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Civil Society and Public Services: Collaboration not Competition

Community and voluntary organisations, charities, mutuals , co-operatives, social enterprise and public service delivery

a TUC publication

TUC

Contents

1. Executive Summary

2. Introduction

3. Political Context

4. Sector Context

5. Key challenges to public services

6. The impact on the voluntary sector

7. Public services and civil society: a collaborative model for reform

8. Managing the threats

Section one

Executive Summary

The Case for Public Services

- Public services are not discretionary commodities. They are core-welfare public goods that provide benefits not only to service users but wider society.
- The TUC believes that the founding principles of public services, namely universal access, delivery according to need, services free at the point of use, and services delivered for the public good rather than for profit should be at the heart of any model of service delivery.
- It is our view that through its democratic accountability, unique funding mechanism and long term integrated approach, the public sector is best placed to provide public services that meet the criteria above.

Government Policy

- The Big Society concept of outsourcing public services to providers from civil society and social enterprise sector must be seen in the context of huge cuts to public spending and ‘reforms’ based on an ‘any qualified provider’ model applicable across the full range of public services.

Threats to public services

- The TUC believes that this agenda poses the threat of further inefficient and costly marketisation of public services, creating a race to the bottom driving down labour costs, conditions of employment and quality of service.
- Community and voluntary organisations, smaller social enterprises and employee-owned mutuals will compete at a disadvantage in an open market with large scale private for-profit enterprises. In addition, private sector businesses will increasingly aim to use charity or social enterprise cover as a means to enter public service delivery.

- Fragmentation of public services threatens service continuity, accountability, regulation and quality standards.

Impact on the voluntary sector

- The voluntary sector is suffering huge cuts in funding that are directly leading to job losses, closures and the loss of services and volunteers.
- This is occurring at a time when demand for services is increasing as a result of the economic downturn and changes to welfare, public and legal services.
- Commissioning and procurement processes are impacting on voluntary sector independence, advocacy and campaigning, forcing charities and community organisations to tailor their organisations to external funding requirements at the expense of service users and client groups.

Collaboration is the key to public service reform

- The TUC supports reform that improves delivery and creates services that are responsive to communities by engaging service users, staff and commissioning authorities through a collaborative model of negotiation and agreement within a public sector framework.

Managing the threats

- The TUC and its affiliated trade unions campaign for public services to be retained within accountable, accessible, integrated and well resourced public sector providers.
- But the TUC believes that minimum conditions and standards can be used to manage and mitigate the worst effects of outsourcing in situations where there is a genuine desire among public sector workers and service users for employee-ownership or social enterprise and in situations where this approach may be a preferable option to closures and redundancies.

Section two

Introduction

The Coalition Government has made clear that its vision for public service reform encompasses the expansion of competition in an open market for services and delivery of services through a diverse range of providers including both the private sector and voluntary and community organisations and social enterprises.

This marketisation of public service delivery must be seen within the context of the deep and rapid spending cuts that the Government has embarked upon as part of its plans to cut the UK deficit within the lifetime of the current spending review.

It is the view of the TUC that the Government's package of cuts are unfair, too deep, too rapid and by undermining economic growth will be counter-productive, making the deficit worse. The cuts are damaging both public and voluntary services just when they are most needed, as communities continue to suffer the prolonged effects of the economic downturn.

The TUC argues that an alternative based on investing in sustainable growth, a fair tax policy, and a crackdown on tax evasion and avoidance provides a fairer and more effective route to recovery and deficit reduction.

Trade unions have long campaigned against the privatisation and fragmentation of public services. In many respects, the outsourcing of public services to civil society organisations contains the same set of threats and challenges. However, in addition, there are issues that are specific to civil society organisations and social enterprise that require a specific policy response.

This report sets out to:

- Outline the public policy context;
- Identify the key issues and challenges for public services and the public sector workforce;
- Identify the impacts on civil society;
- Articulate an alternative vision for civil society engagement in public services;
- Explore how we might manage and mitigate some of the worst effects of outsourcing public services to civil society organisations and social enterprises.

This report refers to a range of organisations including community and voluntary organisations, charities, employee-owned mutuals and co-operatives and social enterprises. It is recognised that this is a heterogeneous group, with a diverse range of political, economic, organisational and legal issues and needs. Grouping these together under the term 'civil society' is necessarily simplified and in some cases, social enterprise being an obvious case, possibly inaccurate.

However, this report reflects the position of the Coalition Government in putting these groups together when discussing the issue of public service delivery. What's more many of the key issues raised in this report are applicable to all the diverse groups within this broadly defined sector. Where specific issues arise to just one element within this group, we have tried to highlight this. However, we agree that there is certainly scope for further discussion on issues related to each of the specific elements within civil society.

This report has been produced following consultation with affiliated trade unions through the TUC's Public Services Liaison Group.

Definitions

The number of different terms and financial and legal structures in the field of shared ownership, social enterprise and other community models can be confusing. In Appendix A we provide a number of brief definitions, taken from the Office for Public Management.

Section three

The public policy context

Many of these developments originated under the previous Labour government, such as the creation of the 'right to provide' in health services.

In 2006, the Secretary of State for Business and Enterprise John Hutton argued that:

"Government must be ever sharper and more adept at creating and managing contestable forms of service delivery. Alternative providers whether in the private, public or third sectors, should be the norm, not the exception."[1]

The 2010 Labour Party election manifesto made clear its support for 'third sector' organisations role in public service delivery, stating that:

"There will be greater support for third-sector organisations in competing for public-sector contracts, ensuring there is a level playing field with the public and private sectors."[2]

However, the Coalition Government has accelerated this process, tabling a number of radical proposals aimed at expanding the role of the community and voluntary sector, social enterprise and employee-ownership in the delivery of public services.

Writing in the Daily Telegraph in February 2011, David Cameron asserted that marketisation of public services would become the default setting of his administration:

"We will create a new presumption – backed up by new rights for public service users and a new system of independent adjudication – that public

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[1] 'Government policy, recession and the voluntary sector' Steve Davies, University of Cardiff 2009

[2] 'A Future Fair for All' Labour Party Manifesto 2010

services should be open to a range of providers competing to offer a better service."[3]

Social enterprise and mutuals already operate in areas such as social care, social housing, health care, offender management and council leisure services. But under the Coalition Government there is to be a considerable expansion of both private and civil society providers across the whole range of public services. As Cameron continued:

"O*f course there are some areas – such as national security or the judiciary – where this wouldn't make sense. But everywhere else should be open to diversity*"[4].

These proposals cannot be separated from the Government's programme of rapid and deep spending cuts.

"The Big Society"

Underpinning the Government's approach to public service reform is the concept of the 'Big Society'. While there has been a degree of confusion and scepticism around this notion, it is becoming increasingly clear that the 'Big Society' agenda has genuine significance as a driver of structural change within public services through a period of austerity.

In its report *'Cutting It: The Big Society and the new austerity'*, the New Economics Foundation identifies three core elements within the 'Big Society':

- Empowering communities: The aim is to bring about a 'massive power shift' from central government to 'local communities'. There will be changes to planning laws and new rights to enable 'locally-based organisations' bid to run local assets and services.
- Opening up public services: The Government wants to give a much bigger role in running public services to 'empowered communities' organised in 'charities, social enterprises and cooperatives' alongside the private sector.
- Promoting social action: Having 'opened up' opportunities, citizens must be persuaded – individually and through voluntary, charitable

[3] David Cameron 'How we will release the grip of state control' Daily Telegraph 20th February 2011
[4] ibid

and community-based groups – to seize them. This involves influencing individual behaviour and finding ways to encourage and support local groups.

While some merit may be identified in the theory, this agenda cannot be separated from the Government's programme of deep and rapid spending cuts. The 'Big Society' as defined by the Coalition must be seen within the context of increased unemployment, huge cuts to local public services, an increasingly punitive benefits system and increasing polarisation within and across regions of the UK.

As the NEF puts it *"unpaid labour and the charitable and voluntary sectors are due to fill the gaps left by public services, providing support to increasing numbers of poor, jobless, insecure and unsupported individuals and families"*[5]

The Government's programme

There are three main ways in which the Government is supporting this agenda:

(i) Building capacity

A 'Big Society Bank' will be established to provide start up funding to social enterprises. This will funded up to £200m with money collected by the Co-operative Bank from unclaimed and dormant accounts and contributions from the corporate banking sector as part of the Project Merlin deal.

The Cabinet Office has established the Office for Civil Society, replacing the Office of the Third Sector, with responsibility for charities, social enterprise and the voluntary sector.

The Government announced in the comprehensive spending review that it will invest £470 million in the voluntary and community sector over the next four years. According to the document, the figure of £470 million includes a short-term £100 million transition fund to help non-profit organisations adapt to the economic conditions. According to the Cabinet Office, the Fund will translate to £10 million in 2010-11 and £90 million in 2011-12. It will be administered by the Office for Civil Society and an as-yet-unannounced third sector partner.

[5] New Economics Foundation 'Cutting it: the Big Society and the new austerity' November 2010

Pilot programmes will be introduced with the aim of building cohorts of community activists and civil society networks, for example through the ‘community organisers’ programme, the National Citizens Service for 16 year olds and the Big Society Network, chaired by Lord Wei.

(ii) Localism

The Government introduced its Localism Bill in December 2010. The Bill includes a number of proposals aimed at devolving decision making to local communities.

The Bill will give civil society organisations and local authority employees the ‘right to challenge’ local authorities where they believe they could provide services “differently or better”[6]. Expressions of interest submitted to local authorities that meet the (as yet undefined) criteria, may trigger a procurement exercise open to providers from the private sector and civil society.

In addition, the Bill will also provide *“opportunities for communities to bid to buy assets that are of community value and from which they can deliver existing and transformed services*”[7].

(iii) Public Service Reform

The Government is explicit in its commitment to *“support the creation and expansion of mutuals, co-operatives, charities and social enterprises and enable these groups to have a much greater involvement in the running of public services”*[8].

The Comprehensive Spending Review of October 2010 set a clear direction for this kind of reform, claiming to shift power *“away from central government to the local level – to citizens, communities, and independent providers”* and that *“the Government would look to set proportions of specific services that should be delivered by non-state providers including voluntary groups; and introduce new rights for communities to run services, own assets and for public service workers to form cooperatives.”*[9]

In November, the Cabinet Office announced the extension of the ‘right to

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[6] Office for Civil Society Green Paper ‘Modernising Commissioning’ November 2010
[7] Ibid Cabinet Office
[8] ‘The Coalition: Our Programme for Government’ May 2010
[9] HM Treasury ‘Spending Review 2010’

provide' across a broad range of national and local public services so that employers will be expected to accept suitable proposals from staff who want to take over and run their services as mutual organisations. Francis Maude has also announced support for these public service 'spin-outs', including £10million to "help the best fledging mutuals reach investment readiness".

In August the Government launched 12 employee-led pathfinder projects in community health, housing services, social work, further education and youth services among others.

In the health service, the Government has announced its plan *"to create the largest social enterprise sector in the world by increasing the freedoms of foundation trusts and giving NHS staff the opportunity to have a greater say in the future of their organisations, including as employee-led social enterprises"*[10] and a third wave of 'right to provide' has been announced. The Health and Social Care Bill will enable GPs to commission services from "any qualified provider" making further opportunities available for both the private sector and social enterprises.

The Ministry of Justice Green Paper 'Breaking the Cycle' seeks to ensure that the "*commissioning model harnesses the creativity and expertise that independent providers can bring. This includes the small and specialist voluntary providers and social enterprises."*[11]

In education, the Government's White Paper 'The Importance of Teaching' sets out plans to increase opportunities for alternative providers through academies and free schools. Particular emphasis is placed on the role of the voluntary sector in the area of alternative provision, with an explicit commitment to "supporting more voluntary sector providers"[12]

In early 2011, the Government will produce a White Paper on Public Service Reform. In the meantime, the Cabinet Office has issued a 'call for evidence' on public service reform and the Office for Civil Society has published a Green Paper on 'Modernising Commissioning'. Both consultations concluded in early January 2011 and will feed into the White Paper on Public Service Reform due to be published in the spring. Both the call for evidence and the Green Paper

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[10] Department of Health White Paper 'Equity and Excellence: Liberating the NHS' July 2010
[11] Ministry of Justice Green Paper 'Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders" December 2010
[12] 'The Importance of Teaching: The Schools White Paper' November 2010

included a focus on the opportunities for developing new rights for communities and public service employees to provide public services.

The Government will also work with the Devolved Administrations to look at how these principles may be adapted to public service delivery in those territories.

Section four

The state of play in the voluntary and social enterprise sector

There are grave concerns about the impact of spending cuts on organisations in the sector, many of which are dependent on public grants and contracts.

According to estimates by National Philanthropy Capital government funding for the voluntary sector will be reduced by between 25% (£3.2bn) and 40% (£5.1bn). By contrast, total grant-making from trusts and foundations in 2008/2009 was £2.7b, insufficient to fill the gap even if trusts and foundations had any appetite to do so.[13]

Cabinet Office figures show that overall the sector receives around £12.8bn from the state, a sizeable proportion of the sector's overall £35.5bn income. Sources of public funding breakdown as follows:

• Local authorities	£6.6bn	52%
• Central government and NHS	£5.3bn	41%
• EU and international	£0.9bn	7%

Statutory funding is concentrated among a minority of community and voluntary sector organisations. According to research from the Third Sector Research Centre[14], 36% of community and voluntary sector organisations receive public money, and 14% (23, 000 organisations) regard statutory funding as their most important source of income.

Approximately 25% of respondents indicated that they had received funding from local sources in the form of grants, and 13% that they had received contract income. There was some overlap between these, and there will also be some overlap with those reporting income from national sources. Here the

[13] National Philanthropy Capital 'Preparing for the Cuts' October 2010
[14] Third Sector Research Centre Working Paper 45 'How dependant is the third sector on public funding' October 2010

headline figures were that 19% reported income in the form of grants and a further 6% reported contract income from national statutory bodies.

In 2008, NCVO reported that earned income now accounts for more than 50% of charities' income for the first time, and that this long-term trend is "driven largely by the provision of greater levels of public services under contract".[15]

CVOs deliver approximately 2% of public services currently. This has been heavily weighted towards the social care sector, including services to children, young people, and the elderly. In housing, supporting people is the main source of public funding from local government, which helps people remain in their own homes and manage the business of running a household.

More recently organisations have been involved in delivering services around employment. However, whilst the sector expected to pick up most of the work stemming from the DWPs 'Work Programme' contracts were mainly let to major private sector organisations such as Serco, Ingeus and A4E.

Funding for the sector has expanded as more community and voluntary organisations engage in the provision of public services under contract. NCVO assert that there has been a "strong shift from grant funding to contract funding" in the sector[16]. Research by the National Finance Hub shows that grant aid funding from local authorities is on a downward trend and that in 2006 "for the first time, third sector income from the statutory sector was derived primarily from fees rather than grants – fees represented 53% of income from statutory sources".[17]

Those most reliant on statutory funding tended to be larger organisations, more likely to be charities or CICs, serving the most vulnerable and socially excluded clients and operating within areas of high deprivation largely in urban areas and northern regions. These organisations also tended to use employed workers more than volunteers. As such, spending cuts will tend to have impacts both on the most deprived service users and on the employed workforce within the sector.

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[15] 'Government policy, recession and the voluntary sector' Steve Davies, University of Cardiff 2009

[16] ibid

[17] 'The Decline of Local Authority Grants for the Third Sector: Fact or Fiction' National Finance Hub 2008

According to the NCV0[18], sub-sectors most reliant on public funding with the highest proportion of income from statutory sources are:

- Employment and training 70%
- Education 51%
- Law and advocacy 51%
- Housing 50%
- Social services 50%
- Umbrella bodies 45%
- Health 43%

Social enterprise is even more heavily dependent on public funding through outsourcing and procurement. Social Enterprise Coalition research[19] found that 39% of social enterprises received the majority of their funding through statutory sources while a further 51% received public funding of less than half of their income.

While the voluntary sector faces impacts from cuts to statutory funding sources, philanthropic and corporate giving has also been scaled back in the wake of the economic downturn. A CAF/ NCVO study from 2009 reports a decrease of 11% (or £1.3 billion) in the total amount donated in the UK. This is backed up by a survey of 450 senior UK business leaders which reported an expected drop in corporate giving of 34% in 2009 - 60% of respondents expect their organisation to cut its charity budget, potentially cutting business donations by £500 million.[20]

Household donations are also declining. Research by University of Bristol and Cass Business School show that the proportion of households donating to charity has dropped from around a third (38%) in 1978 to just over a quarter (28%) today.[21]

[18] NCVO Civil Society Almanac 2010
[19] Social Enterprise Coalition 'Social Enterprise Survey 2009'
[20] 'Government policy, recession and the voluntary sector' Steve Davies, University of Cardiff 2009
[21] 'Big Society equals big slog for charities' The Guardian 15 February 2011

Section five

The threat to public services

The increasing role of social enterprises, CVOs and mutuals in the delivery of public services presents a number of key challenges for public services and the public sector workforce. Many of these issues reflect similar concerns that have been expressed regarding outsourcing to private providers, while some may reflect specific circumstances related to civil society organisations and social enterprises.

But before we proceed to look at these, it is worth reiterating the TUC's position on public service delivery.

The case for a public sector service

Public services are not discretionary commodities. They are core-welfare public goods that provide benefits not only to service users but wider society. The TUC supports public service delivery that is accountable, efficient, value for money and provides high quality, universally accessible services to the community delivered by professional, engaged and appropriately remunerated staff. The TUC believes that the founding principles of public services, namely universal access, delivery according to need, services free at the point of use, and services delivered for the public good rather than for profit should be at the heart of any model of service delivery.

It is our view that through its democratic accountability, unique funding mechanism and long term integrated approach, that the public sector is best placed to provide public services that meet the criteria above.

This view is supported by the wider public. A YouGov survey found that 73 per cent of voters disagreed or strongly disagreed with more competition within the NHS, while another survey found that 89 per cent of the public thought that "public services should be run by the Government or local authorities, rather than by private companies" [22] Research by IPPR and Price Waterhouse Coopers found that 94% believe that national or local government or public service providers should be mainly responsible for providing health care, 93%

[22] 'Rethinking Public Service Reform', TUC, 2008

believe that different state agencies should be responsible for running local schools and 93% believe that national or local government or public professionals should be responsible for keeping the streets safe.[23]

It is our view that there is plenty of scope to increase the engagement of service users and the community and voluntary sector in public service reform, in fact this is crucial. Our proposed model for public service reform is outlined in Chapter 7 below.

But the Government's approach causes a number of key concerns, which we will now turn to.

Marketisation

The conversion of parts of the public sector into worker or community mutuals and the outsourcing to CVOs or social enterprises will lead to an increased marketisation in public services.

For instance, under the 'right to provide' model, health services that are turned into shared ownership enterprises or outsourced to CVOs or social enterprises will have to win contracts and compete with private companies to survive and will be vulnerable to take-over from large companies and multinationals.

This is particularly true when economies of scale dictate that greater efficiencies can be derived when a number of competing enterprises are brought together under a smaller number of "super-providers". What is more the private sector's ability to ability to undercut smaller organisations and take an initial loss to gain a market leading position provides significant competitive advantage over those third sector organisations bidding for contracts.

Fears of corporate 'entryism' are also heightened by increasing evidence of CVOs and private sector operators bidding for public service contracts in partnership. Remploy and Balfour Beatty's partnership on the Work Programme and Nacro's joint bid with Group 4 Securicor to run prison services are two examples of the blurring of boundaries between charity and corporate interests that both hinders the role of charities and increases the use of private for-profit companies in the delivery of public services.

[23] 'Capable Communities: Towards Citizen-Powered Public Services' IPPR and PWC 2010

This approach is also being actively promoted by the government. Minister for the Cabinet Office, Francis Maude, has encouraged employee-owned mutuals to undertake "joint ventures" with "partner organisations", such as management or IT consultants and private capital, in order to provide a service[24]

This has also been the case with social enterprises. With no legal definition, a number of organisational structures available and a variety of interpretations the concept of social enterprise is particularly open to flexible use by the private sector.

As one respondent to a survey by the Centre for Public Policy and Health at the University of Durham put it:

"we have to acknowledge that professional marketeers in the private sector are pretty good at their job, and that if social enterprise is the future, then a huge amount of private companies are going to become social enterprises, so they're part of the future. And I am concerned that the concept is so flimsy that there's no way of keeping out the imposters as it were"[25]

In a report commissioned by the DTI's Social Enterprise Unite, the opportunities afforded to private sector businesses through partnerships with social enterprise are made clear. Benefits that accrue to the private sector include the way that "s*ocial enterprises can help commercial business partners develop their markets, especially in doing business with the public sector and in gaining access to local communities"* and how *"business leaders can use their social enterprise partner to act like a 'translator' – allowing them to communicate effectively with hard-to-reach audiences, particularly at a local community level."*

One company, Accenture, found that the benefit of partnership with the Community Action Network was evident *"in the way it has been able to use CAN to enhance its chances of winning a public sector contract"*[26]

The case of Ealing Community Transport is instructive. Ealing Community Transport (ECT) was one of the largest social enterprises in the UK, evolving

[24] Civil Service World, 27 January 2011
[25] 'Social Enterprise and the NHS: Changing patterns of ownership and accountability" University of Durham 2007
[26] 'Match Winners: a guide to collaboration between social enterprise and private sector business" DTI 2005

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 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, despite the fact that ECT was registered as a Community Interest Company.

A report from the Third Sector Research Centre suggests that the vast majority of the 62,000 organisations designated as social enterprises under the definition used by the Office for Civil Society lack an asset lock preventing the sale of the business to a profit-making company. This means that they would not qualify for the 'Social Enterprise Mark', the quality mark promoted by the Social Enterprise Coalition that shows a business is a social enterprise.[27] This does little to assuage concerns about the potential for the transfer of public assets and services into private companies under the Government's existing proposals.

Marketisation also incurs increased costs. The break-up of public services into competing units acts as a drain on resources which become diverted to transaction costs, such as fees, quality assurance, monitoring of contracts, advertising and invoice and billing costs. Professor Allyson Pollock estimates that marketisation in the health care system may cost up to £20bn a year.

Accountability and Governance

The TUC believes that there is an inherent tension between the Government's stated aims of increasing the plurality and independence of providers of public services – both from the voluntary and private sectors – and of increasing democratic accountability. Given the fragmentation of provision that is likely under the proposals for reform, it is critical that there is robust regulation, clear lines of accountability, and the ability for service users and the public to be involved in scrutinising the commissioning and delivery of services.

[27] *Third Sector*, "We must have a clear definition, says Social Enterprise Coalition", 28 September 2010

Unfortunately it does not appear that this is the case in the policy changes that have been proposed so far.

There is a real risk that the focus on market mechanisms in public service delivery leads to a market approach to accountability rather than a democratic approach, thereby distorting outcomes. The text in the call for evidence refers to service users holding providers accountable through choice. But for vulnerable individuals and those without the resources to exercise choice, this is not a genuine option. And simply leaving accountability to market mechanisms in this way will leave many providers struggling to plan for service continuity and workforce planning.

The Government’s aim of increasing transparency is certainly welcome in principle, but simply publishing documents does not make an institution or service more accountable. The role of elected councillors and strong, well-resourced arrangements for local scrutiny are critical to getting this right. The fragmentation of service delivery proposed by the government will lead to a multiplicity of providers, stretching the capacity of councillors to hold service providers properly to account.

In education, there are concerns about the accountability of new models for schools. Academies are not scrutinised or held accountable by democratically elected local councillors. Unions also have concerns about the internal accountability mechanisms in Academies, where sponsors appoint the majority of governors.

The Health and Social Care Bill gives sweeping new powers to the existing regulator of foundation trusts, Monitor, which will become an economic regulator with a remit that includes promoting competition. This role raises the potential for conflict of interest, with a danger that it will focus on lowering costs rather than on ensuring high quality services. The new local Health and Wellbeing Boards proposed in the white paper will have a lower proportion of elected members than existing local authority scrutiny committees.

Furthermore, fragmentation is likely to lead to a variety of standards in terms of internal quality assurance and governance of standards. Accreditation may provide minimum thresholds but cost pressures are likely to drive down investment in continuous professional development, training and other quality assurance processes. On-going monitoring of quality assurance across a large number of providers in a locality will place enormous demands on commissioning bodies that will be unlikely to be met.

Demand

One of the main arguments deployed in favour of a greater role for CVOs, social enterprise and employee-ownership models in public service delivery is that it responds to a growing demand from service users and public sector employees for greater control over design and delivery of services. While there little doubt that both users and employees would welcome opportunities for a greater say in the design and delivery of services, there are serious doubts about the extent to which this extends to a demand for the running the service themselves.

According to research by the Office for Public Management, the potential benefits derived from employee ownership models, e.g. innovation, efficiency and creativity, only work where there is genuine employee ownership and buy-in. This process cannot be driven from the top. Experience from unions suggest that, contrary to the government's claims, moves towards mutuals and other social enterprise models have mainly been led by management rather than staff, and workers have felt under pressure to support the change.

This has particularly been the case where options have been limited and the move towards social enterprise has been pitched as a means to avoiding cuts and redundancies. For example, Ian Kendall, Chief Executive of Oldham Community Leisure, a social enterprise that originated from Oldham Metropolitan Borough Council in 2002, explains the motivation for the staff in this case:

"When this organisation was run by the council, the staff were extremely unhappy. They felt it was nothing but cut, cut, cut. They were sold the idea that if the trust became independent, they would be in charge of their own destinies"[28]

Evidence from UNISON and CSP suggests that in the vast majority of cases where staff have been balloted, the majority have chosen to remain within the public sector and health service. In many cases the results have been emphatic, as the following table indicates:

[28] 'Four that rose to the challenge of freedom' Third Sector 1 February 2011

Primary Care Trust	% of staff voting against the transfer
Cornwall	81
Plymouth	74
Shropshire	85
Greenwich	86
Mid Essex	97
Sandwell	67
Cornwall & Isles of Scilly	80

In some cases, such as Greenwich, Sandwell and Shropshire, these overwhelming votes against transfer have led to a change of course and the retention of services within the NHS. However, in other cases, such as Mid Essex and Cornwall, the views of the staff have been ignored and the move to social enterprise status has been driven ahead regardless.

This demonstrates a worrying trend within areas of public service such as the NHS, where the drive for social enterprise and 'employee-ownership' has been driven from the top down against staff interests. In many cases, staff engagement has been peripheral or skewed in favour of an outsourcing option, with ballots or staff surveys precluding in-house or NHS options.

A survey by Third Sector and LGC showed that there was not only a lukewarm response to the government's 'Big Society' agenda among public sector staff but also those working in the voluntary sector. According to their findings that only 9% of voluntary sector respondents thought the main effect of the 'Big Society' would be an increase in citizen action and only 11% thought it would bring greater opportunities to set up voluntary and community groups. These figures were similar to respondents from the public sector.[29]

Furthermore, there is little popular support among service users or the wider public. A YouGov survey of the general public found that 59% agreed with the statement that the 'Big Society' was "mostly hot air" and "a cover for the

[29] Big Society Survey, Third Sector and Local Government Chronicle, October 2010

government while they cut public services" and 68% said that it would probably not work[30].

Research by IPSOS/Mori for Public Services 2020 suggests that while there is appetite for a greater role in shaping public service delivery, few were compelled to become involved and a clear majority *"struggle to see a compelling or urgent case for reforming public services to cope with economic pressures and social changes"*[31]

The research found that people were initially positive about the use of co-operatives in delivering public services but that this support fell away as various obstacles were revealed, particularly in relation to accountability and decision making. Support for co-operatives was most desirable in relation to *"non-core services"* and where *"local variation ... is most important"*.[32]

Research from IPPR/PWC found that there was a degree of appetite among the public for a greater say in public services, however their report found that that "while there is support for the public to take more of a role, people nevertheless believe that the state should remain primarily responsible for delivering most public services". 94% of respondents believe that national or local government or public service providers should be mainly responsible for providing health care, 93% believe that different state agencies should be responsible for running local schools and 93% believe that national or local government or public professionals should be responsible for keeping the streets safe.[33]

A YouGov survey found that 73% of voters disagreed or strongly disagreed with more competition within the NHS, while another survey found that 89% of the public thought that "public services should be run by the Government or local authorities, rather than by private companies" [34]

This suggests that public remains sceptical, to say the least, about the appropriateness of community and voluntary organisations delivering mainstream public services.

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[30] 'Brits baffled by Big Society' YouGov, 31 January 2011
[31] Office for Public Management 'New models of public service ownership' August 2010
[32] Ibid
[33] 'Capable Communities: Towards Citizen-Powered Public Services' IPPR and PWC 2010
[34] 'Rethinking Public Service Reform', TUC, 2008

Service continuity

In addition to the problems posed by the fragmentation and complexity of accountability posed by further contracting out, there are also concerns about the impacts on joined up services and continuity of delivery.

There are a number of risks to continuity and quality of service associated with the proposed reforms. The Government's call for evidence on public service reform, states '*fully functioning markets require free entrance and exit for providers*[35]'. This raises the prospect of constant upheaval and uncertainty for service users and for the workers who deliver public services. A key example of this is the 'any qualified provider' model proposed for the NHS, where providers will compete to provide services without any guarantee of work and will therefore be unlikely to invest properly in workforce planning and training.

Key risks include the potential to undermine the universality of provision, with multiple providers and competition leading to disjointed services and the most vulnerable service users being pushed to the back of the queue.

We are concerned that there is a particular potential for problems in dealing with multiple and complex needs, where clear strategic direction and oversight is needed to join up services and ensured that the service users affected are properly supported. For instance, an individual with mental health, housing and drug use issues could find themselves having to navigate a complex terrain of public, private and voluntary sector providers and there is a risk that communication and joining up between providers will fail.

Additional expense to the taxpayer could be incurred for emergency provision when providers withdraw or fail and for transaction costs.

Risk

The outsourcing of services, in theory, transfers risk from the public sector to the new provider. In the case of employee-owned mutuals, CVOs or even social enterprises, these risks will be borne in an open market in competition with larger organisations that have a competitive advantage in terms of delivering economies of scale, accessing commercial funding and employing legal, marketing and contracts expertise.

[35] HM Treasury Call for Evidence on Public Service Reform November 2010

Pauline Kimentas, NAVCA local commissioning and procurement manager, argues that large, often private sector, organisations "*have the economies of scale and can employ members of staff, or even teams, just to write tenders… some even bid on a loss-leader basis, so they don't expect to make or may even lose money, because they want to get a foothold in a particular market."*[36]

Many co-operatives and social enterprises face significant barriers to accessing finance to support investment and expansion. A 2005 survey of British employee-owned enterprises found that over a third had trouble accessing finance, with private equity unavailable to those organisations based on profit making but not profit maximisation and with longer term objectives.[37]

When failures happen, it is anticipated that the taxpayer will have to absorb costs incurred, while service users face disruption and employees face job losses and uncertain futures.

In health services particularly, the 'any qualified provider' model will provide additional risk as no provider will be faced with a guarantee of volume of work or income.

Risk has surely been a factor in many of the staff ballots that have conclusively rejected transfer to social enterprise status. The first of the social enterprises spinning out from PCTs benefitted from three year contracts tendered on a SPMS basis, enabling staff to retain their NHS pensions and sufficient length of contract for the new provider to plan effectively and mitigate risks.

Siobhan Clarke, the Managing Director of Your Healthcare, the social enterprise that spun out from Kingston PCT, illustrates how this worked for them:

"Protecting the rights of new and existing staff, particularly their NHS pensions, was a big problem. But the eventual agreement with NHS Kingston guarantees that new and existing staff retain the right they had, or would have had, in the health service. The risk is still borne by the NHS. We've not been saddled with those commitments. We've had the best of both worlds"[38]

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[36] 'Government policy, recession and the voluntary sector' Steve Davies, University of Cardiff 2009

[37] 'New Models of Public Service Ownership' OPM August 2010

[38] 'Four that rose to the challenge of freedom' Third Sector 1 February 2011

Where the risk has been removed, staff have been more willing to consider the options. But it is crucial to note that this is an historic model that will not be replicable under new government policy. Increased insecurity through the 'any qualified provider' model in the NHS, the removal of the Two-Tier Code and the potential loss of Fair Deal on pensions removes even minimum safeguards and means that the opportunity for this model of outsourcing will cease to exist.

What is more, those employee-owned enterprises that have spun out of the NHS to date, such as Your Healthcare, will be forced to compete under the 'any qualified provider' model and will lose the security of income guaranteed under the previous contracting regime. The risk borne by the NHS referred to in this case will be transferred entirely to the outsourced enterprise.

Employment Standards

There is a large body of evidence to suggest that public service standards of employment are driven down as a result of marketisation and outsourcing. Price competition increases downward pressure on costs, in public service delivery this inevitably translates into detrimental impacts on the workforce's pay, conditions and pensions.

As one example of this, research by the Prison Service Pay Review Body in 2006 showed that at virtually every grade of prison officer, pay and benefits in the private prison sector fell a long way behind those in the public sector. The average basic pay with benefits of a prison officer in the public sector, for example, had a 61% lead over their counterpart in the private prison sector. For support grades this lead was 23%, for senior officers a 68% lead. In fact, there is a public sector lead in every grade apart from senior managers at Director or Governor level where the private sector has managed to achieve a 26% lead in pay and benefits over their public service counterparts.[39]

The situation in the private sector mirrors that of the voluntary sector. Evidence from UNISON and Unite suggests that even in the relative boom years for the sector in 2005 – 2007, price competition was driving down funding and staff pay and benefits. This has been intensified recently as spending cuts begin to bite and contracts become renegotiated.

[39] 'Privately Managed Custodial Services' Prison Pay Review Body 2006

Evidence suggests that several organisations are either suspending or abolishing incremental pay progression or are considering it and that many more are looking for new flexibilities in terms and conditions in a sector that is not known for over-generous pay - at least at the lower levels.[40]

TUPE provisions offer some protection to transferred staff but there are very limited safeguards for new entrants and anecdotal evidence from the voluntary sector suggests that employers are increasingly seeking ETO criteria as a means of avoiding TUPE requirements.

The abolition of the Two-Tier Code and the Government's announcement of a review on the Fair Deal provisions for pensions remove some of the minimal guarantees that workers could rely on in outsourcing situations.

The Fair Deal provisions established in 2000 require the maintenance of comparable pension provision for workers who deliver outsourced public services. The Hutton Commission's interim report stated that these provisions make it more difficult for private and third sector organisations to provide public services. The specific issue of Fair Deal has been deferred to a Government consultation expected to take place in Spring 2011.

The TUC believes that the retention of the Fair Deal protections is essential to prevent a race to the bottom in outsourced public services. There is understandably considerable anxiety among unions about the future of Fair Deal, particularly given the abolition of the Two-Tier Code which provides similar protections on terms and conditions for new employees in contracted out public services.

If Fair Deal does not continue there will not be a level playing field and any private sector contractor would be able to undercut an in-house bid on pension costs alone. It is also worth noting that removal of Fair Deal would undoubtedly lead many contractors to close their "broadly comparable" pension arrangements, thus worsening pension arrangements for many, usually poorly paid, private sector employees who had formerly been public sector workers.

The TUC is also concerned by the questions posed in the Government's Modernising Commissioning Green Paper relating to the issues which VCOs or

[40] 'Government policy, recession and the voluntary sector' Steve Davies, University of Cardiff 2009

smaller organisations may face when complying the TUPE standards. The UK Transfer of Undertakings (Protection of Employees) Regulations 2006 implement the EU Acquired Rights Directive, which requires that all employers, regardless of their size comply with the basic employment standards. This includes public, private and voluntary sector organisation. The TUC would be seriously concerned should the Government consider exempting any employers, including smaller organisations from TUPE rules. Such an approach, we believe, would not comply with EU law.

Section six

The impact on the voluntary sector

Above we have outlined our key concerns about the impact of this agenda on public service delivery and the public service workforce. However, there are also concerns in relation to the impact on the voluntary sector itself.

As referred to above, pay and conditions in the sector are under extreme pressure. A study of 24 voluntary organisations providing social welfare services in Scotland in 2008 found that there was a 'race to the bottom' resulting from the contracting model, all organisations surveyed reported "pressure on pay, conditions, work intensification and dilution of skills"[41]

As a result of the cuts, we are beginning to see job losses in the voluntary sector. Labour Force Survey figures for the four quarter of 2010 show that the voluntary sector employment experienced zero growth[42], this on top of 13,000 job losses in the third quarte, a decrease of 2% on the previous quarter.[43]

It is predicted that job losses will intensify as both statutory funding and voluntary donations significantly reduce. CIPD's Labour Market Outlook indicates that 40% of voluntary sector employers intend to make further redundancies in the first quarter of 2011, up 5% from the previous quarter[44]

Forecasts look equally bleak among NCVO members. 97% respondents to their survey expected economic conditions to worsen in the voluntary sector in 2011, 66% expected their organisation's expenditure to decrease and 55% intended to reduce staff numbers in the next three months. Worryingly, 35% said that their organisation planned to decrease the extent of their services.[45]

At a recent event hosted by the TUC and NAVCA, many organisations present were planning for job cuts. NAVCA predict over 20,000 job losses in the local

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[41] 'A Race to the Bottom? Exploring variations in employment conditions in the voluntary sector' Cunningham, Public Administration 86

[42] 'Charity staff numbers flatline despite Big Society' Skills Third Sector 31 March 2011

[43] 'Voluntary sector employment starts to dip' Charity Times 14 January 2011

[44] Labour Market Outlook, CIPD, February 2011

[45] Charity Forecast Survey NCVO March 2011

voluntary sector, including community development workers, volunteer centre organisers, youth volunteering workers and funding advisers[46].

One particular example from the TUC and NAVCA event was Community Links, a high profile CVO operating in East London, who claim that 3 of their 10 community centres will close, a further 5 are under review and the whole children, youth and community work team were at risk of redundancy, representing 25% of their total workforce.[47]

Not only does this represent considerable reduction in service delivery but it also amounts to a serious brain drain from the sector, as Belinda Pratten, Head of Policy at NCVO put it "*we need to retain the experience and skills in the sector, job losses of this magnitude represent a real threat to the skills base of the voluntary sector workforce".*[48]

These cuts take place at a time when demand for services is increasing. 97% of respondents to a London Voluntary Service Council survey reported that their communities were still suffering the effects of the recession, 70% reported an increased demand for their services and 75% were not confident of meeting this demand now or in the future.[49]

This was confirmed with another CAF survey, reported in February 2009. This was of 322 charities providing services likely to be in demand during the recession. These included financial advice, help with housing, employment advice, educational services to help people get new jobs, assistance with basic living costs, services to help people manage stress and other mental or physical problems. Over half (51%) of the charities surveyed reported an increase in demand in the previous three months.[50]

The cuts are also having a major impact on volunteering. Many organisations such as local Community Service Volunteer (CSV) organisations and Volunteer England are experiencing major cuts, calling into question the ability of these groups to support the government's Big Society agenda of developing volunteer capacity, particularly among young people.

[46] A Future for Civil Society TUC 2011
[47] Ibid
[48] ibid
[49] LVSC 'The Big Squeeze 2010: The Recession, Londoners and the Voluntary and Community Groups Who Serve Them" May 2010
[50] ibid

In order to accommodate more volunteers, organisations would have to scale up their professional support, recruit volunteer co-ordinators and embark on more training. A survey by Youth Action Network found that their members were facing 75% cut in funding for youth volunteering services, the number of workers available to support young people in YAN member organisations will drop from 792 to less than 170 and less than a quarter of the number of young people currently supported by Youth Action Network members will receive the same support from April 2011, a decline of over 300,000 young volunteers[51].

The government plans to address funding shortfalls through additional investment through the Big Society Bank. However, the £470m offered through a combination of government funding (£270m) and commercial money (£200m), raised through the Project Merlin deal, is far short of the predicted cuts inflicted on the sector, estimated to be anything from £3bn - £5bn over the next four years. Furthermore, much of the funding will be made available through commercial loans which many CVOs and other not-for-profit companies may struggle to access.

But it is not only funding cuts that are having negative impacts on the sector. The process of service commissioning and procurement has had a distorting effect on the voluntary sector for some time. This process had intensified as competition grows for shrinking resources.

In a working paper of July 2010, the Third Sector Research Centre identified six key impacts on the shape and direction of third sector organisations:

- compromised independence
- mission drift
- loss of innovation
- worsening employment conditions
- deteriorating inter-organisational relationships
- polarisation within the sector.[52]

Mission drift and compromised independence are significant risks. A survey by the Charity Commission found that only a quarter of charities providing public services agreed that they are free to make decisions without pressure

[51] Youth Action Network, December 2010
[52] 'The Third Sector delivering public services: an evidence review' TSRC Working Paper 20, July 2010

to conform to the wishes of funders, compared to nearly three fifths of charities that did not deliver public services. This led the Commission to conclude that: *"charities that deliver public services are significantly less likely to agree that their charitable activities are determined by their mission rather than by funding opportunities"*[53]

This dilemma is summed up in a report commissioned by the Institute for Voluntary Action Research where the authors found that, although evidence was variable, overall the impact of public service delivery was that:

"some organisations have been drawn by the availability of funding away from community development and community responsiveness towards delivery of public services and services designed externally rather than in direct response to local need ... in making this shift, their potential to act as agents of community change or as advocate for local people has been diminished."[54]

The problem is intensified for smaller, niche organisations that often struggle to engage with the commissioning process. Many of these niche operators will be dependent on other organisations sub-contracting their services, many of which will be private sector or larger charity organisations imposing tougher commissioning regimes.

This may also be the case as public service commissioners are encouraged to achieve procurement efficiencies through larger contracts and the sharing of procurement functions across departments and organisations.

The National Coalition for Independent Action, a grass roots campaign organisation for voluntary and community organisations, assert that:

"The primary role and purpose of voluntary organisations in civil society is to strengthen our democracy through diversity and pluralism, by providing a haven and test-bed for new thinking, for community action and ways to fill gaps in services and support to people, while maintain a platform for social action. Within this mix, the role of the sector in holding to account state agencies and interests through advocacy, campaigning and dissent, where needed, remains crucial."[55]

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[53] 'Stand and Deliver: The Future for Charities Delivering Public Services' Charity Commission 2007
[54] 'Servants of the Community or Agents of Government?' Cairns, Harris, Hutchison, IVAR 2006
[55] 'Public Services and Privatisation' NCIA 2010

Arguably, much of this is increasingly being lost through the diminishing capacity of the sector to deliver due to a combination of funding cuts and an increasing dependence on contracts for public service delivery.

Section seven

Public services and civil society: a collaborative model for reform

The TUC's approach to public service reform rests on the understanding that public services provide public value, benefits that accrue not only to service users but wider society. Public value cannot be measured in simple terms of profit and loss but through the quality of service delivery and a process of democratic engagement between service providers and users, identifying priorities and strategies that most meet the needs of communities. This is why market-based approaches to public service delivery have failed over many years and continue to do so[56]

The TUC supports innovative and flexible public services and a greater role for civil society in working in partnership to provide added value and help facilitate community engagement. However, we believe that this is approach is most effective through collaborative model between service users, community organisations, public service workers and commissioning authorities within a framework of public sector accountability.

In the TUC report 'Rethinking Public Service Reform' we described this approach as the 'enhanced public value' model. This model meets the Government's intentions to shift power towards communities and enhances efficiency and flexibility but avoids the harmful and expensive fragmentation and complexity caused by further outsourcing and marketisation.

The TUC believes that the relationship between communities, through CVOs or, in some cases, social enterprises and the public sector can be beneficial. These benefits are derived in two main ways. First, civil society organisations are often able to engage with hard to reach clients and communities that may be beyond the scope of the public and private sector. As such, they are positioned to provide added-value, niche services in partnership with the public sector. Second, CVOs are able to represent and articulate the needs of service users and clients, facilitating greater engagement between public

[56] "Private sector not better or cheaper" Financial Times, 18 October 2010

service providers and the communities they serve. Enhancing the capacity and role of civil society in these areas is essential to improving public service delivery.

We stated above that that the public sector is best placed to provide public services that accord with the founding principles of public services, namely universal access, delivery according to need, services free at the point of use, and services delivered for the public good rather than for profit. And that maintaining public services within the public sector is the most effective way to ensure accountability between those services and the democratic institutions that govern them.

However, there is a compelling case that in many situations there is disconnect between public service providers and the communities they serve. This accountability deficit creates problems such as increasing public scepticism regarding the decision making of public service professionals, a widening gap between public perception of service quality and objective criteria used to measure improvements and a lack of responsiveness to locally determined need. While public sector-delivered services have essential links to democratic institutions, more should be done to build links with service users and communities.

There is scope to achieve this within a public sector framework, whereby accountability to democratic institutions is balanced with mechanisms for engaging the community and service users and where the public sector workforce plays a fundamental role in the consultation and negotiation process with commissioners and users of services.

The 'enhanced public value' approach is based on a process of consultation and negotiation between service users, the workforce and the commissioning bodies to identify priorities, strategy and service implementation that best meets the needs of the community, within the context of restricted public resources. In this way, services are commissioned in a way that meets local need but balances this with the broader needs of the community, the prioritisation of scarce resources and the promotion of public value.

In the report, 'Rethinking Public Service Reform' Mick McAteer identifies three key benefits derived from this approach in that it has to:

- balance the interests of the public realm and the market

- consider individuals to be citizens, not just consumers, and thus balance the interests of communities *and* individuals
- consider wider social concerns, not just narrow financial concerns.

In this way, public service reform can be driven from within a democratically accountable and joined up public sector framework. Furthermore, through placing the public sector workforce at the heart of the process alongside communities, it is able to restore links between providers and users thereby addressing the accountability deficit and restoring legitimacy to public services. What is more, staff involvement ensures that implementation of service delivery is more closely aligned with higher level strategy.

While this model has not been tested across the public sector, there are case studies of similar approaches undertaken that provide some very positive outcomes. The 'Time of Our Lives' project in Bristol City Council, the approach taken to service improvements in Newcastle City Council[57] and the (formerly) Inland Revenue's 'Our Time' project[58] all demonstrate a consultative process including public sector workers, through their recognised trade unions, employers and service users that provided benefits to the workforce and community, driving through public service reform from within.

In summary, the core principles underlining the TUC model of 'enhanced public value' are:

- engagement with users to determine public service delivery strategies and implementation plans with a precise focus on identifying what public service users and the wider community want a service to generate
- a commitment to deliberation and negotiation in identifying that public value
- a recognition that any conception of public value must involve not just what a service should deliver but also how it can be delivered in a cost-effective way.
- the development of public service delivery strategies and implementation plans that uphold the founding principles of public services,

[57] See 'Public service reform but not as we know it' Wainwright and Little 2009
[58] See 'Rethinking public service reform' TUC 2008

namely universal access, delivery according to need, services free at the point of use, and services delivered for the public good rather than for profit

- the development of public service delivery strategies and implementation plans that preserve the organisational integrity of public services and which value collaboration and integration over competition and fragmentation
- full engagement with public service staff in the determination of strategies and implementation plans
- the establishment of robust feedback mechanisms for staff and users during the implementation and delivery phase of any strategy.

Through this approach, civil society plays an important role in the commissioning of services that meet community need but through a process of partnership with the public sector, including the workforce.

It may well be that through this process, elements of public service delivery are commissioned in a way that provides scope for VCOs and other organisations to provide niche services, building on the valuable work already performed by organisations like Mind, Age UK, the Terrence Higgins Trust, the Alzheimer's Society and the Stroke Association.

But this should be achieved through a process of negotiation and partnership between VCOs and public service providers, according to the principles outlined above.

In their report on co-production, Compass explain this process as *"service stakeholders working together to create or improve a service by making it both more innovative and fairer. It is about the formation of a space in which meaningful dialogue between government, management, staff and users can maximise innovation and ensure consensus on all levels of provision from commissioning right down to front-line service delivery"*[59]

In so doing community engagement becomes a mainstream process, without the needless adversarial implications of the current Government proposals. And this too removes the need for arbitrary proportions of services to be

[59] 'Co-production: the modernisation of public services by staff and users' Compass / UNISON 2008

outsourced and eliminates the threat to public service delivery caused by fragmentation and marketisation.

Section eight

Managing the threats

Managing the threats

The TUC has made its position clear that we believe that public services are not discretionary commodities. They are core-welfare public goods that provide benefits not only to service users but wider society. The TUC supports public service delivery that is accountable, efficient, value for money and provides high quality, universally accessible services to the community delivered by professional, engaged and appropriately remunerated staff.

It is our view that through its democratic accountability, unique funding mechanism and long term integrated approach, that the public sector is best placed to provide public services that meet the criteria above.

However, at the same time, trade unions are at the forefront of negotiations and discussions with public authorities and employers from a range of sectors and industries in order to ensure the best possible outcomes for their members and the services they deliver.

As such, it is important that we make clear the conditions we believe must be met in order to ensure that, where outsourcing to CVOs, charities or social enterprises takes place, the worst effects are managed and mitigated.

First, we believe that any model of service delivery must adhere to the founding principles of public services:

- universal access
- delivery according to need
- services free at the point of use
- services delivered for the public good rather than for profit

Any model that threatens or fails to meet any of the above criteria should be unpalatable to any organisations that support the ethos and mission of public services and should be rejected on that basis.

In a situation where public service workers are faced with outsourcing to a social enterprise, employee-owned mutual or other not for profit organisation, the TUC believes that the following should follow as a matter of course:

- Genuine, bottom-up engagement with staff at the outset;
- Engagement of service users and others who will be affected by the formation of the enterprise;
- Full consultation with staff and a ballot with all options on the table and opportunities for all sides to present their case fully;
- An equality impact assessment of staff and service users and a requirement on outsourced body to meet statutory equality duties;
- In any form of employee-ownership, employees to own the majority of shares and elect a significant proportion of the board;
- Asset locks to prevent predatory asset stripping of what are currently publicly owned assets;
- Terms and conditions in accordance with transferred staff for all new entrants;
- Admission to public service pension schemes;
- Commissioning that includes an appraisal of the outsourced model in comparison with in-house delivery;
- Procurement based on quality and social, economic and environmental objectives.

Above all, the TUC believes that there needs to be a more rigorous evidence base applied to commissioning decisions. Currently we do not believe that there is a proven case for outsourcing or for the benefits accrued through employee-ownership, social enterprise or other not for profit models in terms of either the efficiency or responsiveness of public services.

Appendix One

Appendix

Appendix 1: Definitions

These definitions are reproduced from the Office for Public Management report ‘New Models of Public Service Ownership: a guide to commission, policy and practice’ August 2010

Employee owned

Definitions published by the Employee Ownership Association (EOA) suggest that for an organisation to be classified as ‘employee owned’, employees must have ownership of at least 51 per cent of the organisation:

There is a wide range of ways in which employee ownership is structured, although there is consensus that the principle that employees can own a controlling stake – or in other words at least 50 per cent of the voting shares – is a fundamental one.

Co-owned

The EOA uses the term ‘co-owned companies’ for those firms where employees have ‘a significant stake’ in the business, but one that is less than 50 per cent.

In such organisations, ownership can be direct, where employees – for example – as individuals, own shares in the company; or indirect, where a block of shares is held in an employee trust that exercises control of the company on behalf of the employees, or through a combination of the two. Many organisations that begin with employee shares being held in trust move to at least some of those shares being held directly by employees, to give access to potential financial reward and, if the shares are voting shares, a more direct sense of employee control. This transition can occur via a number of routes, including employees buying or being given shares, or granted share options.

Co-operatives

Organisations which call themselves ‘co-operatives’ may take many different legal forms and the owners of co-operatives may be workers, citizens, users, other organisations or any combination thereof. The key thing that differentiates co-operatives from the other forms of shared ownership organisations described here is that they subscribe to a set of long-established and widely recognised common principles, which are:

- voluntary and open membership
- democratic member control
- member economic participation
- autonomy and independence
- education, training and information
- co-operation amongst co-operatives
- concern for the community.

Mutuals

The term ‘mutual’ is particularly fated to be confusingly deployed but essentially refers to an organisation where the primary purpose is to generate benefits for members – whether employees, service users or a combination – or a defined community. Some experts and policy-makers almost use it as an umbrella term, to refer to any model of shared ownership.

The Cabinet Office’s *Mutual Benefit* paper says:

‘Mutual organisations are either owned by and run in the interests of existing members, as is the case in building societies, co-operatives and friendly societies, or – as in many public services – owned on behalf of the wider community and run in the interests of the wider community, for example, NHS foundation trusts and co-operative trust schools.

There is also scope for other local services, like community buses, to be run as mutual or co-operative groups. To help ensure the organisations best serve the interests of their members, mutuals are characterised by their democratic governance arrangements. They usually have ‘one member, one vote’ systems *for balloting members and governance structures that formally incorporate a variety of stakeholder interests.'*

In the interests of preserving clarity, however, it is important to recognise that there are two types of mutuals, as alluded to in the quotation above. The first type are organisations that do not have external shareholders and are owned by, and for the benefit of, their membership. Stakeholder groups with a stake in the ownership of a mutual and its governance may include service users, employees and others.

The second type of mutual exists for the benefit of a defined community. In this case, the notion of the individual member's 'share' or 'benefit' is specifically defined, as follows. No individual member can take away his or her 'share' of the asset(s).

The member's share in the mutual organisation is nominal only. Any person receiving services is entitled to become a member and own a share. Unlike shares in a company, membership of the new mutual organisation gives each member one vote only, and it gives no right to a share in the underlying value of the business. The member has no entitlement to a dividend. Instead, the surplus (profit) generated from the trading activity is returned to the community in the form of better quality, or cheaper service. In other words, individual members hold their share – that is to say they own the mutual organisation (nobody else owns it) – on behalf of the community.

Community trusts

A similar, but distinct, model to the second type of mutual are community trusts, where an organisation is set up to serve a specific, defined community (and where that purpose is enshrined in its constitution) but where the assets are put in the hands of a group of trustees.

Community trusts – or 'community land trusts' to give them their legal title – were defined in law in July 2008, through an amendment to the Housing and Regeneration Act 2008, as corporate bodies which are established for the express purpose of furthering the social, economic and environmental interests of local communities.

Community trusts achieve this by acquiring and managing land and other assets in order to provide a benefit to the local community and ensuring that the assets are not sold or developed, except in a manner which the trust's members think benefits the local community. Crucially, individuals who live or work in the specified area must have the opportunity to become members of the trust, but community trusts are prohibited from paying benefits directly to members.

Social enterprises

There are also many other organisational forms which do not fall under the specific category of 'shared ownership', but are often used inter-changeably.

In particular the 'social enterprise' model is an important option for public services, and one which has received significant government backing in recent years, especially in the health sector, and has been reinforced by the July 2010 white paper. The definition, developed by the Social Enterprise Unit, is that a social enterprise is:

'… a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or the community, rather than being driven by the need to maximise profit for shareholders and owners.'

We can see from this definition that there is nothing intrinsic to the social enterprise model that says it has to operate along any principles of shared ownership (and, in fact, there may be something positively inconsistent between this and some shared models which are driven by the need to maximise profit for owners). As another author notes:

'While social enterprises were distinguished by their social aims and objectives, they could adopt a wide range of legal forms and governance arrangements to reflect the purpose of the organisation. Social enterprises should therefore be considered as a means to an end. They could be initiated by a range

of organisations (such as the trading arms of charities, new provider initiatives within the NHS, or other organisations already delivering health or social care), developed as a result of partnerships, or set up from scratch to meet specific needs.'

Examples of social enterprises run along co-operative or other shared ownership models do indeed exist, but in order to avoid some of the conceptual and practical confusion, it is important to differentiate between the purpose of an organisation, which may or may not be to reinvest surplus in the business itself or the community (as social enterprises do), and its ownership.

Community Interest Companies

Community Interest Companies (CICs) are a type of social enterprise. They are limited companies that exist to provide benefits to a community or a specific section of a community. They have the flexibility of a normal company but are regulated to ensure that they adhere to their community purpose and that their assets are locked.

Public interest companies

What we have termed the 'public interest' model is based on OPM's own experience of combining full employee ownership with governance mechanisms to include a wider stakeholder group to reflect the public interest. OPM combines: employee ownership through a trust, the company board having non-executive directors drawn from voluntary sector and public service organisations to represent a user perspective, and a 'public interest general council' to hold the organisation to account for achieving social value.

Civic companies

Civic companies, as proposed by Phillip Blond in *The Ownership State*, rest on the basis of a 'new power of civil association' to allow staff and/or users to take over ownership of public services, each owner having an equal share. Delegation of responsibility for delivering public services would be accompanied by full budgetary responsibility, although the model also proposes an asset lock to prevent public assets being transferred out of the new organisation.

User-led organisations have been developed in the field of disabled people's organisations, and whereby all members of the management board and trustees must be service users. The organisation's purpose – that of benefiting a prescribed group of service users – will be locked in, for example to its articles of association or constitution.

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