

Employee ownership, cooperatives and social enterprises in the public sector: A briefing for union members



Summary

The Government and all opposition parties have intend to promote employee ownership of public services. This briefing looks at the various proposals and examines the implications for public services, their users and workers.

Conservative Party proposals would give public sector workers a right to form employee-owned cooperatives to take over services. The **Labour Party** would bring together public service users and employees as mutual members of provider organisations while the **Liberal Democrats** have discussed turning hospitals into employee-owned trusts to give staff a say in how they are run.

Over the past few years, there has been a growing push to transfer services out of the public sector to either existing or new social enterprises or cooperatives. Social enterprises and cooperatives already operate in such areas as social care, social housing, offender management, and council leisure services and there is a push to expand them in health care.

The proposals are linked to policies to expand community involvement through the development of academy schools and NHS Foundation Trusts and the transfer of assets such as parks and libraries to community groups.

Key Questions and Issues

Can mutualism ever be consistent with universal coverage? The drive to social enterprises and cooperatives can be seen as part of a wider policy framework of privatising services. Outsourcing and privatisation only leads to the fragmentation of public services and the breakdown of cooperative relations between providers.

What will all this mean for accountability? The transfer of services out of the public sector weakens democratic accountability. Once a service is outsourced – to a social enterprise or a private firm - public accountability ultimately depends on the strength of the contract between the commissioner and the new provider. Competition for public services leads to reduced innovation, drives down costs at the expense of quality of service and shifts organisational focus towards winning contracts at the expense of client need.

What is the problem to be fixed? Advocates say that employee ownership boosts staff autonomy and motivation. But if this is the case, do we really need a radical change in ownership? Most staff would prefer to sort out problems linked to top-down targets, bureaucracy and constant change, rather than yet another round of organisational upheaval. And would it not be better to promote fairer capitalism and workplace democracy in private sector firms first?

What happens if a social enterprise or cooperative fails? It is unclear what would happen if an employee owned organisation was deemed to be failing, either by the public sector or by the cooperative itself. Would the staff be able to challenge its own Board or sack its managers? Will the taxpayer have to pick up the cost if an organisation went bust?

What will this mean for pay and pensions? Any workers transferred to a cooperative or social enterprise would have their employment rights protected by TUPE, but any future improvements to public sector employment terms and conditions and pay would not automatically be granted. TUPE prevents public sector workers transferring their public sector pensions with them.

How will governance arrangements be established? Again, this is unclear. Careful consideration needs to be given to questions relating to governance, monitoring and performance. Would all employees have identical shares and equal votes? Who will set the performance standards and will they be consistent across the country?

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Introduction

The Government and all opposition parties have made announcements setting out their intentions to promote employee ownership of public services. This briefing looks at the various proposals, current policies and examines the implications for public services, their users and workers.

Conservative Party

Power to public sector workers, 15 February 2010

A Conservative government will give public sector workers a powerful new right to form employee owned cooperatives to take over the services they deliver. This will empower millions of public sector workers to become their own boss and help them to deliver better services.

The new right to form employee owned co-operatives will apply throughout the vast majority of the public sector – including JobCentre Plus offices, community nursing teams and primary schools.

Employee owned cooperatives will continue to be funded by the state so long as they meet national standards, but will be freed from centralised bureaucracy and political micromangement.

They will be not-for-profit organisations - any financial surpluses will be reinvested into the service and the staff who work there, rather than distributed to external shareholders.

Employee owned cooperatives will be able to decide on management structures, innovate to cut costs and improve the quality of service, and share any financial surpluses amongst the staff.

Once running successfully, staff cooperatives will be in a strong position to do more than just the service they were initially contracted for. They will have complete freedom to bid to take over other areas of government activity, or merge with other staff co-operatives if they wish.

http://www.conservatives.com/News/News_stories/2010/02/~media/Files/Downloadable%20Files/powerpublicsectorworkers.ashx

David Cameron, 8 October 2009

"I see a country where communities govern themselves - organising local services, independent of Whitehall, a great handing back of power to people."

David Cameron, April 26 2009

"We'll invite social enterprises, private companies and community organisations to help run our public services."

Labour Party

Tessa Jowell, Minister for the Cabinet Office. The Guardian 14 December 2009

There are important lessons to be learned from studying how the Co-op and John Lewis work, companies owned, respectively, by their customers and their staff.

By bringing users, employees, and others together as mutual members of the provider organisation we can successfully get to grips with the supply side of public service.

When a public service is mutually owned, we know staff feel that they are leading the reform process, rather than having it imposed upon them. This turns them into champions of improvement and reform, enhances feelings of solidarity and responsibility and makes staff more willing to co-operate for the common goal.

Gordon Brown, 27 June, 2008

Building on the success of the Foundation Trust model in the NHS, which sees a million people actively engaging in the governance of their local hospitals, I believe that over the next decade we will see a growing proportion of our services provided by independent public service providers and social enterprises."

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Liberal Democrats

Norman Lamb, Shadow Health Secretary. 20 September 2009

We must empower staff at every level – not just doctors and nurses – but the whole team - from the cleaner right up to the chief executive.

We should look at what works in other sectors and learn from their success – the John Lewis Partnership model is just such a case.

In this highly successful business every staff member is a partner, has a say in important decisions and benefits from the success.

The Liberal Democrats would turn every NHS hospital into an employee owned trust - so that people working in the NHS have a stake in it as well.

All the evidence shows that this approach will improve quality and save money.

This is what we mean by a people-centred NHS, fit for the 21st century.

http://www.libdems.org.uk/speeches_detail.aspx?title=Speech%3A_Norman_Lamb_speaks_about_the_NHS_at_Autumn_Conference&pPK=5bb46914-0f65-461b-a33f-705b826c8320

Definitions

Mutualism

A mutual raises funds from a membership or customers, which can then be used to provide common services to the members. A mutual is owned by and run for the benefit of its members.

Profits are usually re-invested in the mutual for the benefit of the members, although some profit may be retained to sustain or grow the mutual. Examples of mutuals include building societies, friendly societies, mutual healthcare and insurance societies and NHS Foundation Trusts.

Mutuals:

1. are established to serve a specific community or interest group
2. are owned by members
3. have democratic voting systems based on one member one vote
4. have governance structures that formally incorporate stakeholder interests with different stakeholders having an appropriate role in running the organisation proportional to their relevant stake.

Cooperatives

Cooperatives are often defined by the relationship they have with their primary members. In a Worker Cooperative the primary members are the co-operatives' employees; in a Consumer Co-operative, the primary members are the co-operatives' customers. All the profits have to be redistributed to the workforce, the consumers or plowed back into the enterprise. Examples include the John Lewis Partnership, the Cooperative chain of stores, banking, insurance, travel and funeral services.

Cooperative principles:

- Voluntary and open membership
- Democratic member control
- Member economic participation
- Autonomy and independence
- Provision of training and information
- Cooperation between cooperatives
- Concern for the community

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Definitions

Social Enterprises

A Social Enterprise is a business or service with primarily social objectives whose surpluses are 'principally' reinvested for that purpose in the community. Examples include the Big Issue and Jamie Oliver's Fifteen restaurant. Social enterprises use a wide variety of legal forms including:

Community interest company (CIC) A CIC is a legal form created specifically for social enterprises. It has a social objective that is "regulated" ensuring that the organisation cannot deviate from its social mission and that its assets are protected.

Industrial and provident society (IPS) This is the usual form for co-operatives and community benefit societies, and is democratically controlled by their members in order to ensure their involvement in the decisions of the business.

Companies limited by guarantee or shares are the most common legal structure for businesses, While they can ensure they have a social mission written into their Memorandum and Articles of Association, this is not regulated.

Social enterprises may also hold charitable status

The state of play – mutualism in the public services

Traditionally, social enterprises and cooperatives have provided useful niche services, often reaching hard to reach communities. What is new, however, is a growing push to actively transfer local services out of the public sector to either existing or new social enterprises.

Social enterprises and cooperatives have made an expanding impact in social care, social housing and offender management, while a growing number of council leisure services are run by cooperatives. It is estimated that around 30% of leisure services are run by social enterprises.

In the NHS a small number of GP and dental practices already operate as social enterprises, but there has been a recent drive to create social enterprises to take over more primary care services. The largest existing social enterprise in the NHS is Central Surrey Health (CSH). In January 2005, East Elmbridge and Mid Surrey PCT decided to move away from directly providing services and focus on commissioning. This triggered a review of the PCT's provider arm and the directors decided to set up a not-for-profit limited liability company, owned by its staff. CSH was established with a three-year contract from the PCT. All major assets continued to be owned by the PCT and are leased or used by CSH to fulfil its contract.

At the time, it was agreed that CSH staff would keep NHS terms and conditions. By agreement with the Department of Health, new and existing CSH staff are allowed to be members of NHS pension scheme while new starters to other social enterprises are not allowed to join the scheme. All co-owners have equal shares, but do not get dividends and cannot sell to make a profit if they leave. Staff elect representatives to sit on a council of co-owners which contributes to strategy development and co-owners appoint a non-executive director to sit on the board.

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Social Enterprise in the NHS

In July 2008, the NHS Next Stage Review included a commitment that primary care trust staff should be given the “right to request” to set up social enterprises.

NHS trade unions have communicated their strong concerns about the procedures of setting up social enterprises in the NHS and the apparent lack of process for testing whether the staff involved support the new structures.

The Department of Health has stated that ‘social enterprise is not something that can or should be imposed on staff’ yet trade unions have lodged their dismay about the assurance process and the insufficient level of assessment of support among staff.

Social enterprises are described as a means to allow greater autonomy and access to decision-making for NHS staff. Starting such a process without full engagement of staff risks undermining the whole ethos from the start.

In the education sector, trust schools are foundation schools supported by a charitable foundation or “Trust” and are able to employ their own staff, set their own admission arrangements, and manage their own land and assets. Unlike academies, trust schools remain part of the local education authority and are funded like other maintained schools. In March 2008, Reddish Vale technology college, near Stockport, became the first cooperative trust school. It has a forum on which anyone with an interest - including pupils, teachers, parents and neighbours - will be able to sit to set school policies and its ethos. The Government has set out plans to establish up to 200 cooperative schools in the future.

A linked development is the Government’s policy around community asset transfer to allow community ownership and management of assets such as buildings and land. If elected, the Conservative Party would introduce similar policies to allow local residents to protect community assets from closure through a community ‘right to buy’ scheme and allow local people to take over the running of public buildings and community assets, including post offices, pubs and parks. The party has stated that “instead of the government funding schemes that fail to strengthen society, we will direct existing government funding to help voluntary sector organisations and social enterprises expand and tackle some of the most difficult social challenges.”

Political parties also look to NHS Foundation Trusts (FTs) as a source of inspiration for mutualism and community involvement. Trusts are constituted as autonomous entities, accountable only to a board drawn from a membership comprising local residents, patients, and employees, and are accountable to an independent regulator, rather than the Government.

Key Questions and Issues

A key difference between the Labour Party and Conservative Party plans appears to be the emphasis on community and user involvement. It is claimed that Labour plans place more emphasis on the community in addition to worker involvement than the Conservative ideas. However, both plans are as yet still quite patchy and there are major questions that need to be answered in order to make a fair judgment about the proposals. Below, we set out some key issues that need to be addressed. We also pose some wider questions about transfer of services out of the public sector.

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Can mutualism ever be consistent with universal coverage?

By definition, public services cover every citizen and every eventuality. Of course, this does not happen in every case, public service managers often have to make decisions about which people it offers services to for example, social care for the elderly. However, public services have a strong track record in targeting the most vulnerable, hardest to reach individuals and families.

By contrast, social enterprises and cooperatives operate within a very different ethos. Those operating within the market economy providing goods and services, treat users as consumers. Meanwhile, those social enterprises and cooperatives operating in the public sector provide niche services, targeting particular communities or needs. In neither case do they provide universal coverage. The impetus to do so could only ever emanate from the contract held with the commissioning organisation in the public sector. This highlights the inherent problems and risks of the contractualisation of public services.

The drive for social enterprises and cooperatives can be seen as part of a wider policy framework of privatising services. The marketisation and contractualisation of public services continue to create problems for public service delivery organisations, their staff and the public sector as a whole. Public, private and third sector organisations have to dedicate ever increasing resources into bidding for contracts, while commissioning organisations themselves dedicate time and resources into tendering and monitoring contracts. All the while, these resources are transferred away from improving the quality of services provided.

Contracting out leads to the breakdown of cooperative relations between providers, while public sector in effect subsidises the new private or third sector provider through its provision of education, training and regulation which is not factored into the contractual price.

What will all this mean for accountability?

Tessa Jowell stated that: "Mutualism – the ownership of an organisation by those who work in and manage it and also, when it is sensible, by those who use its services – transforms internal culture, and helps to embed real democratic accountability and a renewed sense of community responsibility."

But, by transferring public services out of the public sector inherently weakens accountability by severing public institutions from a democratically elected state that otherwise owned and governed them. We know from existing outsourcing programmes that the only real power that a commissioning body has over a contracted out services is the threat not to renew a contract with the provider organisation.

Once a service is outsourced, the public accountability depends on the strength of the contract between the commissioning public body and the new provider. This in itself demonstrates the inherent risk behind the push towards cooperatives and social enterprises. We must place this development in the wider context of outsourcing and the fragmentation of public services. These new organisations would exist and survive only on the basis of contracts it wins from local authorities, government departments or the NHS. If they failed to win contracts or lost existing contracts this would threaten the financial viability of the organisation and the livelihood of its staff. In addition, the professionals who are being courted to establish social enterprises and co-operatives on the basis they will be able to exercise their professional judgment may end up as contract managers.

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This raises the question of the vulnerability of social enterprises and coops in a competitive environment. Indeed, Ellins and Ham, in a report for the Nuffield Trust warn that: “If the experience of the third sector is anything to go by then employee-owned organisations might expect to face particular difficulties in competing against locally established and recognised public sector providers on the one hand, and well-resourced commercial companies on the other.”¹

Ealing Community Transport

Ealing Community Transport (ECT) was one of the largest social enterprises in the UK, evolving from providing community transport, into a business with a multi-million pound turnover and interests in a range of trading sectors, including, waste management, rail and healthcare recycling which grew to account for 80% of its turnover.

In June 2008, ECT Recycling was bought by the for-profit May Gurney construction and support company. Other divisions of ECT were disposed of, or separated from the parent group, leaving ECT Group to focus on its core transport operations. This restructuring thus allowed assets held for the interest of the community to be transferred into private hands.

A report recently produced for UNISON also examined the impact of the expansion of the competitive model in the relationship between the government and the third sector². It concluded that the model would only lead to:

- increased competition for public funding,
- threat to the survival of some organisations
- reduced scope for innovation within contracts
- the driving down of costs at the expense of quality of service
- the consolidation of contracts, with potential threats to small organisations
- shifting of organisational focus towards winning contracts at the possible expense of client need
- danger of ‘mission drift’ and loss of independence.

What is the problem that these proposals are attempting to fix?

A fundamental question that must be answered is what problem are these proposals attempting to fix. From the rhetoric, it appears to be that the plans are about untapping the potential of currently undermotivated employees. Tessa Jowell stated that: “When a public service is mutually owned, we know staff feel that they are leading the reform process, rather than having it imposed upon them. This turns them into champions of improvement and reform, enhances feelings of solidarity and responsibility and makes staff more willing to co-operate for the common goal.”

If this is indeed the case, does the answer lie in a radical change in ownership? Many public servants complain about top-down targets, overly burdensome bureaucracy and constant change. Perhaps these are the issues that should be addressed, rather than another round of organisational upheaval. People rarely go to work in the public sector in order to be entrepreneurs, rather they do so to help provide good services.

¹ Ellins J & Ham C. *NHS Mutual: engaging staff and aligning incentives to achieve higher levels of performance*. The Nuffield Trust, 2009

² Davies, S. *Government policy, recession and the voluntary sector*. UNISON, 2010

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The Nuffield Trust report found that “research consistently demonstrates that employee ownership only produces (or only sustains) benefits when two further factors are present: human resource management practices that foster staff participation; and a culture of ownership that is associated with staff having a collective voice in the organisation.” So is staff engagement and collective voice the answer rather than employee ownership?

All three main political parties see employee ownership as a means to make savings for the public purse and/or improve the quality of services. But as the Nuffield Trust report says “few studies have assessed the impact of employee ownership on customers/service user outcomes” and these have been mostly confined to the US and the commercial rather than public sector, with evidence in the UK largely “anecdotal”. Furthermore, research assumes that social enterprise models in the banking or retail sector can actually be transferred to other sectors like education and health. In short, there is little evidence to suggest that mutuals or other types of social enterprise companies would deliver a more efficient or higher quality service than the public sector, although there is some research to suggest they may well be able to improve upon the profit-driven private sector.

All of this leads us to the immutable question, if employee ownership is believed to be so beneficial, why isn't it being promoted in the private sector rather than the public sector? Now is not the time for a leap into the dark with untried and untested models of ownership in public services. Now is the time to consider a fairer form of capitalism and improved workplace democracy. Employee ownership may well play an important role in making private sector organisations more responsive to the common good, but making public sector organisations more aligned to private interests is not the answer.

How will profits be treated?

Under the Conservative plans, the Government would “negotiate a tariff or payment-by-results contract with the cooperative – based on national standards – for the desired services and outcomes expected, which would provide incentives for staff to provide better services at better value.”

Cooperatives would be able to “innovate to cut costs” and staff would be able to decide whether to share any profits between themselves or reinvest them in the organisation. One way that a new cooperative may decide to “innovate to cut costs” would be to offer worse terms and conditions to new starters than transferred staff. Conservative plans would also allow for cooperatives to buy in services from other cooperatives or private sector organisations.

This could allow ‘cherry picking’ where simple cases of assistance, advice, treatment or support are dealt with quickly as they are more profitable. People with complex cases are then marginalised.

What happens if a social enterprise or cooperative fails?

It is unclear what would happen if an employee owned organisation was deemed to be failing, either by the public sector commissioning organisation or by the cooperative itself. Would the staff be able to challenge its own Board or sack its managers? Will the taxpayer have to pick up the cost if an organisation went bust?

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Secure Healthcare

In 2009, Secure Healthcare a social enterprise that provided NHS care for prisoners went bust with debts of over £1 million. The organisation had a contract worth more than £5m a year with Wandsworth prison in London. The problems were mostly related to the contractual relationship with the NHS. Secure signed a fixed-price contract that could not be renegotiated, while employment costs began to mount as overtime and agency staff were used to cover vacancies. Meanwhile, banks were reluctant to agree a bail-out loan. Although patient satisfaction had been found to have improved, significant problems were reported, including inconsistencies in care.

What will this mean for public sector pay and pensions?

Any workers transferred to a cooperative or social enterprise would have their employment rights protected by TUPE regulations. However, any future changes or improvements to public sector employment terms and conditions and pay would not automatically be granted. Currently TUPE regulations prevent public sector workers transferring their public sector pensions with them. There is also a strong fear that contractors may try and argue that TUPE does not apply because the re-contracting of a service is a 'service re-design'.

New pension rules for NHS staff transferred to a social enterprise under the "right to request scheme" are slightly different and allow staff to stay in the NHS pension scheme. Any new starters would be employed on the terms and conditions of the new organisation which should be overall no less favourable than the terms and conditions of transferred employees, and the social enterprise or cooperative would need to provide separate pension scheme arrangements for new staff.

Under the existing rules governing social enterprises in the NHS, if the new organisation bid for and won contracts to provide services for non-NHS funded services, any staff working on these contracts will not be able to retain membership of the NHS pension scheme and their service up to that point will be frozen.

Conservative Party plans for the public sector appear to be significant in the context of the development of cooperatives. For example, they intend to reorganise the way that teachers are paid, in order to allow variable rates. While it is as yet unclear what their plans are for other parts of the public sector, it appears that they favour the introduction of more local pay bargaining.

How will governance arrangements be established?

Key questions will need to be addressed in terms of governance, monitoring and performance. Would all employee members have identical shares and equal votes on strategy and management? Who will set the performance standards and will they be consistent across the country? What will be the balance between public sector and community input and monitoring? A lack of careful consideration of these questions risks the credibility, stability and future operation of these new organisations.

Speak up for Public Services represents 26 public sector trade unions, together with the TUC.

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