conclusion to be drawn is that the Department failed to take reasonable steps to ensure as level a playing field as possible during the consultation period, thereby biasing the process in favour of unitary outcomes.

The decisions announced in July 2007

In July 2007, the DCLG issued decision letters to the authorities whose unitary bids had gone forward for consultation; the information contained in these letters is summarised in Table 1.

The test for compliance with the five criteria had been altered from October 2006 and was now framed in terms of whether or not there is:

'a reasonable likelihood that, if implemented, the proposal would meet the outcomes specified by each of the criteria set out in the Invitation.'

Four of the 2006 criteria can be said to fit this formulation, in that they refer to the what is expected of any new unitary authority once it had been established, for example, with respect to financial savings. However, there is one criterion, support for the unitary **proposal**, that manifestly meant and means support for undertaking the change **before** the re-structuring occurs. As has already been noted, measurement of support was inherently impossible at the time bids had to be submitted in January but that, by the time the consultation period ended in June, the attitudes of stakeholders and members of the public could have become clear and could have been assessed.

Table 1

The DCLG's decisions, July 2007

The assessments of the five criteria are in the form of yes/no answers to the following question: Is there 'a reasonable likelihood that, if implemented, the proposal would meet the outcomes specified by each of the criteria set out in the Invitation?'

	The five criteria				
	A	B	C	D	E
<i>Bids accepted</i>					
Bedford unitary authority	Yes	Yes	Yes ¹	Yes ²	Yes ¹
Cheshire, 2 unitary authorities	Yes ¹	Yes ¹	Yes	Yes ²	Yes ¹
Cornwall unitary authority	Yes	Yes	Yes	Yes	Yes ¹
Co. Durham unitary authority	Yes	Yes	Yes	Yes	Yes ¹
Exeter unitary authority	Yes ¹	Yes	Yes ¹	Yes ^{1/2}	Yes
Ipswich unitary authority	Yes ¹	Yes	Yes	Yes ^{1/2}	Yes
Northumberland unitary authority	Yes	Yes	Yes	Yes	Yes ¹
Shropshire unitary authority	Yes	Yes	Yes	Yes	Yes ¹
Wiltshire unitary authority	Yes	Yes	Yes	Yes	Yes
<i>Bids rejected</i>					
Bedfordshire unitary authority	Yes	Yes ¹	Yes	Yes	Yes
Cheshire unitary authority	Yes ¹	Yes	Yes	Yes	Yes ¹
Cumbria unitary authority	No ¹	No ¹	Yes	Yes	Yes ¹
Norwich unitary authority	Yes	Yes	No	No	Yes
Northumberland 2 unitary authorities	No	Yes	No	Yes	No
N. Yorkshire unitary authority	Yes ¹	No	Yes	Yes	Yes ¹
Somerset unitary authority	Yes	Yes ¹	Yes	Yes ¹	No

A Strong, effective and accountable strategic leadership.

B Neighbourhood flexibility and empowerment.

C Value for money and equity on public services.

D Affordability.

E Supported by a cross section of partners and stakeholders.

1 On balance or overall.

2 Need for further work regarding the costings.

Consider first the four criteria other than support for the proposal. In July, the word that was used was **must**, implying that that there would have to be a high level of confidence that, if implemented, the outcome would be achieved. This comparatively tough test had now been substantially eased, to **reasonable likelihood**. Instead of an 80% or 90% probability of success, the DCLG now seems to have accepted something as low as perhaps a 60% probability. This represents a very considerable weakening of the test being applied.

As for the level of support, the change in formulation can be explained in only one way. As of June 2007, stakeholders and the public had not, in general, been won over by the unitary proposals, with the result that the DCLG resorted to expressing more of a hope than a firmly based expectation that support for the unitary councils would emerge once they were established. If consultation is to mean anything, to be counted as a significant part of the decision process, then it is not acceptable to say, in effect, 'you may not have been persuaded

at this stage but just wait until you see what happens'. Changing the criterion in this manner is a sleight of hand that undermines the whole consultation process, and thereby the credibility of the Government. The honest approach would be to present a fair assessment of opinion, acknowledging, if that is the case, that it is lukewarm or hostile, and then to argue why the evidence persuades the Government to a different view. This has not been done. This failure of practice calls in question the reality of the Government's commitment to 'engagement' and 'empowerment', two concepts of which much is made in current public rhetoric.

Unitary bids were made public, with various forms of information and supporting material, meetings, etc. Those who were not in favour had the opportunity to make their views known, issuing critiques or commentaries on the proposals and undertaking their own information and publicity. The concept of this process was, we assume, to provide the DCLG with the best information possible for making a decision, and at the same time giving stakeholders and the public the opportunity to arrive at an informed judgement about the merits or otherwise of the proposals. Therefore, towards the end of the consultation period, these interested parties would be as well equipped to judge whether they supported the proposals or not as would be possible. The change in the formulation of the support criterion between October 2006 and July 2007 indicates beyond any doubt that the support which was forthcoming in the summer of 2007 cannot have been strong enough for the DCLG to say that there was majority support, or even that there was a 'broad cross section of support', leaving the Department to offer the hope that the support would be forthcoming at a later date.

The second feature of the decision letters to note is the re-ordering of the criteria, something that has been done without any comment by the DCLG. In October 2006, affordability and support were placed first and second respectively but now appear as the fourth and fifth matters to be addressed, with the implication that they have been accorded lesser weight than previously. Another detail to note is the fact that the criterion of support that forms a section heading in the decision letters specifies support by partners and stakeholders, ignoring members of the public, even though the text that follows generally discusses public attitudes – but the implication is that members of the public are less important than partners and stakeholders.

Table 1 shows that, among the successful bids, there are only three where the assessment of support for the proposal, if implemented, is an unqualified "Yes" – Exeter and Ipswich as unitary cities, and a unitary Wiltshire. For all of the remaining six successful cases, the 'Yes' is qualified in one of two ways, by the words 'on balance' or 'overall'. In other words, in the absence of clear support for proposals before implementation, the Secretary of State has come to the conclusion that the balance of probabilities is that, if implemented, the unitary authorities would come to command an adequate level of support. The terms 'on balance' and 'overall' imply probabilities close to 50:50, perhaps no better than 55:45. This is a far cry indeed from the assertion that there must be support **before** implementation.

In several ways, therefore, the decision letters show that the goalposts have been moved a very considerable distance from their position in October 2006 and that they also display a biased approach to the assessment of the bids. That this is indeed the case is shown by an examination of the five criteria, each of which is discussed below.

Level of support

Initially, we will consider the three cases in which a successful bid has been given an unqualified 'Yes' in regard to support – Exeter, Ipswich and Wiltshire. For all three bids, the wording in the decision letter is virtually identical, so that the text for Ipswich may be cited as applying to the other two cases:

‘She [the Secretary of State] considers that, if implemented, the proposal would command a cross-section of support from a range of stakeholders, both public and private sector, as well as some support from the general public. She concluded that there was a reasonable likelihood of the proposal achieving the outcomes specified by this criterion.’

That is the entire text of the assessment under this heading. There is no discussion about the detail of the evidence and the quality thereof at the end of the consultation process.

In a literal sense, the terms used by the DCLG are almost certainly true, for there can be little doubt that **some** stakeholders and members of the public would come to support unitary authorities for Exeter, Ipswich and Wiltshire. But this terminology begs the question of **how much** support there would be, and of course ignores the issue of support for making the change before the change is effected. It is clear that the DCLG has chosen a form of words that technically cannot be faulted but which is in fact irrelevant to the issue in hand. This is a form of semantics that is not acceptable.

The situation becomes even less satisfactory when the other successful bids are examined. The reaction of the public to four of the bids is reported in very similar terms, so that the text for Co. Durham may be quoted as also representing the assessments of the two unitary bid for Cheshire, and the single unitary bids for Cornwall and Shropshire:

‘The Secretary of State notes that of those that responded **directly** to the consultation, there appears to be at least a reasonable level of support in most sectors.

Whilst she recognises that the districts carried out polling which came down heavily against the proposal for a unitary council for Durham, the climate in which the polls took place, including the information that was available to voters either directly or as a result of press debate suggests that the results need to be viewed with caution. On balance therefore, she concluded that there is a reasonable likelihood of the proposal achieving the outcomes specified by this criterion.’ (Emphasis has been added.)

There are three features of this text that stand out. First, there is no attempt to summarise the evidence that has been considered. Second, it is clear that only responses received directly by the DCLG have been taken into account, which leaves open the suspicion that responses which may have been transmitted by a third party have been ignored, as for example, the refusal of the Department to accept the detailed returns of opinion polls in at least some cases. Third, opinion polls have been discounted (even ignored?) on the basis of the ‘climate’ in which the polls were undertaken.

There is no suggestion that the polls themselves were badly executed and therefore no question is raised that they are to be faulted on technical professional grounds. In effect, what the Department is saying is that respondents failed to arrive at the ‘right’ decision because the information available to them was biased against the unitary bids. It may well be that some or many respondents did come to conclusions that can be categorised as mistaken, but that is not a reason for discounting the evidence. In an electoral democracy, the Government governs on the basis of the assent accorded to it by the electorate. If Government chooses to discount or ignore opinions that are contrary to its wishes, however irrational those opinions

may be, then this undermines the basis of representative democracy. But perhaps the most extraordinary thing is that, in assessing the rejected bid for a unitary North Yorkshire, the DCLG ‘notes the polling commissioned by district councils did not show a clear outcome of **informed** opinion’ (emphasis added). For some reason that is not explained, the ‘climate’ in North Yorkshire has been accepted as allowing members of the public to come to informed views of the merits of the unitary case, whereas this was not possible elsewhere. Is it the case that, in North Yorkshire, the outcome of the polling more nearly provided the ‘right’ answer than anywhere else?

Matters are shown to be even worse than this when the other two successful bids are examined – a unitary Bedford city and a unitary Northumberland. The full text of the Bedford assessment reads as follows:

‘The Secretary of State acknowledges the concerns raised by key stakeholders in the public sector with regard to co-terminosity and that many have said that as they currently deal only with the County Council, having to liaise with two authorities will be burdensome as they would have to manage multiple interfaces. However she also notes the support for the proposal from within Bedford, where local businesses and people see Bedford’s interests being best served by a single council with all the local government levers at its control. In particular she notes that almost 30,000 people have expressed a view in favour of the proposal including a petition signed by over 20,000 people. She therefore concludes, on balance, that there is a reasonable likelihood of your proposal achieving the outcomes specified by this criterion.’

On this occasion, the key stakeholders are over-riden by the local businesses and members of the public within Bedford itself. There is no mention of opinion in the remainder of the county area and whether a unitary Bedford would be in the best interests of residents outside the city. As for public opinion within Bedford, there is no note of caution regarding the ‘climate’ in which the opinions were elicited, and no mention of the scale of opposition. Consequently, the evidence cited is partial and may or may not accurately portray the situation.

These difficulties are compounded when one considers the successful bid for a unitary Northumberland. In this case, the support of two of the key stakeholders is identified, the Chief of Police and the North East Chamber of Commerce. The naming of these two highlights the absence of equivalent detail in the other decision letters, suggesting that many of the key stakeholders have in fact withheld their support. Equally important, the DCLG relies on a 2004 referendum, in which over 40% of respondents favoured a unitary county. However, that referendum was conducted in the context of a proposed elected regional assembly. Were such an assembly to be established, then two-tier local government would have been abolished. The referendum asked the electorate to choose between two options for unitary local government in the county, one option being a unitary county. The results are absolutely irrelevant to the present situation, in which the continuation of the present two-tier arrangements has been a real option. It is unacceptable for the Government to respond to a consultation process by using such obviously inappropriate material.

The overall conclusion regarding the assessment of stakeholder and public support is the following. Almost no hard evidence is offered of the opinions available at the end of the consultation period. The DCLG has been highly selective in the way that the evidence on support or lack of it has been presented, in the extreme case using completely irrelevant material. And it is clear that the opposition that is evident among members of the public to many of the proposals has been deliberately downplayed. Given that the DCLG had given an undertaking that it would itself consult stakeholders and the public, and failed to initiate any

surveys of public opinion, only one conclusion is possible; ministers were aware that many unitary proposals would be unlikely to receive public endorsement. If the public have not been persuaded, and many stakeholders as well, the fundamental conclusion to be drawn is that the case made by the proponents has not proved to be convincing.

This then leads us to the next major question. In examining the other four criteria, does the Government show that we should have confidence that the objectives would be achieved if the proposals were to be implemented? If there should be a good case, then there would be a reason for deciding that indeed the proposals should proceed notwithstanding the lack of support forthcoming before the changes were to be put in hand. This is the question to which we now turn.

Affordability: value for money and equity on public services

As has already been pointed out, these two criteria overlap in substantial degree because the affordability criterion is predicated upon the concept of value for money, with the proviso that 'transitional costs overall must be more than offset over a period not exceeding five years'. For this basic reason, the two criteria really amount to the same thing and need to be treated together as one, a need that is reinforced by the fact that comments on some matters appear somewhat randomly under different headings. An example is that scale diseconomies are noted for all six sub-county unitary bids, four of the references being under the affordability criterion, the other four occasions being under the value for money heading (for Exeter and Ipswich, the matter is mentioned under both headings).

Somewhat odd as it may seem, a convenient starting point for this discussion is provided by the rejected bid for two unitary councils in Northumberland. There are two reasons for this choice. The first is the fact that, whereas the bid is rejected on grounds of value for money, it is accepted as being affordable. Second, the grounds given under the value for money heading have important implications for the way other bids have been evaluated. The full text for the two criteria as given in the decision letter reads as follows:

'Value for money and equity on public services

The Secretary of State believes that the proposals will [*sic*, would] remove the confusion that currently exists about which tier of local government delivers which service. However, she is of the view that the two unitaries would in all their circumstances suffer from capacity and resource constraints that would threaten the delivery of specialist services and the ability of the authorities to react to change. She also considers there is a real risk to services – particularly the delivery of county services; children's services, adult social care – as a result of the complex joint arrangements proposed in the two unitary model. She is also of the view that the proposals – if implemented would have cost implications for other public sector bodies – Fire, Police and Health, who would have to carry out some internal reorganisation to adapt to the new arrangements. Accordingly she concluded that there is not a reasonable likelihood of your proposal achieving the outcomes specified by the criterion.

Affordability

The Secretary of State considers that the financial case looks reasonably robust and there is little risk that the proposal would be unaffordable. Accordingly she concluded that there is reasonable likelihood of your proposal achieving the outcomes specified by the criterion.'

Given the negative comments and conclusion under the value for money criterion, and given that value for money is the prime component of the affordability criterion, it is impossible to see how the proposal could be judged to be affordable. In the starkest possible terms, the sentences quoted above demonstrate the muddled and contradictory thinking that lies behind this decision in particular, and the decisions in general.

It is said of the proposal for two unitary authorities in Northumberland that they would suffer from capacity and resource constraints, which amounts to saying that they would suffer from diseconomies of scale. This same point is made for all the other sub-county unitary bids – explicitly for two unitaries in Bedfordshire and Cheshire, and for both Exeter and Ipswich; in the case of Norwich, attention is drawn to the small population, which is another way of describing the loss of scale economies.

It is also said of the proposed two unitary bid in Northumberland that there would be ‘cost implications’ for the Fire, Police and Health services, presumably because of the lack of coterminosity. The identical problem would occur with all the other sub-county proposals – two authorities in Cheshire, and unitary councils for Bedford, Exeter, Ipswich and Norwich – but the decision letters are confusing, making no direct mention of the three services identified in Northumberland. The issue is not mentioned in respect of unitary proposals for Bedford, Ipswich and Norwich. In the case of Exeter, it is noted under strategic leadership that there would be some ‘dilution’ of coterminosity, and it is under this same heading that it is said of two unitaries in Cheshire that the councils would ‘have a broad degree of coterminosity’. It is impossible to regard these assessments as providing a coherent analysis of the realities about the impact of changes upon other agencies and local authorities.

It seems clear that the reasons given for rejecting the two-unitary bid in Northumberland on value for money grounds apply with equal force to the other five sub-county unitary bids. Despite this, the DCLG has been persuaded to accept four of the five proposals, albeit with reservations (see Table 1). The only possible basis for coming to these conclusions seems to be contained in the decision letter for Ipswich. With respect to a unitary Ipswich, concerns are expressed about scale and capacity in terms that are fairly similar to those used for Northumberland, but these concerns are then dismissed with the following words, that the Secretary of State:

‘Recognises that a council can enhance its capacity and take measures to overcome any skills shortage.’

The logic of this proposition is that **all** local authorities, whatever their circumstances, can deal with the disadvantage of small size in a fully cost effective and efficient manner, and that the five other sub-county unitary proposals should have been accorded the same treatment in the assessment.

Returning to the text quoted above for two unitary authorities in Northumberland, note the very first sentence. If the removal of confusion between the two tiers would have been beneficial in that county, why is there no reference to the matter in any of the other fifteen decision letters other than that for a unitary Co. Durham? This is yet another illustration of the muddle that the DCLG has created.

There are some equally serious matters to be considered when one examines the county unitary bids, most of which have been accepted; in only two cases are any doubts raised about the affordability criterion. In the case of Bedfordshire, the Department concluded that the financial case looks reasonably robust even though ‘the projected savings figures appear very high’ but for Somerset somewhat stronger terms are employed, it being

recognised that there are ‘questions about the realism of the on-going savings projected in the proposal and the projected transition cost figures ...’. For all the other eight county unitary bids, the affordability criterion is assessed with just two sentences, in each case the first sentence being almost identical to that cited above for two unitary councils in Northumberland. For eight out of the ten county bids, there is no hint in the affordability assessment that the financial data are in any serious doubt.

Now it happens that one of us (Chisholm) prepared reports on a total of nine bids, including eight counties, six of which have gone forward as being accepted by the Government. While it would be a mistake to claim infallibility, significant doubts were identified in the six successful county bids examined, but these doubts have not been addressed by the DCLG, as may be illustrated by just one example. In the case of Cornwall, the assessment given by the DCLG regarding affordability is, for all practical purposes, identical to the one quoted above. The county’s bid included an estimate for annual recurrent savings at £17.7 million p.a. gross, of which some £6 million was attributed to savings on district frontline services. This estimate is described in the bid document in the following terms:

‘If under a unified council, performance for district services could be improved to either the average or the highest performance currently being achieved within Cornwall (performance being judged by cost per head)’ then savings would be achieved of £6 million to £11 million p.a. (Emphasis added.)

The county adopted the figure of £6 million, being the saving if all service costs were brought to the relevant county averages.

Beyond the text quoted in the last paragraph, there is no further detail offered about this saving. There is no evidence that the individual service headings have been scrutinised and the feasibility of achieving the savings examined. In other words, this was a desk exercise based on the assumption that high cost per head equates to inefficiency, and vice versa. Thereby, numerous influences upon relative expenditures are completely ignored, for example: geography, as with the need for sea defences; social differences, such as the level of homelessness; and the decisions that councillors have taken regarding relative priorities. The saving of £6 million p.a. is entirely hypothetical and should have had no place in the bid made by the county.

This example is particularly clear but is not the only problem with the Cornish case, and it is paralleled by equivalent problems in the other bid documents. It really is unacceptable for the DCLG to treat the material that was submitted in the cavalier manner that is evident in the bland terms of the decision letters. Taken together, the sixteen letters do not build a convincing case that the affordability and value for money issues have been judged in a dispassionate and consistent manner. In fact, precisely the opposite is the case, the assessments containing numerous inconsistencies and reasons that seem to amount to little more than special pleading. Consequently, it seems clear that stakeholders and members of the public have been right to be sceptical about the strength of the case for establishing unitary structures.

We can identify some of the reasons why these difficulties have arisen. In setting up the bidding process, the Government set out the form in which information was to be presented, including the financial data. However, there was wholly inadequate guidance given regarding the items to be included in the tally of transition costs, and the tally of recurrent gross savings and additional expenditures to give comparable net savings data. This left councils with considerable discretion, and there are numerous cases of inappropriate

omissions on the one hand, and inclusions on the other. These problems were compounded by the absence of rules for how costs and savings should be calculated. Overall, the effect has been to leave the bidders plenty of scope to be very inventive in compiling their submissions, and the DCLG has displayed an inadequate capacity to evaluate the bids in a rigorous and un-biased manner.

Strong, effective and accountable strategic leadership: neighbourhood flexibility and empowerment

The first matter to consider is the meaning of 'strategic leadership'. In normal parlance, a clear distinction is made between strategy and tactics, with strategy focussing on the broad aims, the goals to be achieved. Considering this in the context of local government, the obvious meaning of strategic leadership must be leadership designed to achieve clear objectives. However, the problem is that a local authority cannot act in isolation – there has to be cooperation with other local authorities, regional bodies and the national government. Strategic leadership must, therefore, mean the 'outward orientation' that is identified by the DCLG in amplifying the criterion, and related characteristics, such as:

‘Strong strategic leadership.’

‘Take tough decisions.’

‘Powerful local leaders’

This description of strategic leadership is one to that can be accepted in the present context.

However, the DCLG muddles matters by including the following attributes:

‘Tackling disengagement and powerlessness by shortening the distance between governors and governed.’

‘Personal visibility’ of councillors.

Both of these requirements are pointing in the direction of neighbourhood empowerment, not strategic leadership, creating a significant overlap between the two criteria.

Much more important, though, is the direct conflict that there is between the two criteria, as illustrated by the following excerpts from the document inviting unitary bids describing neighbourhood empowerment:

‘Power and resources to influence decisions.’

‘Devolution of power down to local communities.’

‘Strong citizen focus.’

‘Shape service provision.’

Even if the overlap issue is discounted, it is wholly inappropriate to present these two criteria as being independent the one of the other, because they are pulling in opposite directions. If there is more of the one, there is liable to be less of the other. The proper way in which to present these two criteria is to ask for the maximisation of strategic leadership subject to the need for neighbourhood empowerment, or vice versa. It is impossible to maximise both simultaneously, because they are reciprocally constrained.

Formulated in these terms, the following assertions may be made with confidence. A small unitary authority, such as the four cities, has much more scope for empowering its citizens and neighbourhoods than a large one, primarily because there would be no reduction in the number of councillors. On the other hand, such an authority would have little real opportunity for strategic leadership because so many issues relate to matters beyond the city's borders, requiring negotiations and compromises at numerous levels. Conversely, a large unitary authority, such as a county, would be better placed to 'punch its weight' at the regional and national level and is therefore likely to be better placed to offer strategic

leadership than a small unitary council, but its very size would make it harder to achieve genuine neighbourhood empowerment and citizen engagement. The basic fact is that there is a trade off between the two desirable goals.

Despite this entirely obvious situation, the DCLG has presented the two criteria as if they are independent, to be achieved in equal measure irrespective of the size of the proposed unitary council. As a result, the bids that were submitted to the Department display considerable contortions in trying to comply.

There is a further general point to be made. Both of these criteria are very fuzzy, depending upon assertions regarding what may be achieved with very little scope for hard evidence being marshalled. Consequently, the bid proposals go to considerable lengths to set out **structures** but can say very little about how these might work in practice. This is especially relevant at the regional and national level, because partnership and cooperative working depends as much on the other agencies as upon the unitary council. But it is also true at the neighbourhood level, which also involves other agencies, whether these be the police or voluntary bodies, etc.

Given the fundamentally incoherent situation with respect to these two criteria, it is little surprise that the sixteen decision letters reveal seriously muddled thinking. The examination that follows takes the sub-county unitary proposals first, followed by the unitary counties. In both cases, the strategic leadership issues will be dealt with first, and neighbourhood empowerment second.

Sub-county unitaries: strategic leadership

The treatment of the four city unitary bids is remarkably similar in one important respect, it being said of strategic leadership that, as unitary councils, they would be able to focus on their respective urban priorities. This is despite the fact that these cities are intimately connected to their surrounding areas, a fact that has two important implications. First, the solution for perceived problems within the cities may lie outside their boundaries and therefore involve decisions by other agencies that can only be influenced, but not controlled, by the cities. Second, and conversely, the surrounding areas are intimately affected by what happens in the cities and their interests should not be ignored. These issues are not seriously addressed. In addition, there are some odd observations, the relevance of which is hard to detect, as with:

‘There is alignment between the cabinet portfolios and the corporate directorates’ (Bedford).

‘Enhanced scrutiny function’ (Exeter and Ipswich).

‘Integrating directorates’ (Norwich).

It would appear that the DCLG has found it difficult to find reasons why strategic leadership would be improved by having unitary cities.

The Secretary of State has rejected proposals for two unitary councils in Northumberland, on the grounds, *inter alia*, that the split between the urban and rural parts of the county are less obvious than is commonly made out, saying:

‘She notes that there are significant interactions and commuter flows between the two which mean that a high degree of strategic co-ordination and coherence is needed.’

However, these issues are not mentioned for a unitary Bedford even by implication, and only tangentially for Norwich, although the problems are recognised for Exeter and Ipswich. For the four cities, the DCLG claims that unitary status would enable them to concentrate on ‘urban priorities’, which means that the Department is willing to ignore the wider interactions

for the three cities whose bids have been accepted. If the two parts of Northumberland need a 'high degree of strategic co-ordination and coherence', it is difficult to see why this is not also needed for Bedford, Exeter and Ipswich and their respective surrounding areas. The DCLG has been seriously inconsistent.

Sub-county unitaries: neighbourhood empowerment

The four proposals for unitary cities embody few risks regarding the existing level of citizen and neighbourhood involvement, and offer the reasonable prospect that this could in fact be improved, because existing district and county functions would be handled by one council. In effect, the proposals build on existing practices with regard to the role of ward councillors, area committees and the like. In the absence of reduced councillor numbers, there is every reason to expect the existing level of citizen engagement to continue. What is less certain, however, is whether there could or would be genuine empowerment, in the form of real delegation of powers and responsibilities. To the extent that such devolvement might occur, this would be within the overall constraint that the cities themselves are constrained by the fact of multiple inter-connections with their surrounding areas, whereby they could not act as free agents.

The bids for two unitary councils in Cheshire and Northumberland are a different matter. In both cases, the DCLG expresses doubts about the precise role of the area committees/area boards, noting in the case of Northumberland the risk that they would 'lack capacity to take-on any meaningful delegation of services/decisions', and that in Cheshire 'the proposed size of electoral divisions presents a potential risk to councillors' capacity to engage with the electorate'. These concerns are reasonable given that there would be a significant reduction in the number of councillors. Nevertheless, both proposals have been accepted as qualifying on the neighbourhood empowerment criterion, unconditionally in the case of the rejected Northumberland bid but 'on balance' in the case of the two unitaries in Cheshire. For the present, the key point to note is that the DCLG has expressed concerns in respect of two unitary councils in the two counties.

Unitary counties: strategic leadership

We agree with the DCLG's view that, in general, a unitary county could simplify working with agencies such as Health and Police, and that strategic planning matters would probably be easier to manage. Consequently, strategic leadership is likely to be facilitated.

However, these likely benefits may be obtained by the sacrifice of benefits that arise from the existing two tier arrangements. Every county is diverse, with the consequence that the needs and aspirations of those who live in one part may not coincide with needs and aspirations elsewhere. Serious problems may arise if the area governance arrangements in a unitary county dilute the political and administrative articulation of the geographical differentiation that exists. Unless those area governance provisions are truly robust – and consequently rather expensive – the benefits of improved strategic leadership at the county level may well be offset, or more than offset, by the loss of representation for minority interests, the diminution of democratic accountability, and the failure to empower communities.

Unitary counties: neighbourhood empowerment

As noted above, the Government has recorded concerns about the ability of the proposals for two unitary councils in Cheshire and Northumberland to achieve neighbourhood empowerment, even though both proposals were allowed to pass on this criterion. As there are manifest grounds for concern for local authorities comprising half of a county, then there must be even greater reasons for doubting that whole counties would be able to deliver an

adequate degree of devolution and empowerment, unless there are truly radical proposals to address the problems. The fundamental reason lies in the fact that the county unitary councils would have even fewer councillors in relation to the population than would be the case if there were two authorities for the same area.

A unitary county would have fewer than half the number of councillors than is currently the case when the county and district councillors are summed. Indeed, the proposal for Cornwall as submitted was for a reduction from 331 to 82, the latter figure being the present number of county councillors, implying not a 50% reduction but 75%. It was on the basis of these figures that the proposal was drawn up and costed by the county, although it was acknowledged that the number of councillors might have to be increased from 82 to 100. The DCLG decision letter refers to this issue with the following words, that the Secretary of State:

‘Recognises that concerns as to the viability of democratic links between councillors and their electorate appear to have been mitigated with the proposal for significantly increasing (**possibly up to doubling**) the current number of councillors at county level.’ (Emphasis added.)

If the county really has suggested up to 164 councillors, then it is strange that the June 2007 response to Prof. Chisholm’s critique of the county’s case does not mention any increase in councillor numbers, so where the Department get the idea that there might be a doubling from 82? The further point is the following. The county’s costings are based on 82 councillors. An increase above that figure would have implications for recurrent costs, and if the increase were to be anywhere near the figure hinted at by the Government, then there could well be the capital costs of a new council chamber to be taken into account. It is unacceptable for the Government to play around with figures in this manner.

County unitary authorities would have many fewer councillors than at present. Yet we know that the greater part of constituency work falls upon district councillors, not upon their county counterparts (Wilks-Heeg and Clayton 2006). Consequently, what is the nature of the proposals put forward by the counties to ensure that neighbourhoods and citizens would enjoy at least the same level of engagement and empowerment as at present, and preferably even more, in order to comply with the stated aims of the Government? In general terms, all the bids propose versions of area committees, the number of areas varying from case to case, partly in response to the size and geography of the respective counties – for example, 16 in Cornwall, 20 in Wiltshire and 27 in Shropshire. How much substance do these proposals have? It is to this question that we now turn.

To begin with, consider two county unitary bids that have been rejected although passing muster on the neighbourhood criterion, Bedfordshire and Somerset. In the former case approval was given, although with the qualification of the word ‘overall’, and was given despite the fact that the Secretary of State ‘**considers that these `arrangements involve little real delegation`**’ (emphasis added). Somerset’s bid was also endorsed, in this case without caveat; the DCLG’s letter comments on the lack of clarity about delegation beyond the four area committees proposed, noting the Secretary of State’s view that the proposals:

‘Are not clear and that the absence of meaningful devolution could be a step backwards from the current successful local working practices in some parts of the county. She recognised, however, that **clarity and devolution could readily be introduced`**’ (emphasis added).

If an adequate degree of local empowerment would be possible with ‘little real devolution’ in Bedfordshire, one has to ask why any devolution would be needed anywhere? Conversely, if ‘clarity and devolution could readily be introduced’ in Somerset, then the whole concept is fundamentally meaningless as a criterion for establishing a unitary county.

Matters become even more doubtful when one enquires about the costs associated with devolved administration within counties, as, for example, the following annual costs taken from three of the bids:

Cornwall	16 areas	£2.3 million p.a.
Co. Durham	14 areas	£9.4 million p.a.
Shropshire	27 areas	c. £1.0 million p.a.

Some further detail for one of the counties illustrates what figures such as the above imply. In Cornwall's case, the £2.3 million p.a. identified by the county covers the additional costs to be incurred in administering the 16 areas plus small local budgets, but nothing else. Responding to Prof. Chisholm's critical assessment of the bid, the rejoinder issued by the County in June 2007 had this to say about more serious devolution:

'If the unitary proposal is accepted, the new council would set the overall operational budgets for services and their capital programmes. **Depending on the service, the devolution of this budget may be considered.** This will not represent an additional draw on the authority's budget, merely a change of the geographical scale at which decisions on priorities are taken. **If this devolution takes place,** it will occur within an agreed framework for measuring and monitoring both expenditure and performance to agreed targets.' (Emphasis added.)

This passage sets out as clearly as is possible the practical constraints to proper devolution within a council area. With this in mind, it is difficult to see how the DCLG could come to the following conclusions with regard to neighbourhood empowerment in two counties:

Cornwall

That the sixteen community areas 'would offset the risks of the council being seen as too remote and would provide genuine opportunities for neighbourhoods to influence local service delivery and shape their local communities.'

Shropshire

That the 27 area committees would 'have sufficient opportunity to influence local service delivery.'

There is only one county unitary bid for which the DCLG raises no concerns about remoteness from the citizenry, this being Shropshire, for which county the sum earmarked for area governance is about £1 million, barely sufficient to pay for one full-time member of staff to service each area committee. For every other county, the issue is noted under one or other of the two criteria currently being considered, but is often brushed aside with comments along the lines used for Northumberland, where, it is said, the proposed 26 community areas would 'help ensure that the authority is not seen as being **too remote**' (emphasis added). There is a clear admission here, and for other successful bids, that the unitary councils would indeed be remote, it merely being a matter of judgement whether that remoteness would be acceptable or not.

It would be tedious to work through all the county assessments that have not so far been mentioned but there is one that deserves special notice, being that for Co. Durham. The initial part of the DCLG's statement about the area governance proposals is that they would suffice to 'reduce the risk of the authority being seen as remote from local people ...', but the continuation reads that the Secretary of State:

‘Considers that the proposals provide strong “top-down” corporate and neighbourhood governance arrangements that avoid the risk of significant duplication on the part of the council and that of its principal partners.’

The use of the phrase ‘top down’ implies very little room for real local engagement, confirming what has already become abundantly clear generally from the discussion thus far.

The local governance proposals in the county unitary bids would provide for little or no real empowerment for neighbourhoods, or even for larger areas within the authorities. Ambitious claims are made for what would be done, but the resources identified in support of those claims are so small that the reality could not possibly meet the rhetoric. Nevertheless, the DCLG has concluded that all of the county unitary bids, other than those for Cumbria and North Yorkshire, pass the area governance threshold. Consequently, one is driven to believe that the DCLG has come to the conclusions it has for one of two reasons. The first possibility is that the Department, and therefore the Secretary of State, has acted irrationally. The second possibility is that the Government does not really care about genuine empowerment at the local level and wishes to increase the ‘efficiency’ of county government by creating structures that sharply reduce the power of communities to influence the decisions taken by their councillors. Neither possibility provides grounds for confidence in the conclusions that have been reached.

Conclusions on the 2006/07 re-structuring process

There are two very disturbing features of the procedure that has been adopted for creating new unitary authorities.

In the first place, the whole process relied upon the prospect of retrospective legislation being enacted. We argue that the concept of legislative retrospection is offensive, save only in quite exceptional circumstances that cannot possibly be called in aid in the particular context. The fundamental problem with Acts that have retrospective impact is the introduction of uncertainty into the lives of citizens and of corporate bodies, who cannot be confident that current actions which are legal will not subsequently be ruled to have been outside the law, with potentially serious financial and/or other consequences, as with the three cases cited above. That kind of uncertainty increases the provision that firms must make for political risks and makes it very difficult for citizens to make sensible choices. Injustices are going to occur, and the whole social and economic fabric becomes less efficient. In effect, everybody loses.

In addition to these general concerns about the impact of retrospective legislation, the actions of the Secretary of State in anticipation of the Local Government and Public Involvement in Health Bill being enacted illustrates yet again the minor role that Parliament plays in the governance of the country. The Government proceeded in the confident expectation that her actions would be endorsed, showing in the clearest possible terms that the Government treats Parliament as an extension of, or adjunct to, the executive. The erosion of the balance of power is thereby starkly revealed.

The second reason for grave concern about the process lies in the manner of the doing. Originally, five criteria were set out, with which bidders were told that their proposals **must** conform, including support for the proposed change. This requirement has been changed to the words that, in the judgement of the Secretary of State, ‘if implemented, the proposal would meet the outcomes specified by each of the criteria’. This modified formulation applies to the criterion of support, which no longer has been established before the event,

reliance being placed upon stakeholders and citizens coming to accept the new arrangements after the event. The goalposts have been moved.

In addition, the criteria have been badly drafted, most obviously in the case of affordability and value for money; the former is very largely defined in terms of the latter. There are similar problems with strategic leadership and neighbourhood empowerment, between which there is some degree of overlap; however, more important is the fact that these two criteria pull in opposite directions. Nevertheless, the criteria are set out as if they were fully independent of each other, and as if there were no trade off between them. These confusions have fed through into the bid documents and the July decision letters from the DCLG.

These letters reveal major inconsistencies and contradictions, and the selective use of the available information, to such a degree that confidence in the decision process, and hence the outcomes, is seriously undermined, even destroyed. In many respects, the outcomes have the appearance of a lottery rather than the result of dispassionate weighing of evidence, something that must occasion the question: Why engage in consultation when the material that is forthcoming from that consultation is so selectively used? This in turn has an impact upon confidence about the stated aim of Government to foster community and citizen engagement and involvement, engendering the belief that there is little substance to the rhetoric.

In addition to these two reasons for being exercised about the processes since October 2006, there is the following consideration. As a consequence of these events, there will be disappointed bidders who will seek the opportunity for another attempt to obtain unitary status, and there will doubtless be other authorities inclined to throw their cap into the ring. There has been some suggestion from ministers that additional unitary authorities should be created. As a result, there will be a considerable degree of uncertainty hanging over local authorities in shire England, something that will impede improvements to service delivery.

The new unitary councils in prospect range from quite small cities to sizeable counties – there is no obvious logic – making for an even more variable pattern across England than currently exists. The effect is to call in question the ability of the smaller unitary councils to compete with the larger ones, with potential repercussions for at least some of the 46 unitaries that came into existence in the 1990s. In fact, the potential implications go further than that, to the Metropolitan districts and the London boroughs.

The account that has been given above amplifies and extends the summary that has been published in the *Municipal Journal*. The process employed over the past year for creating new unitary authorities has been marred by serious deficiencies that undermine its credibility and hence the credibility of central government, with damaging implications for the governance of the country. Thereby, our previous conclusion is confirmed: ‘The process is so flawed that it corrupts the body politic.’

References

- Chisholm M. and S. Leach (2007), ‘Moving the goalposts for unitary structures’. *Municipal Journal*, 18 October, pp. 16-17.
- Wilks-Heeg S. and Clayton (2006), *Whose Town is it Anyway? The state of local democracy in two northern towns*. York: Joseph Rowntree Foundation.