



# Equality, Entitlements and Localism

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## About the author

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## Introduction

How can we ensure that increasing decentralisation does not lead to a reduced focus on outcomes for those groups that rely on public services the most heavily? This is a key question in the ongoing debate about the role of localism in the future delivery of public services (ippr and PWC 2009).

In theory, a centralised delivery model provides greater safeguards and ensures that services continue to focus on those groups that are socially excluded and experience differential outcomes from a range of public services. Where decision-making and service delivery is decentralised and potentially delivered by an array of agencies, such equity and control are arguably more difficult to ensure.

The recent publication of the National Equality Panel's groundbreaking report *An Anatomy of Economic Inequality* in the UK has underlined the importance of ensuring that public services continue to focus on those who are economically and socially excluded and who rely most heavily on public services (National Equality Panel 2010). It is vital that we do not risk further exacerbating the very patterns of inequality identified by the National Equality Panel by shifting towards more unequal forms of public service delivery. The pursuit of localism must not come at the price of heightened inequality.

This paper explores the relationship between localism and notions of equality of access and outcomes for a range of groups and communities. The specific focus throughout is on the needs and experiences of those disabled people, ethnic minorities, older and younger people who are economically and socially excluded and/or currently experience differential outcomes from key public services.

The central argument at the heart of this paper is that genuine localism will only be achieved if Whitehall believes that it can trust key parts of the public sector and local communities to deliver effective, accessible and equitable services for all.

It is proposed that this trust could be established by taking two simple steps:

- Firstly, the development of an agreed set of rights or entitlements that make clear what service users can expect from individual public services.
- Secondly, using the new Public Sector Equality Duty to ensure accountability and guarantee that the pursuit of localism does not lead to a reduced focus on tackling inequalities experienced by particular groups and communities.

## The politics of localism

All of the major political parties in the UK have spoken of the desire for the further decentralisation of both democratic decision-making and public service delivery. The notion that services can be more effectively and efficiently configured, targeted and delivered by those working at a local level, rather than via the more traditional centre-led approach to public service delivery, is undoubtedly an appealing one. The desire to find more effective ways to deliver public services has been hastened by the current economic climate and the need to identify substantial potential efficiency savings. Local decision-making and decentralised delivery of public services appears to be a viable way of achieving this goal.

When in power, Labour flirted with localism in a number of forms – from Scottish and Welsh devolution to Neighbourhood Renewal; from NHS Foundation Trusts to elected mayors. However, analysts have suggested that while the Labour government periodically turned to localism, it never pushed the agenda as far as it could have, particularly in the English context (Kenny and Lodge 2009). There undoubtedly remains scope for further decentralisation of decision-making and delivery.

While in opposition, both the Conservatives and Liberal Democrats spoke extensively of the need to further devolve power from the centre to local authorities, police forces, NHS Trusts and local communities. Now in government, the Coalition has publically committed itself to implementing an agenda that is underpinned by the principles of localism. The text of the full coalition agreement sets out the extent of its ambitions:

*The Government believes that it is time for a fundamental shift of power from Westminster to people. We will promote decentralisation and democratic engagement, and we will end the era of top-down government by giving new powers to local councils, communities, neighbourhoods and individuals. (HM Government 2010)*

This prompts two questions:

- Can the Coalition push localism further than the last government did and deliver a further meaningful decentralisation of power?
- Can it do so without lessening the value of key public services for those who need them most?

## Localism and inequality

Localism challenges many of the orthodoxies of public service delivery. Foremost among these are:

- The notion that Whitehall knows best
- That universal services are best designed at the centre
- That the consolidation of public services is crucial to ensuring the most effective and efficient use of ever scarcer public funding.

There is clearly a logic to the notion that those working in a locality will be better placed to respond and to tailor public services to the needs of service users than those sitting in government departments in Whitehall. Recent examples of public service reform, Scottish and Welsh devolution and the fall-out from the recession have all underlined the degree to which parts of the UK require alternative approaches and different solutions. Localism certainly provides a vehicle for ensuring that individual public services can respond to the specific needs of different parts of the UK.

It is, however, important that as decision-making is devolved to local service delivery organisations we ensure that these organisations are mindful of the impact of what they do and how they do it. We must ensure that those who configure and deliver public services understand the consequences, including the unintended ones, of their decisions for a range of communities and groups. Individual decisions must not be allowed to penalise those who are already among the most marginalised and unequal in British society. We must ensure that the decisions that are made locally do not disproportionately or unfairly impact on disabled people, older people, different ethnic minority communities or other groups that are currently socially and economically disadvantaged.

The reality is that regardless of Whitehall's willingness to relinquish its hold on real power, a number of local authorities are pushing ahead with reforms that could radically alter the way that public services are delivered and fundamentally change their relationship with service users. From Barnet's 'Easy Council' approach to Lambeth's 'John Lewis'-inspired model, public authorities are beginning to rethink the very basis on which local services are delivered. It is suggested that whatever the prevailing model, a degree of caution is required.

The concern is that as we pursue different models of public service delivery, it becomes harder to ensure fairness. How can we ensure that those who configure and deliver public services do not simply focus their efforts on the majority – the well, the comfortable and the informed? The core risk is that as service delivery organisations are given greater freedoms they will place less emphasis on the needs of those communities and groups that are currently socially and economically excluded. The risk is that local authorities will decide not to set aside land for Gypsy and Irish Traveller sites; adult social services departments will cut support services for disabled people; further education institutions will reduce access courses that provide a route back into education for economically and socially excluded individuals; NHS Trusts will cut outreach services to those communities and groups that are least likely to access healthcare services.

The London Borough of Barnet's 'Easy Council' model is a live example that shows the potential problems associated with ensuring equality in the context of different forms of public service delivery. Barnet is pioneering an approach in which it provides basic core services, with higher levels of services costing local people more.

This experiment most recently made the headlines when the council was enjoined to prevent it ending the provision of wardens for disabled and older people in a council-run sheltered housing unit. It is important to stress that the Barnet case has emerged within the current context; however, it arguably offers a preview of issues that can accompany the pursuit of different approaches to public service delivery. The central concern is that as public authorities exercise greater freedoms and potentially move towards different models of service delivery, an unintended consequence may be that the needs of particular communities are simply overlooked.

Issues relating to equality of access and outcome are potentially further complicated by the fact that a key feature of localism is that a greater proportion of services are likely to be delivered by commercial and third sector delivery partners. This again raises questions about whether in such circumstances we can possibly guarantee equality of access and outcome.

It is therefore important that as we embark on the next stage of localism we consider measures that will ensure that both those charged with devolving and those who are ultimately responsible for local decision-making and public service delivery are mindful of the impact of their decisions for different communities and groups.

It is proposed that an equitable and fair approach to localism will require two complementary solutions. First is the establishment of a core set of national rights or entitlements. These should make clear what the public (regardless of where they live) can reasonably expect from key public authorities and specifically how they can use these to hold these organisations to account when they fail to deliver.

The second solution is to identify a mechanism through which public authorities can ensure that they are considering the impact of what they do for a range of communities and groups. This should enable the public and other stakeholders to further hold to account those public authorities that fail to ensure equitable provision and access. However, it is suggested that rather than place an additional requirement, or to use the jargon 'burden', on public authorities, it seems more fitting, given the current emphasis on efficiency and effectiveness, that we utilise something that is already in place: the existing race, disability and gender equality duties and their successor, the Public Sector Equality Duty. These solutions are explored in greater detail below.

## Developing a coherent set of entitlements

There is a significant recent history of Citizens' Charters and service standards. Successive governments have chipped away at the principle of transparency and accessibility in order to stress the need for public authorities to articulate what service users can expect from key public services. In 2008, the Public Administration Select Committee called for a shift from Citizens' Charters that often set out aspirational goals to more concrete and grounded 'public service guarantees' that clearly articulated entitlements (Public Administration Select Committee 2008).

All three major political parties have spoken of the need to move on from a public service delivery framework in which public authorities are guided by a range of nationally set targets. The debate regarding rights, entitlements and increasingly responsibilities appears set to play an important role in ongoing discussions regarding the future of public service delivery.

Gordon Brown, as Prime Minister, set out his desire to move towards a model in which there are an agreed set of national 'entitlements' which clearly establish what individuals can reasonably expect from the public authorities with which they interact. He stated:

*Offering people legal rights to public services and entitlements is a way of ensuring fair access to all, while at the same time improving public services for the many. (Brown 2010)*

While the coalition government is yet to formally set out its own thinking in this area, the coalition agreement speaks of:

*...the potential to completely recast the relationship between people and the state: citizens empowered; individual opportunity extended; communities coming together to make lives better. (HM Government 2010)*

It seems only a matter of time before the Coalition brings forward its own take on the principle of entitlements or service guarantees.

Entitlements or guarantees seek to codify the basic principles upon which services are based and the way in which they are delivered. The former enshrines notions of equity, consent, confidentiality and access. The latter ensures the right to information, timeframes for particular services, different modes of delivery and rights in terms of an individual's involvement in the decision-making processes that affect them. Such a set of rights or entitlements are articulated in the NHS Constitution:

*This Constitution establishes the principles and values of the NHS in England. It sets out rights to which patients, public and staff are entitled, and pledges which the NHS is committed to achieve, together with responsibilities which the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. (NHS 2009)*

By codifying such rights and entitlements, the NHS is making clear the principles upon which its services are based and the minimum standards service users can expect.

If there is to be a move towards the genuine decentralisation of public services in other policy areas then there will need to be greater emphasis on such codification of rights and responsibilities in all relevant areas of public service delivery. This will involve a clear articulation of key commitments relating to core, minimum service standards, levels of provision, available additional support, complaints handling and systems of redress. Such an approach will help ensure that the public are clear about what they can expect from

individual services, regardless of where they live, or whether the service is delivered directly or by a third party contractor. Such an approach reduces the risk of potential geographical variations in access, service standards and outcomes. At the very least it should help avoid the perpetuation of one of the media's favourite phenomena – the 'postcode lottery'.

## Public Sector Equality Duty

The second crucial component of an equitable approach to localism is a framework that requires public authorities (and their delivery partners) to consider the impact of what they do for a range of communities and groups. This could of course potentially involve the development of a new, complex framework that would help ensure that such considerations take place on a regular basis.

However, in line with the spirit of the times, ippr suggests that there is a ready-made solution available in the form of the existing equality duties for race, disability and gender equality, and their successor – the new Public Sector Equality Duty. It should be noted that the remainder of this article largely focuses on the potential impact of the new duty; however the majority of the points are equally relevant to the protections offered by the three existing duties.

The new Public Sector Equality Duty forms part of the Equality Act 2010. Having successfully made it through the parliamentary process, the new duty is scheduled to come into effect in April 2011. It places a proactive legal requirement on relevant public authorities to consider the impact of what they do for a range of communities and groups. The onus here is on the public authority, not the service user, to ensure that it meets the requirements of the duty and adjusts its policies and activities accordingly.

The new duty extends many of the protections already in place in respect of race, disability and gender equality in two important ways:

- Firstly, the new duty expands protection beyond race, disability and gender to cover older age, sexual orientation and religion and belief and helpfully makes explicit the previous gender equality duty requirements in respect of transgender, and pregnancy and maternity.
- Secondly, the new duty emphasises the need for public authorities to move away from the parallel processes of the past, which, while this was never the intention, has ensured that the consideration of equality impact has often occurred wholly separately from mainstream policy and service development. Similarly, the duty places a much stronger emphasis on shifting outcomes (most notably life chances) than its strand-specific predecessors.

The new duty retains many of the strengths of the current race, disability and gender duties including requirements for relevant public authorities to consider and monitor the impact of their policies, services, employment activities and procurement for the key 'protected grounds'. In particular, the existing duties variously require relevant public authorities to carry out equality impact assessments of new and proposed policies. This means that public authorities have to think proactively about what they are planning to do prior to actually doing it and to attempt to anticipate the likely impact, in order to, among other things, promote equality and eliminate potential discriminatory activity.

It is important at this stage to underline that the duty is not a minority sport. It provides protection not for the minority, but rather for all – the duty applies to men as to women, White British people as well as ethnic minority communities and to heterosexual, lesbian, gay, bisexual and transgender people.

The duty contains three key elements that could be harnessed to help ensure that the

pursuit of localism does not lead to differential outcomes for those who can least afford it. These are requirements to:

- Assess the impact of key policies and services
- Involve relevant communities and groups at the policy and service development stage
- Monitor the actual impact once a policy or service has been introduced.

These simple requirements could help to ensure that those who are charged with developing and delivering local services are:

- Mindful of the needs of different groups and communities
- Aware of the differential take-up or impact of particular services
- Focused on delivering equality of outcomes for all.

Failure to meet these legal requirements will potentially leave public authorities open to legal challenge via judicial review proceedings and/or enforcement action by the Equality and Human Rights Commission.

The reality is that before a public authority can take important decisions about the configuration or delivery approaches of particular services it should ensure that it has considered the impact of its proposals for groups such as disabled people or different ethnic communities, and where appropriate involved relevant groups and communities in the process. It is important to note that once a public authority has identified evidence of inequality or discriminatory activity, it must justify, ameliorate or remove the relevant aspects of the policy or activity.

It is interesting to note that in the aforementioned Barnet 'Easy Council' case, the injunction was granted on the basis of concerns regarding whether the council was compliant with the current Disability Equality Duty. There are a significant number of other cases in which public authorities have been challenged and have been deemed to have failed to meet the requirements of one or more of the equality duties. These cases include rulings in respect of the use of restraint techniques in youth offending institutions, provision of acute disability services and changes to funding programmes for community organisations. In each case the existing equality duties were cited in order to prevent a public authority from pursuing a policy that was deemed likely to have a discriminatory or equality impact.

It is also important to underline that in addition to the growing bank of equality duty case law, the actions of a far greater number of public authorities will have been influenced and changed by the desire of individual public authorities themselves to meet the requirements of the respective duties; for example by carrying out effective equality impact assessments of new and proposed policies, and the interventions of the Equality and Human Rights Commission responding to complaints of inequality and discrimination. The soft and hard applications of the existing duties provide a clear indication of the way in which the new Public Sector Equality Duty could be harnessed in order to hold public authorities to account as part of the wider approach to localism and decentralisation.

The existing and the new Public Sector Equality Duties also provide significant safeguards in respect of 'contracted-out' services. The duties clearly extend to those services that have been contracted out by public authorities. This effectively means that a public authority cannot simply divest itself of its legal responsibilities by using its procurement arrangements. This position appears to have been copper fastened by the inclusion of a clause in the Equality Act that makes clear that the equality duty extends to those bodies that are delivering 'public functions'. This doubly ensures that the duty is effectively handed on to third party delivery organisations, such as those that deliver care home



services, private prisons or housing services. Such a distinction could be important in the context of localism and the greater devolution of decision-making and public service delivery.

In the context of localism, the new and existing duties could provide both a mechanism that enables public authorities to quality-proof and monitor the impact of their decision-making and service delivery and the means by which members of the public can hold such authorities and their delivery partners to account. It is therefore important that all relevant public authorities strive to meet all the requirements of the existing and new Equality Duty in order to ensure that their policies and services are fit for purpose and that they safeguard themselves against potentially expensive legal challenges that could arise from failure to meet the requirements of the duty. Take-up and compliance with the duties will ultimately help to improve the delivery and accountability of key public services.

## Conclusion

Historically, the pursuit of localism in public service delivery has, arguably, been hampered by the reluctance of those within Whitehall to genuinely devolve decision-making to the localities. The core issue is apparently one of trust – can Whitehall trust local service providers to provide appropriate and equitable services? It is suggested that the twin focus afforded by an agreed set of entitlements for key public services and the new Public Sector Equality Duty may hold the key to unlocking this log-jam.

In order to be effective, entitlements must be clearly set out and be rooted in the reality and practices of individual public services, rather than a one-size-fits-all approach that has little or no relationship to circumstances in which such services are delivered. They should articulate specific commitments in terms of minimum service standards and not simply parrot generic statements of intent. In effect these entitlements should set out the minimum standards that all service users can expect, together with clear systems of redress.

For their part, the existing and prospective equality duties can provide a simple mechanism whereby public authorities can ensure that any devolution of public service delivery takes account of the needs of different communities and groups and ultimately a mechanism by which service users and other stakeholders can hold to account those authorities that fail to do so.

A codified set of entitlements or service guarantees coupled with adherence to the Equality Duty will help ensure that all public authorities are focused on providing equitable services and achieving equitable outcomes for all groups and communities, regardless of background, need or geographical location.

The twin safeguards provided by the articulation of a clear set of entitlements and adherence to the equality duty will help ensure consistency of provision and equality of access for all service users. This twin track approach will ensure that public authorities have the freedom to deliver public services in different and locally appropriate ways, safe in the knowledge that they do not risk neglecting the needs of those who rely most heavily on public services. This in turn may mean that Whitehall may be more willing to loosen its hold on decision-making and service delivery and pursue genuine localism, knowing that this will not lead to the creation of further postcode lotteries or poorer outcomes for those who need public services the most.

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