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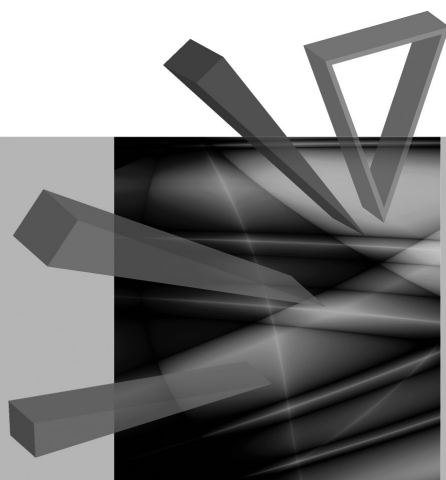
RESEARCH PAPERS

of Wrocław University of Economics

283

Local Economy in Theory and Practice

Local Development Governance Aspects



edited by

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Andrzej Sztando



Publishing House of Wrocław University of Economics
Wrocław 2013

Copy-editing: Elżbieta Macauley, Tim Macauley, Marcin Orszulak

Layout: Barbara Łopusiewicz

Proof-reading: Barbara Łopusiewicz

Typesetting: Adam Dębski

Cover design: Beata Dębska

This publication is available at www.ibuk.pl, www.ebscohost.com,
and in The Central and Eastern European Online Library www.ceeol.com
as well as in the annotated bibliography of economic issues of BazEkon
http://kangur.uek.krakow.pl/bazy_ae/bazekon/nowy/index.php

Information on submitting and reviewing papers is available
on the Publishing House's website
www.wydawnictwo.ue.wroc.pl

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Wrocław 2013

ISSN 1899-3192

ISBN 978-83-7695-333-5

The original version: printed

Printing: Printing House TOTEM

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CONTROL OVER LOCAL GOVERNMENT IN ENGLAND

Summary: This article discusses ways of control over local councils in England. It is explained why the subject discussed here is so important. Because the control systems have been amended in recent years, our theoretical and practical knowledge of the degree of integration between control and audit systems as used by local governments, is still limited. It has to be expanded if we want to understand the nature of control as a tool for evaluating the management control systems operated by local government units.

Keywords: audit, control, local government.

1. Introduction

In England, local governments' activities have been subjected to many forms of administrative (also financial) and political control. Some of them are formal (statutory), while others are extra-legal and thereby quite general and indirect. The latter can be exemplified by a situation when a local council takes an unpopular decision that consequently makes the party having a majority representation on the council lose power during the next elections. Powers of control over local councils are held not only by courts of law, but also by the central administration that generally abstains from exercising them for political reasons. It frequently happens that a local council, where most councillors belong to the same political party that have formed the central government, is in opposition to a coalition minister interested in some local undertakings. In the past as well as today, the primary aim of control over local government has been to ensure that local councils deliver their services effectively and uniformly. Consequently, the degree of control exercised by the central government is greatly dependent on how much weight public opinion and the government are willing to give to particular services [Supernat 1999, p. 65].

2. Control and its forms

The most important type of administrative control extending over local councils is financial control. Its three areas are: control of councils' borrowing activities, control of councils' subsidies and grants and audits of councils' financial statements performed by auditors.

This information has to be expanded for the better understanding of the essence of management control as a tool allowing the evaluation of the management control system in councils.

For any control activity to be effective, there must exist a set of instructions setting out control procedures that can be used, for instance, to verify the specimens and distribution of documents. All organizational units have detailed lists specifying the persons and institutions authorised to carry out control activities. Both internal and external audits can actively support financial management in a municipality, thus making it easier for local councils to take major decisions affecting the municipality as a whole.

A properly functioning, adequate, and thereby effective control system is vital for financial management, mainly because of its key role in risk management. Although control is always secondary to planning (because it does not create a new reality) and a control system alone cannot guarantee that a municipality will work efficiently, it certainly increases the security of public sector undertakings that are carried out following the law in force and the accepted policy of development.

Control is a process with which the degree of consistency between the 'as-is situation' and the target can be determined. It is expected to explain why discrepancies appear and how big they are. According to H. Fayol, a control process regularly compares the status quo with the plan, rules and guidelines. The International Standards for the Professional Practice of Internal Auditing describe control as any action that the management, the council or another entity undertakes to manage risks and to increase the probability of their organization's objectives and tasks being fulfilled. The so understood control is a tool for attaining objectives rather than an objective in itself.

Different approaches to control may be distinguished based on the type of activity and the management style. Within a structural approach, control conducted in local government units has characteristics that make it similar to bureaucratic control. This has a bearing on the purpose of control (subordination of personnel), office setup (lean structures, top-to-bottom hierarchy), the degree of discipline (strict rules, formal control tools, rigid hierarchy) and employees' participation in control processes (limited and formal). Although control usually includes all these elements, bureaucratic control as part of management in local government units imposes a menu of control measures and procedures to be chosen from.

3. A brief outline of the history of control over local government in England

After the Boards of Poor Law Guardians were established following the enactment of the Poor Law Amendment Act of 1834, Parliament approved a rule which required that the councils' financial statements be regularly audited by an external body. Before the Local Government Act became effective in 1972, all councils' accounts were usually inspected by district auditors appointed by, and accountable to, the Secretary of State for Environment. The act allowed the county and district councils to choose whether they wished district auditors or approved auditors (professional auditors named by the Secretary for Environment) to carry out an audit. The district councils could make the choice for parishes in the district [Shaw 2009, p. 368].

The councils' right of choice was nullified by the Local Government Finance Act of 1982, which led to the establishment of the Audit Commission in 1983. The new body was formed by the Secretary for Environment after consultations with local councils and the organizations of accountants.¹ The Audit Commission is a public company that aims to improve the efficiency and effectiveness of public financial management by implementing audit and financial control rules. It is authorised to supervise the units of the *National Health Service* (excluding the NHS Foundation trusts), local units of police forces and other local public institutions in England.

4. Responsibilities of The Audit Commission and Auditors

After consultation with the council to be audited, the Audit Commission decides whether an audit procedure will be carried out by one of its district auditors, or by one of the approved private accountant auditors. Both categories of auditors have the same powers and duties [Hurrell Clay, Bassett 1999, p. 68].

An outline of the duties can be found in art. 5 of the Audit Commission Act of 1998. According to the law, in inspecting financial statements, auditors must establish whether:

- the Secretary for Environment's regulations and all other statutory provisions applicable to the preparation of financial statements as well as sound accounting rules were followed;
- the audited body took appropriate measures for securing economy, effectiveness and efficiency in using its resources.

This means that auditors must be sensitive to possible cases of fraud and corruption, as well as to the illegitimate use of public money [The Audit Commission Act 1998b].

Auditors may demand that the audited body disclosed all documents they need to perform an audit. They are also authorised to demand relevant information and

¹ <http://www.audit-commission.gov.uk/aboutus/Pages/default.aspx> (date of access: 20.09.2010).

documents of those who keep the documents or are in charge of them [Hawke, Parpworth 1996, p. 55]. Every local voter may ask the auditor about the inspected accounts and present their objections [*Code of Audit Practice 2010*].

All interested persons (a group larger than just local voters) have the right to inspect the accounts, the evidence of correct accounting records, receipts, as well as the documents prepared by the auditor. The documents which will be audited must be made available fifteen days before the audit start date as indicated by the auditor, so that the interested parties can submit questions and objections. Having completed the audit, the auditor must prepare a statement and an opinion on the accounts, and consider whether it would serve the public interest to draw up a report on each item that attracted his or her attention. If produced, the report must be put on the agenda of the next pertinent meeting of the council, as well as distributed among the councillors and the press to make the public aware of its contents [*Local Government... 2010*].

If the auditor finds that some item in the financial statements is contrary to law, they may request the High Court or a county court of law (if the court is competent to deal with the questionable amount) to issue a relevant declaration, unless the item has been approved by the Secretary for Environment. With issuing the declaration, the court may also demand that the person who made or approved an illegitimate expenditure, repay its total amount or part thereof (councillors voting against the expenditure are therefore not liable to the financial consequences). If the amount to be returned exceeds GBP 2,000, the court may also suspend the councillor, if the person guilty of violating financial discipline is a councillor, for a fixed period. However, an order demanding that the questioned amount be returned or depriving a councillor of the mandate may not be issued, if the court finds the person to act reasonably or in the belief that the expenditure was authorised by law. Naturally, the court must consider all aspects relevant to the case, including the financial status of the culprit and his or her capacity for repaying all or part of the irregular expenditure [Hawke, Parpworth 1999, pp. 48–49].

It has already been mentioned that all local voters are entitled to see the auditor to present their objections against any financial statements. If the auditor then fails to request from the court issuing a ruling on the presented case, the aggrieved voter has six weeks to demand that the auditor explains the reasons for non-action. The same right has been granted to individuals that the auditor indicated has to repay some irregular amounts. A person wronged by an auditor's decision always has a right of appeal to a court of law.

The Local Government Act of 1988 gave the auditors a right to issue prohibition orders, thus strengthening their powers. This option can be exercised when an auditor finds it possible that the body or officer being audited is likely to make an expenditure that is contrary to law or to take an action that may result in a financial loss or deficit. Prohibition orders must be addressed to specific bodies or individuals. Any act in breach of a prohibition order is recognised as illegal. Its recipient has

a right to appeal against its provisions to the High Court [The Audit Commission Act 1998a].

The powers which have been granted to auditors are very important in practice. In addition, the Audit Commission may, at any time, request an auditor to carry out an extraordinary audit of any financial statements of a local council (without having to seek its consent). This option is usually exercised when there are grounds to suspect that the councillors may have embezzled or misappropriated funds.

5. The structure and nature of political control

All units of local and central administration are also subordinated to political control. This control is exercised by public opinion that frequently uses the press to this end, but its ultimate tool is the ballot box. Political control is effective when local communities know what their councils are doing. In addition to the mass media, as the prime distributor of this information, there are also statutory solutions that grant citizens' rights of access to public information (in some cases only local voters or residents may be entitled) [The Freedom of Information Act 2000]. The most important of them are the following:

- a right to attend the meetings of the council, its committees and subcommittees,
- a right to view council's accounts, to ask the auditor questions and to read the audit report,
- a right to view the copies of the minutes from the meetings of the council, its committees and subcommittees and to make their duplicates and abstracts as necessary,
- a right of access to various registers and records, from the planning decision register to the list of daily allowances paid to the councillors,
- a right to view documents that must be available to citizens at the council's premises as required by the law, including those drawn up by the council itself, e.g. drafts of local laws and dispossession decisions,
- a right to file a complaint against a decision issued by the local council to the competent Commissioner for Local Administration [The Local Government Act 2000].

As far as political control over councils is concerned, the provisions of the Local Government, Planning and Land Act of 1980 are important. The act requires councils to publish information on their activities [The Local Government Act 1992].

6. The role of The Commission for Local Administration

The Parliamentary Commissioner Act of 1967 provided England's system of administrative control with the institution of the Parliamentary Commissioner for Administration. Because of its numerous shortcomings, in 1974 the act was replaced

by the Local Government Act that became effective on 1 April 1974, together with the Local Government Act of 1972.

The 1974 law established the Commission for Local Administration in England. Its *ex-officio* members are the Parliamentary Commissioner and the Local Commissioners appointed by the Crown, who remain in office until retirement.

The present Commission for Local Administration has three Commissioners who are in charge of, respectively, London, south-eastern and eastern England; northern England with the northern part of central England; and the remainder of England. The Commissioners are responsible for handling citizens' complaints against any local council, including its commissions, councillors and particular officers, but excluding parish councils (unless a parish council acts on behalf of a county council or a district council).²

The act allows citizens, who have been treated unfairly by a local council failing to properly perform its management functions, to file a complaint. This right excludes cases when a citizen can ask a court of law or an administrative tribunal for a ruling, as well as cases involving a right of appeal to the competent minister. An exception is a situation when the Commissioner concludes that judicial measures are not appropriate. Although Local Commissioners are generally free to decide whether or not to handle a complaint, they are not permitted to deal with cases that may concern all or most residents living within the council's boundaries, nor are they allowed to question the merits of the correctly issued discretionary decisions [The Parliamentary Commissioner Act 1967].

A complaint in writing must be made directly to the Commissioner or to the local council, in which case the council must advise the Commissioner of its contents. If the Commissioner decides to investigate the case, then the local council must be allowed an opportunity to examine and comment on the complaint. After the investigation is closed, the Local Commissioner draws up a report and distributes it to the dissatisfied citizen, the local council concerned and its officers who reported on the complaint. The council must disclose the report to the public and announce that it has done so. If the report finds that poor management standards have really contributed to the appearance of irregularities, the council must analyse the report and advise the Commissioner of the actions it will take to rectify the situation. Should the council fail to act on the recommendations it has received, the Commissioner may prepare a special report to explain the case [The Local Government Act 1974].

Local councils can redress unfair treatment as described in the Commissioner's report by offering monetary or other benefits to the aggrieved parties. The law requires that the Local Commissioners prepare and deliver an annual general report to the Commission for Local Administration that subsequently presents its annual report to a representative group consisting of the members of the local councils that have been investigated by Local Commissioners. The report is then published with

² <http://www.lgo.org.uk/about-us/background/> (date of access: 23.10.2010).

or without comments [*Guidance on Running* 2010]. Five categories of issues are outside the control powers of Local Commissioners:

- legal procedures,
- criminal investigations or crime prevention,
- labour issues (promotions, wages, discipline, old-age pensions, etc.),
- internal structure and the functioning of schools and other educational establishments,
- business agreements and issues [The Local Government Ombudsman 2010].

In practice, most complaints against local councils concern the way they fulfil their spatial planning, residential building and housing functions.

7. Conclusion

The above discussion can be summed up by stating that a municipality having a correctly planned, structured and managed financial system supported by transparent control and audit solutions, additionally evaluated by independent rating institutions, is viewed by investors as a serious partner. However, for a municipality's control system to be effective, the appropriate guidelines must contain specimens of documents and document circulation procedures, there must exist a complete inventory of persons and institutions that are authorized to carry out inspections in all organizational units of the municipality, the heads of the units must perform control activities within their supervisory capacity, etc.

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KONTROLA DZIAŁALNOŚCI WŁADZ LOKALNYCH W ANGLII

Streszczenie: Właściwe zarządzanie finansami publicznymi, zarówno na poziomie strategicznym, jak i operacyjnym, nie jest możliwe bez stosowania rozwiniętych systemów kontroli. Prawidłowo funkcjonujący, adekwatny do potrzeb, a przez to skuteczny system kontroli jest jednym z najważniejszych elementów zarządzania publicznego, tym bardziej że pełni on niewątpliwą rolę w zapewnieniu efektywności i jednolitości świadczonych usług samorządowych. Niniejszy artykuł został poświęcony problematyce kontroli funkcjonowania władz lokalnych w Anglii, gdzie działalność władzy lokalnej jest poddana wielu różnym formom kontroli administracyjnej (w tym finansowej) i politycznej. Niektóre z nich mają charakter formalny (przewidziane są przez ustawy), inne zaś pozaprawny (*extra-legal*) i działają raczej w sposób ogólny i pośredni.

Słowa kluczowe: kontrola, audyt, samorząd lokalny.