

Law Commission Review of Co-operative Law

Anthony Collins Briefing Notes

Briefing Note 3: Local Government

This Briefing Note focusses on local government and co-operation, as follows:

1. The role and funding of local government and its current crisis
2. Co-operation and local government: historical background and current context
3. Why the future of local government involves co-operation, and the changes to the law that are needed.

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Co-operatives, as an alternative to competition-based enterprise, help to build democratic literacy, civic engagement and community wealth.

[The Law Commission](#) has been invited by the Treasury to review the legal framework governing co-operatives and community benefit societies.¹ It has been asked to consider whether the current statute law which governs these organisations is *fitting to their nature and needs*, and *whether the current form of regulation is proportionate*.

The [All Party Parliamentary Group for Mutuals](#) is spearheading a campaign to co-ordinate a cross mutual sector response to the review.

We are producing these briefing notes because Anthony Collins is keen to support the Law Commission itself, the APPG process and all those who may wish to contribute to the review. The briefing notes are intended to assist by helping to raise awareness of this review, by providing some background information and describing the context for the review, and by encouraging conversation about important areas that might be included.

These notes are not intended to put forward particular changes to the law; they are intended to highlight issues and provoke discussion. The aim is to stimulate dialogue within sectors and apex or trade bodies about potential changes, so that this important opportunity isn't missed. If you would like to talk to us about anything in the briefing notes, or anything else that might help you in engaging with the review, please contact one of us.

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¹ Historically known as "industrial and provident societies"



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1. The role, funding and current crisis

Role

Local government is a building block of UK democracy and the provider or commissioner of a range of public services.² Councils are creatures of statute, with powers and duties conferred by central government through legislation, regulations and guidance.

Councils are made up of councillors who are elected by the public in local elections. Councillors work with local people and organisations including other public bodies, businesses, voluntary and charitable organisations, to agree and deliver on local priorities. Their decisions are implemented by permanent, non-political, council staff, known as officers, who are responsible for services on a day-to-day basis.

Councils are responsible for a wide range of vital services for people and businesses in local areas, including education, social care, environmental and regulatory, highways and transport, public health, cultural, fire and rescue, planning and development, waste and housing. This includes some core statutory duties such as safeguarding. More than half (58%) of local authority spending in 2021/22 was on education and adult social care.³

Funding

Local authorities in England have two main sources of income: (1) central government grants, and (2) locally funded income, including council tax, business rates and other sources of income generated locally. In 2019-20, the last year before emergency COVID funding, grant income was 44% of the total (£75bn out of £170bn).⁴

Unlike central government, local authorities in England cannot borrow to finance day-to-day spending and so must either run balanced budgets or draw down reserves. They have limited revenue-raising powers compared to local authorities in other wealthy nations.⁵

Since 2010, the overall spending power of local authorities has been substantially reduced. According to the Institute for Government, it fell by 17.5% between 2009/10 and 2019/20, before partially recovering. This is largely due to reductions in central government grants which were cut by 40% in real terms over this period. This trend was reversed in the following two years through COVID grants, but despite these the fall from 2009/10 to 2021/22 was still 31%. Council tax receipts were allowed to increase, providing some help for councils.

Alongside these cuts in funding, between 2009 and 2022 the English local government staff headcount fell from 2,254,700 to 1,346,400.⁶ Councils have little control over rising demand,

² [The role of local authorities | Islington Council](#)

³ <https://commonslibrary.parliament.uk/research-briefings/cbp-9721/>

⁴ <https://www.gov.uk/government/statistics/local-government-financial-statistics-england-2022>

⁵ <https://www.instituteforgovernment.org.uk/explainer/local-government-funding-england>

⁶ <https://www.local.gov.uk/publications/ons-quarterly-public-sector-employment-survey>

and an ageing population makes such a rise inevitable. It is no surprise that in these circumstances the ability of local government to meet its obligations and do what people expect is seriously impacted.

Current crisis

There are multiple causes, but local government is facing a financial crisis.⁷ If a council believes that expenditure will exceed income, it issues a notice under section 114(3) of the Local Government Finance Act 1988. At that point all non-statutory spending must cease.

Two councils issued s.114 notices in 2000, one council issued two notices in 2018, but in the period 2020 – 2024 there have been ten s.114 notices. It is estimated that more than half of councils are likely to issue a s.114 notice within the next five years unless funding is reformed.⁸ The political control of a council has had no bearing on the likelihood of a s.114 notice, and while s.114 notices were previously symptomatic of financial mismanagement, in all but two of the cases since 2020, the notices were issued because the councils could not balance their books.

(Funding is different in Scotland and Wales where devolved governments provide funding.⁹ Whilst councils in these countries similarly face major challenges, the threat of insolvency is not so imminent.)

Against this background it is not difficult to see that local government is in crisis, requiring the main focus of attention to be on solvency. Councils need to survive to continue providing services that so many depend upon. Central government has the power to change things, as demonstrated by short-term funding schemes such as the Household Support Fund. However, in the current economic climate, it is difficult to foresee an imminent long-term increase in funding. The prospects of a general election appear unlikely to affect that in the short to medium term. With demand continuing to rise, the priorities continue to be doing more with less, and survival. What else is possible?

2. Co-operation and local government: historical background and current context

Local government

Although local government can be traced back many centuries, it substantially evolved in the 19th century in response to the industrial revolution and the massive population increases and urbanisation which it generated. There were major welfare reforms from the 1830s, enabling industrial towns like Birmingham and Manchester to be incorporated as boroughs,¹⁰ the establishment of local health boards,¹¹ and the first standardisation of local government via the Local Government Act 1888.

⁷ <https://www.neweconomybrief.net/the-digest/local-authority-finances>

⁸ <https://www.localgov.co.uk/14-councils-likely-to-issue-s114s-next-year/58951>

⁹ <https://ukandeu.ac.uk/explainers/local-government-in-england-scotland-and-wales/>

¹⁰ Municipal Corporations Act 1835

¹¹ Public Health Act 1848



There have been numerous reforms to the structure of local government since then, including a comprehensive reform under the Local Government Act 1972 which created metropolitan counties, the introduction of unitary authorities from 1992 onwards, the introduction of combined authorities and elected mayors from 2010 onwards, and the new county combined authorities introduced last year. Throughout these many structural reforms, the duties, responsibilities and powers of local government have also evolved. In particular this included the broadening of the powers of councils beyond their specific statutory powers (1972), the introduction of the well-being power (economic, social and environmental (2003)), and the general power of competence in 2011 giving local authorities the power to do generally anything that individuals may do.

Co-operation

If the establishment of local government was the state's response to the industrial revolution and the resulting needs of citizens, co-operation and mutuality were the spontaneous response of people in communities who lacked access to the essentials of everyday living. Building societies helped to finance home ownership, and friendly societies provided a degree of personal security through mutual insurance, savings and pensions. Co-operative societies had wide powers of trading enabling mutuality to function in a range of sectors.

Retail trade became the backbone of co-operation in the UK, giving people access to food and other basic needs for everyday living. The volume of trade generated by retail societies grew rapidly from its origin in 1844, reaching £23 million by 1900. Through surpluses generated by this trade, co-operatives became mainstream supporters and funders of what became local public services. As well as care facilities in some factories and convalescent homes for retail workers, surpluses were used to fund schools for those with hearing and speech impediments and learning disabilities; there was maternity and nursing care, stays and holidays for mental health purposes, and funding for temporary disaster relief.

Probably the most common service generally provided was access to newspapers and books in a reading room above the shop, the antecedents of public libraries. From an early stage, a fixed percentage of surpluses was allocated to an education fund. There are many echoes in today's local government from co-operative history; although established by the state, local government has significant roots in the community self-help traditions of co-operation and mutuality.¹² This heritage is now even more important where early help and intervention are needed to manage the increasing demand on statutory services.

Local government and co-operation today

Co-operation enables customers or workers to be involved in the ownership of enterprise. This distinctive feature of co-operation also provides the opportunity to engage in and learn about democratic participation in a collective endeavour. This is particularly relevant today given concerns about declining democratic participation generally.¹³

¹² It also has roots in the charitable sector

¹³ See final report of the [Independent Commission on the Constitutional Future of Wales](#), and [Commoning the Public: Translating European New Municipalism to the UK Context](#)



For many years, local government and co-operation existed alongside each other with limited strategic collaboration. That said, co-operative democracy was an important training ground; it provided an education in democratic representation and participation and played no small part in the development of the labour movement. The co-operative movement in the UK established its own political party in 1917, and through an electoral pact with Labour, individuals can stand as Labour and Co-operative candidates for local councils or Parliament; and more recently as mayors, and members of the Welsh Assembly and Scottish Parliament. With over 900 councillors across the UK, co-operation has a significant historical democratic voice within local government. However the concept of co-operation has credence and appeal across a wider political spectrum.

Following the creation of the Industrial Common Ownership Movement (ICOM) in 1971 as the national umbrella organisation for worker co-operatives, national and local funding was allocated to supporting worker co-operative start-ups. This included the set-up of the national Co-operative Development Agency in 1978 and approximately 100 local authorities in England established co-operative development agencies. Publicly funded Co-operative Development Agencies (CDAs) flourished in the 1980s and 90s, but no longer today.

In 2012, with the London Borough of Lambeth having held a “Co-operative Commission” through which it resolved to become a “Co-operative Council”, the Co-operative Councils Innovation Network (CCIN) was established by councils actively focussed on encouraging a co-operative agenda. The CCIN is a hub for co-operative policy development, innovation and advocacy. The Network now has 47 councils as full members. The establishment of the Network signalled a positive drive from within local government to promote co-operation.¹⁴

There is another recent development from within local government to note. From the 1980s onwards there was a drive for a more business-like approach in the public sector (New Public Management), using private sector ideas and techniques such as compulsory competitive tendering. With a growing focus on citizens as customers, this marked a trend towards the marketisation of services and a corporate style of management.

Essentially based on contract law which focusses on the rights of the parties (council and citizen) *as against each other*, this establishes a competitive or adversarial relationship. This market-based approach encourages a binary, done-to model of public service provision, treating the interests of the parties as separate and competing rather than shared. This was further entrenched by a commissioner-provider split and private sector delivery. Privatised and financialised services have since then had a long-term impact on a number of sectors such as social care and has led to extraction of decades of profits from local economies.

Such an approach is a radical departure from the community self-help heritage of local government. It also plays into contemporary attitudes about responsibility for the proper functioning of things being somebody else’s (the state, the council). It detracts from a sense of community and collective responsibility, and with rising demand and overstretched budgets it simply fuels helplessness and despair. Furthermore, it ignores the deeply engrained instinct for community, illustrated in many locations during the pandemic. It is in this context that an alternative vision of citizen responsibility, engagement and participation working *with* local government has emerged. Community wealth building is at the heart of this vision.

¹⁴ See CCIN [case-studies](#)



Developed by CLES and partner organisations, community wealth building is a “people-centred approach to local economic development, which redirects wealth back into the local economy, and places control and benefits into the hands of local people.” It is “a response to the contemporary challenges of austerity, financialisation and automation. It seeks to provide resilience where there is risk and local economic security where there is precarity.”¹⁵ A number of similar initiatives along these lines are developing independently elsewhere.¹⁶

Community wealth building and the work of the CCIN generally, alongside new municipalist movements in Europe,¹⁷ can be seen as a broad trend to reshape local government, replacing a top-down, marketized, transactional and extractive paradigm with a collaborative and relationship-based alternative based on retaining wealth locally through different ownership arrangements.¹⁸ At the heart is the idea of local government and other public bodies **working collaboratively with** citizens, communities, businesses and local bodies. This is the epitome of a co-operative approach.

3. Why the future of local government involves co-operation, and the changes to the law that are needed.

With rising demand for services, a climate emergency and a financial crisis, councils would appear to have no choice: if they cannot provide essential services themselves, they must collaborate with others to ensure that citizen’s needs are met.

As well as a local government duty or responsibility to co-operate in a number of situations,¹⁹ and similarly for NHS bodies²⁰, there are many examples of councils collaborating with each other both voluntarily and structurally. The establishment of combined authorities by central government drives a similar agenda, and alongside elected mayors provides a basis to empower people locally. Health and social care integration similarly demonstrates a drive for collaboration between local government and health. The establishment of Corporate Joint Committees in Wales shows a similar intent by Welsh Government.

But what about councils collaborating with citizens and communities? Mechanisms are needed to enable councils to work with individuals and communities, as citizens and co-producers rather than as customers and service-users. Our generally top-down local government approach doesn’t easily enable individuals to have a role other than as elector or customer.²¹ Involving communities, co-producing and working in collaboration sounds resource-heavy and open to oppositional dynamics, particularly in the now marketized context. It might also feel like a threat to a council, even though in reality the decision-making is still held by the council. However, it is here that co-operation can create new possibilities and where it should be encouraged.

¹⁵ Quotations from <https://cles.org.uk/community-wealth-building/what-is-community-wealth-building/>

¹⁶ For example, [Middleton Co-operating](#), [Wigan & Leigh Community Charity](#)

¹⁷ [Commoning The Public: Translating European New Municipalism To The UK Context](#)

¹⁸ See for example <https://cles.org.uk/publications/owning-the-workplace/>

¹⁹ E.g. https://www.local.gov.uk/sites/default/files/documents/5.44%20Duty%20to%20refer%20advice_v04.pdf

²⁰ <https://www.england.nhs.uk/long-read/guidance-on-good-governance-and-collaboration/>

²¹ The [We’re Right Here](#) initiative illustrates this



Legislation in Wales already requires public bodies not just to take an integrated approach with other public bodies, but also to involve those with an interest in the objective being pursued, for example users of a service and their families and communities.²² Other Welsh legislation requires local authorities to promote the development of social enterprises and co-operative organisations or arrangements in care, and to involve those for whom services are provided to be involved in their design and operation.²³

This indicates a trend towards a collaborative approach. Self-styled “Co-operative Councils” intentionally pursue this approach and look overseas for inspiration to regions such as Emilia Romagna and Mondragon where there is a deep history of collaboration, both at grassroots, community level and also in collaboration between municipalities and community-based co-operation.²⁴ But the UK perspective remains generally fixated on market-based solutions²⁵, and only exploring alternative approaches through the route of alternative structures or “models”. The default approach is predicated on the purchaser-provider split, competitive tendering, and market-based mechanisms in all situations.²⁶

Transformation requires a conscious decision by the public sector to do more than look at “alternative provider models” whilst continuing to engage with them through market mechanisms, focussed on measures of private benefit with some ‘social value’ added to the mix.²⁷ It involves identifying a different way for the public sector (which itself operates for public benefit and not private gain) to engage and work with organisations which themselves have a different nature and purpose, whether that is for a public, charitable or social purpose. Adversarial and binary arrangements like contracts struggle to meet this need.

What is generally absent from UK thinking is making relationships and co-operation the priority, and seeing structure as a means to an end, rather than an end in itself. In practice this means shifting the focus away from the legal entities and exploring instead the possibility of co-operation as a mechanism by and through which services can be provided, within governance arrangements rather than principally through contracts.

There are plenty of situations where informal collaboration between voluntary organisations, faith groups and charities is already well established. Based on personal relationships, mutual trust and a commitment to something beyond private gain, there are multiple examples of community-based initiatives such as foodbanks, pantries and groceries where people are able to access food and other everyday essentials without any contractual or market-based mechanisms in place. Informal co-operation is effective and widespread.

But a co-operative can be used as a formal legal mechanism for relationships based on shared values. This is too vague for contract law as it would be an “agreement to agree”. A co-operative establishes instead a structural relationship (membership), specifying what it covers (objects), how decisions are made (governance), and the shared values and principles which underpin that decision-making. This avoids binary and competitive relationships, bringing the parties together with the common purpose of meeting the relevant

²² Section 5, [Wellbeing of Future Generations \(Wales\) Act 2015](#)

²³ Section 16 [Social Services and Well-being \(Wales\) Act 2014](#)

²⁴ Much helped in Italy by [Marcora law](#)

²⁵ See for example [The Big Con](#), Mariana Mazzucato

²⁶ The Green Finance Initiative being an example over recent years

²⁷ The Social Value Act has become a means to avoid change; a veneer to distract attention from private benefit



needs. Rather than creating relationships protecting individual interests, it establishes (to use co-operative language) “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.

The fact that membership is open to anyone who can subscribe to a co-operative’s rules and purpose creates a different dynamic and an alternative to the use of competition to select providers. There is already in existence an example of a co-operative being used as a framework for non-competitive co-operation across a range of private and public bodies, including councils.²⁸ There is a credible argument that where such co-operative arrangements apply, there would not be any “public contract” that is subject to the current procurement regulatory regime or the one that is forthcoming under the Procurement Act 2023.

Changes to the law?

The current crisis requires significant action by both central/regional and local government. What has been referred to as “a return to industrial strategy and active, purposive state planning of the economy”²⁹ requires encouraging alternative approaches and initiatives, just as privatisation and marketisation have been encouraged over the last four decades or so.

Co-operation has demonstrated itself as capable of providing a mechanism for formal collaboration between councils, citizens and communities. It is useful because it can create opportunities for different ideas and approaches which are focussed on meeting local needs rather than seeking to attract private investment with the prospect of financial gain.

Does co-operative law need to be changed for this? At one level, no; the legal mechanism of co-operation is available to be used for these purposes now. However, there is an important respect in which UK co-operative law remains under-developed and in need of reform.

As explained in our [briefing note 2. on the care sector](#), unlike other jurisdictions, UK law does not provide an adequate definition of co-operative, either as a structure or a mechanism for an alternative relationship-based approach to the provisions of goods and services. The UK lags behind most European jurisdictions in this, and behind the ambitions of the international co-operative community which advocates for supportive national legal and regulatory frameworks for co-operatives.³⁰ Addressing this issue will help to establish a firm basis for encouraging the use of co-operation where the government wishes to do so.

To conclude

It is important that the law for co-operatives is kept up to date, efficient and as fit for its particular purpose as the law for companies. Central, devolved and local governments all have a clear interest in the modernisation of UK co-operative law in this respect, so that (as in other jurisdictions) its use can be encouraged through policy and other legislative reforms.

²⁸ CNI provides brings together public and private organisations to create and share digital infrastructure

²⁹ <https://www.in-abundance.org/reports/commoning-the-public-translating-european-new-municipalism-to-the-uk-context>

³⁰ For example, see the ICA’s [Blueprint for a Cooperative Decade](#)



For example, the promotion of indivisible reserves, a well-known feature in other jurisdictions, helps to keep money local and to be reinvested where it is generated.

As well as looking at definitions, the Law Commission is known to be looking at a number of other areas of modernisation. This includes capital, where the statutory framework is no longer fit for purpose and inhibits (for example) the development of local co-operative and community banks. This subject will be covered in a future briefing note.

Where councils see co-operation as having a role to play in expanding the options available to local government in achieving its objectives, they are encouraged to add their voices to those calling for the modernisation of UK co-operative law.

