Local Government and Communities Committee

Local Government Boundary Commission for Scotland’s 5th Electoral Review

Written Submission from East Lothian Council

Representation to the Local Government and Communities Committee on the Local Government Boundary Commission’s 5th Electoral Review

It is East Lothian Council’s view that the Local Government Boundary Commission for Scotland’s 5th Electoral Review is fundamentally flawed. It is also our opinion that the Commission’s proposal for East Lothian, which has been accepted by Scottish Ministers, to reduce the number of East Lothian Council elected members from 23 to 22 makes no sense and will have negative outcomes for East Lothian and East Lothian Council.

The representation will outline the reasons why the 5th Review carried out by the Local Government Boundary Commission for Scotland (LGBCS) is flawed before highlighting East Lothian Council’s concerns about the proposal to reduce the number of councillors from 23 to 22.

1. Arbitrary decision to take deprivation into account in determining elected member numbers

Firstly, it is unclear both from written evidence and from the oral evidence given by LBGCS representatives to the Local Government and Communities Committee the extent to which the Commission took deprivation into account in determining elected member numbers.

The Commission’s evidence to the Committee on 5th October contained several factual errors.

In the verbal evidence and in response to questions the Commission’s representatives (Professor Ailsa Henderson and Isobel Drummond-Murray) played down the influence of the use of the Scottish Index of Multiple Deprivation (SIMD) and talked more about population and having to take a consistent methodology approach Scotland wide.

The Guidance Booklet for the Fifth Reviews of Electoral Arrangements (February 2014) states that: “The methodology we adopted for the Fifth Reviews: used measures of population size as the key determinant of councillor numbers.”

However, in explaining the methodology used to determine which of five bands each local authority was placed was based on two criteria: The proportion of the population living outwith settlements of less than 3,000 (i.e. population distribution) or more AND the proportion of the population living in the 15% most deprived areas.

This suggests that population distribution and deprivation have been given equal weighting.
Professor Henderson also misled the Committee by stating that “deprivation first surfaced as an issue at the time of the LGBCS consultation on methodology carried out in 2011.”

However, the Commission’s consultation on the methodology it should use to carry out its 5th Review (January 2011) did not mention deprivation. It sought views on factors other than population that should be taken into account in determining councillor numbers. It suggested there had been a wide range of developments that had taken place in local government since the mid-1990’s that might have impacted on councillors workload, including:

- devolution
- introduction of multi-member wards and increased remuneration for councillors
- electronic communications
- establishment of trusts, arms length companies and other arrangements to provide public services
- establishment of new political structures (e.g. Cabinet) and management structures with local authorities
- partnership initiatives such as Community Planning Partnerships and Single Outcome Agreements.

The Commission did not suggest that deprivation might be a factor in councillor workload or in determining councillor numbers.

Only one council at this stage mentioned deprivation as a factor and this was in addition to several other factors. Geographical issues were cited as most popular factors.

“The Commission noted that if it is to use fewer bands for local authorities, there is limited value in modelling additional factors, such as deprivation, in order to determine categories. This arises since allocation to a band would be largely determined by demography, and additional factors would have only a marginal effect, as with fewer bands there would be fewer borderline decisions.”

The Commission appears only to have begun to consider deprivation as a factor after the appointment of a new Chair and members in 2013. LGBCS Paper 2176 gave options for methodology following on from the 2011 consultation but they did not give SIMD within this. The suggestion to use SIMD did not appear until November 2013.

The LGBCS appears to have made the decision to use deprivation and SIMD data as a factor with which to categorise councils without having any firm evidence base on which to change its mind.

Professor Henderson also said that the LGBCS had looked at other bodies that categorise local authorities and specifically mentioned the Scottish Local authorities

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1 From LGBCS minutes, June 2011
Remuneration Committee (SLARC). She stated that the SLARC used SIMD as a factor in categorising councils into bans for determining remuneration.

However, SLARC did not use deprivation as a factor in categorising councils. In its final report of the 2010 Review of Remuneration for Local Authority Councillors (March 2011) SLARC states that “We believe that estimated service expenditure remains the best measure for determining relative need. We recommend therefore that councils should be banded relative to estimated service expenditure.”

He SLARC reports bands local authorities into three bands based which take no account of deprivation.

Professor Henderson suggested that deprivation was used as an indicator of ‘what puts pressure on councillors’ and as a pressure that impacts on workload.

However, there is no basis for the LGBCs to make the assumption that deprivation is a significant factor in councillors’ workload. No research into of the role of elected members and their workload has suggested that deprivation is a significant factor in councillor workload.

The most detailed study carried out to date was commissioned by the SLARC in 2005. This study concluded that the key factors influencing councillors’ workload are been whether the elected member is a ‘full-time’ of ‘part-time’ councillor (i.e. councillors with no other employment tend to spend more time on council business than councillors who are in paid employment); and the level of responsibility the councillor has (i.e. councillors with positions of responsibility – ‘frontbench’ councillors – tend to have greater workloads than ‘backbench’ councillors).

When reviewing electoral arrangements the law requires the LGBC to take account of:

- the interests of effective and convenient local government
- that each councillor should represent the same number of electors as nearly as may be
- local ties that would be broken by making a particular boundary
- the desirability of fixing boundaries that are easily identifiable
- special geographical considerations.

Elected member workload is not one of the factors set out for determining electoral arrangements.

In a letter from the LGBCS to the Chief Executive of East Lothian Council the Secretary to the Commission Secretary stated: “We need to base our methodology on what is the best information available at the time and we believe there is a plausible case to be made for using deprivation, not only as a factor that may impact in individual councillor workload but as a factor that may impact on a council’s corporate capacity.”

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2 Survey of Scottish Councillors’ Workload and Analysis of Councillors’ Weight of Responsibilities; Hexagon Research and Consulting, September 2005
3 Letter from LGBCS to East Lothian Council, 16th December 2014
The Commission may believe there is a ‘plausible case to be made for using deprivation’. But surely a public body such as the LGBCS must base its decisions on more than mere supposition. It has to have a firm evidence base for making such important decisions.

At no time has the Commission explained why and how it deprivation impacts on individual councillor workload (does it increase constituent caseload, does it increase work in relation to scrutiny or decision making duties?) or how it impacts on a council’s corporate capacity (do areas with higher levels of deprivation require higher levels of councillor involvement on decision making or scrutiny committees?).

It was only in July 2014, after having made the decision to use deprivation as a factor that the LBGCS commissioned research to provide evidence on the role and workload of councillors. If this research had been commissioned to provide an evidence base for the Commission’s work rather than as an afterthought then the research could have been used to influence the 5th Reviews.

The Commission has stated it will take the evidence from the newly commissioned research (from Professor Richard Kerley and Dr Neil McGarvey) into account when it carries out the 6th Reviews. However, the evidence gathered by the research will then be out of date by then as it will be based on the current number of elected members and not the numbers that will exist following the outcome of the 5th Reviews. Presumably, the Commission will expect to see changes in workload and impact resulting from the outcome of the 5th Reviews so the 6th Reviews should be based on evidence of the impact of these changes and not evidence drawn from the experience of councillors operating under the system pertaining before the 5th Reviews.

The research commissioned by LBGCS was meant to have been completed and reported by April 2015. However, over 18 months after that due date the Commission has still to report on the findings of the research.

2. Flaw in the process followed by the LBGCS

East Lothian Council is strongly of the view that there was a flaw in the process adopted by the LBGCS to conclude the 5th Reviews in respect of East Lothian Council.

The current review of local government electoral arrangements in Scotland formally began on 21 February 2014. The Commission consulted the East Lothian Council on its proposal to reduce the number of councillors for East Lothian from 23 to 21. East Lothian Council responded to the consultation opposing the proposed reduction in Councillor numbers in April 2014. The consultation was then opened to members of the public until August 2014.

The LBGCS reviewed the submissions and then published its response to that consultation exercise on 20 July 2015 and launched a public consultation exercise on its revised proposal to reduce the number of councillors in East Lothian from 23 to
22 on 30 July 2015. The deadline for responses to the latest consultation was 22\textsuperscript{nd} October 2015.

It is the Council’s view that the Commission has failed to adhere to the terms of Section 18(2)(aa) of the Local Government (Scotland) Act 1973. That section requires the Commission to consult with Councils on any proposal for a period of two months before that proposal is put to public consultation. The legislation also requires that the Commission takes account of any views that the Council might have prior to public consultation.

It is the Council’s position that the proposal put to the public was not in fact ever made to East Lothian Council in advance of that public consultation and accordingly the Council was not afforded the opportunity to comment. It is the Council’s opinion that this action breached the requirements of the legislation and may nullify the process.

3. Failure by the Commission and Scottish Ministers to take on board public opinion in East Lothian

In responding to the LGBCS 5\textsuperscript{th} Reviews Scottish Ministers stated that: “In a small number of cases – Argyll & Bute, Dundee City and Scottish Borders – we have listened to local representations and left boundaries as they currently stand, to ensure strong historic ties in particular areas and communities are maintained.” \textsuperscript{4}

However, Ministers ignored the weight of representations made by East Lothian community organisations and members of the public against the LGBCS proposals. The largest number of representations to the LGBCS consultation in 2014 came from East Lothian. There were 30 responses to the public consultation for East Lothian Council area; 5 supported the reduction in councillor numbers and 25 opposed a reduction in councillor numbers.\textsuperscript{5}

In response to a letter from one of East Lothian Council’s independent councillors querying the decision by Scottish ministers to accept the LGBCS recommendation in respect of East Lothian while they rejected its recommendations for several other council areas, Joe Fitzpatrick MSP, Minister for Parliamentary Business, stated that the representations made against the LGBCS recommendations “had to be balanced against the repercussions of not accepting the Commission’s recommendations. In the case of East Lothian, as with most other areas, I decided that the balance lay in favour of accepting the Commission’s recommendations.”

However, the Minister gave no indication as to what the repercussions of not accepting the Commission’s recommendation for East Lothian might be. Since the Minister rejected several Commission recommendations then the argument that the Review needed to result in a consistent approach across the whole of Scotland falls. If Ministers can reject the Commission’s recommendations for one or more council areas then they could also have rejected them for other areas.

\textsuperscript{4} Scottish Government press statement, 14\textsuperscript{th} September 2016
\textsuperscript{5} LGBCS Paper 2266, December 2014

The LGBCS originally proposed to reduce the number of East Lothian councillors from 23 to 21 (three 3-member wards and three 4-member wards); reducing the number of wards in the area by 1 and reducing councillor numbers by 2. The proposal was based on creating a single 4-member Musselburgh Ward by combining the Musselburgh West and Musselburgh East & Carberry Wards; moving the settlements of Wallyford, Whitecraig and part of Inveresk from the Musselburgh East & Carberry to the Fa'side Ward; moving the settlement of Macmerry from the Fa’sie Ward to to the Preston Seton Gosford Ward; and, moving part of Pencaitland to the Haddington and Lammermuir Ward.

The Council had opposed the original proposal on various grounds, including concern East Lothian’s population has grown substantially since the last Review of Local Government boundaries and is projected to continue to grow; that the workload of councillors in the wards most affected by the proposed boundary changes would increase given the larger electorate and the larger number of community organisations they would be expected to work with. The Council was also concerned that the new ward boundaries proposed by the LGBCS cut across existing high school catchment areas and sever a number of long-standing local ties. The LGBCS revised its proposal and then consulted on a second proposal to cut the number of East Lothian councillors from 23 to 22. It proposed to accommodate this reduction in councillors by creating a single 4-member Musselburgh Ward; moving Wallyford and Whitecraig to a new Tranent, Wallyford amd Macmerry Ward; movingOrmiston and Pencailand to the Haddington and Lammermuir Ward and increasing the number of councillors in this ward from 3 to 4. It proposed that the boundaries and number of elected members for the other three wards would remain unchanged.

The LGBCS asserted that these proposals:

- allow for the maintenance of local community ties;
- improve overall forecast parity and address forecast disparities in existing ward 1 (Musselburgh West);
- place Musselburgh in a single ward to improve local community ties.

However, the substantive objections made previously by the Council against any reduction in the number of East Lothian Councillors remain valid, in particular since we are aware that the population of East Lothian is forecast to grow quite substantially over the next few years. It is very likely that the reduction in councillor numbers arising from this review will almost certainly need to be reversed at the next review.

The Council’s response to the LGBCS recommendation to cut the number of elected members for East Lothian from 23 to 22 are summarised below.

**Why cut East Lothian Councillor numbers by 1?**

The Boundary Commission claims to have taken account of the Council’s response to the previous consultation when the Commission proposed to cut the number of
councillors from 23 to 21. A cut to 22 is preferable to the original proposal cut
councillor numbers in east Lothian to 21 but the Council’s arguments against any cut
in our councillor numbers are all still valid.

East Lothian made the largest number of responses to the previous consultation and
the responses were overwhelmingly against any cut in councillor numbers.

The Commission has not given any justification for the cut and has not presented
any benefits.

The cut in East Lothian councillors by one is not required to allow for increases in
councillor numbers elsewhere since the Commission’s proposals across the whole of
Scotland actually reduce the number of councillors.

The amount of disruption and the expense involved in re-drawing boundaries to
accommodate the cut of one councillor has to be taken into account. Examples of
the cost of the change include the need to change the electoral registers, redraw all
the maps and the staff time involved in re-establishing new Area Partnerships.

The creation of the six Area Partnerships is proving to be successful in giving
communities a stronger voice and the ability to plan for their own needs and
priorities. They have recently consulted on their draft Area Plans and proposals to
spend their devolved budgets. The Commission’s proposal means we would have to
re-draw the boundaries and membership of three Area Partnerships and the new
Area Partnerships would need to start again start again.

**Why cut councillor numbers when our population is growing and will continue
to grow?**

It is illogical to cut East Lothian’s councillors at a time when our population is growing
and will continue to grow.

The Commission has taken no account of the major new housing developments that
are just about to start, especially in and around the wards that are being changed,
and of the proposals for even more new housing that will form a key part of the Local
Development Plan which has just been published accommodating 10,000 new
homes in East Lothian.

Between 2003 – 2013 East Lothian’s population grew by just over 10,000 (11%) and
it is projected to grow by around 1% a year for the next 25 years – the fourth fastest
rate of growth of any area in Scotland - behind Aberdeen, Edinburgh and Perth &
Kinross.

It makes no sense to go to the expense and disruption of cutting one councillor when
the next review will need to increase the number of councillors.

**Breaking community ties**

The Commission’s imperative to deal with ‘forecast disparities’ means that they have
totally failed to take account of reality and life in our communities.
The Commission has claimed that its proposal allows for the ‘maintenance of community ties’. But the new ward boundaries it proposes to accommodate the cut in councillors will break important community ties.

Creating a single Musselburgh Ward abolishes the divide between Musselburgh West and East, but by doing this the Commission have weakened community ties between several communities and their closest town.

The Commission has stated that it responded to representations by the Council and others to its original proposal to cut the number of councillors from 23 to 21 which would have resulted in moving the settlement of Macmerry from the Tranent ward (with which has very close community ties) to the Preston Seton Gosford ward (with which it has no ties).

However, the revised proposal from the Commission results in other long established community ties being broken.

To accommodate the cut in the number of councillors through merging Musselburgh West and Musselburgh East & Carberry wards the Commission has had to move Wallyford and Whitecraig to the Tranent ward. However, these two communities have much closer ties with Musselburgh than with Tranent. People from these communities are far more likely to shop and socialise in Musselburgh than Tranent. The children from these communities go to Musselburgh Grammar, not Ross High (Tranent).

Since they are not able to increase the number of councillors in the Tranent Ward (it is already at the maximum of 4) the Commission has had to move the Ormiston and Pencaitland settlements from the Tranent ward to the Haddington & Lammermuir Ward. Ormiston has no real link to Haddington and its historic and community ties are with Tranent. The expanded Haddington & Lammermuir ward no covers around one half of the total area of East Lothian.

The new Musselburgh and Tranent ward boundaries also cut across the Holyrood Parliament boundaries. Currently, Musselburgh West and Musselburgh East & Carberry wards are totally within the North Midlothian and Musselburgh constituency. Under the LGBCS proposal the whole of the new Musselburgh ward and the Wallyford and Whitecraig part of the new Tranent ward will be in this constituency whilst the remaining part of the Tranent ward would be in the East Lothian constituency.

**Increasing Councillors’ workload**

How does cutting the number of councillors improve the council’s capacity to deal with the issues caused by the growing population, increased demand for services, the need to grow our economy and to reduce inequality, and the growing complexity of the public sector such as the new Integrated Joint Board for health and social care, increased local scrutiny of police and fire services?
At a time when the number of constituents is growing, problems faced by constituents continue to grow and the demand on councils and councillors from the Scottish Government is growing, cutting the number of councillors will only increase the workload on councillors.

The proposal to move Wallyford and Whiitecraig to Tranent actually goes against the Commission’s aim of trying to take account of deprivation in councillors’ workload. Having taken account of deprivation when determining councillor numbers at the Scottish level, the Commission’s recommendations take no account of deprivation at a local authority level. Surely, if the Commission believes deprivation is a factor which increases councillors’ workload then it should follow this premise through and adjust councillor numbers at the ward level. However, the commission has not been able to do this.

So the recommendations for new ward boundaries in East Lothian actually result in an increase in workload for councillors representing the ward with the highest level of deprivation in East Lothian.

The Commission’s proposal moves two communities with relatively high levels of deprivation into the Tranent ward, which already has the highest level of deprivation (measured by unemployment, benefits recipients, health inequality and other factors such as housing and crime).

Replacing Ormiston and Pencaitland – two areas with relatively low levels of deprivation – with Wallyford and Whitecriag, will give the new Tranent Ward a higher level of relative deprivation that the existing Fa’side ward. The four councillors in the new Tranent ward will represent a greater number of areas with high levels of deprivation.

The West of the County which has the highest levels and greater concentration of deprivation is currently served by 14 councillors in 4 wards – Musselburgh West (3), Musselburgh East (3), Fa’side (4), and PSG (4); and the East has 9 councillors in three wards – Haddington (3), Dunbar & East Linton (3), and North Berwick (3). Under the Commission’s proposals the West of the county will lose a ward and lose 2 councillors (a 15% cut) whilst the three wards in the East will gain a councillor.

The creation of the new Tranent ward and the expanded Haddington and Lammermuir Ward will create significant disparity in workload between councillors across the county. The four Musselburgh councillors will have one Community Council and one Secondary School. The four Tranent councillors will have four Community Councils and two Secondary Schools. The four Haddington and Lammermuir Councillors will have six Community Councils and also two Secondary Schools.