

THE SHADOW STATE

A report about outsourcing of public services

A report by

**SOCIAL
ENTERPRISE
UK**



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Executive summary

Introduction

The UK's public services industry is a powerful social, political and economic force. It affects all citizens. It employs millions of people and moves billions of pounds around the UK and its economy. Recent decades have seen successive governments outsourcing public services, usually purchasing them from private companies: waste management, children's homes, adult social care, social security, education services, prisons, border control and many others. UK citizens are getting used to, or failing to notice, providers other than the state running public services.

Now the drive to outsource public services is gathering speed. Recent Government announcements have been made that will see more outsourcing in the NHS, police force and prisons. In July 2012, the Financial Times said: 'The collective growth of the sector – dominated by FTSE 100 giants G4S, Capita and Serco – means Britain is in the grip of the biggest wave of outsourcing since the 1980s.'

There are extraordinary risks attached to the way that public service markets are being developed. This report outlines these risks, and the profound effect that outsourcing practice is having on the wider economy. Our belief is that a 'shadow state' is emerging, where a small number of companies have large and complex stakes in public service markets, and a great deal of control over how they work. Transparency and genuine accountability are lacking.

Government spending is being cut back and demand for public services is rising. For taxpayers and public service users, it is vital that the Government squeezes every drop of value out of the money it spends. But our research indicates this is not happening. We believe that the way outsourcing has been done in the last couple of decades has created a major problem. It has left the Government buying services in a market and using contracts that are far too heavily weighted in favour of the companies they are buying from, and their shareholders. The time has come for a change of mindset on how public services are bought. New legislation that comes into law in January is a start, but it needs strengthening. We cannot continue as we are. The evidence laid out in this report leads us to the conclusion that current outsourcing practices are unaffordable and unsustainable. Public bodies must greatly increase the amount of social value they get from the services they buy.

One fundamental problem is a lack of public awareness and understanding about this situation. Public debate in the wake of the financial crisis has centred on whether public spending cuts must be made or avoided. But who benefits and who loses because of the way that public spending is done, is a much bigger question.

What we have found

Our research has shown that:

- In critically important markets, private sector oligopolies are emerging, where a small number of companies have a large share of the market. Firms with large stakes in multiple public service markets are too big or too complex to fail. Smaller providers, often the social enterprises and charities that successive governments have marked out as ideal providers, are being forced out.
- When choice over who to buy services from is reduced, providers can increase their costs and negotiate contracts in ways that are loaded in their favour.
- Complex business arrangements and a lack of information as a result of commercial confidentiality make it impossible to hold many providers properly to account.
- When providers do fail to deliver, they often go on to win more business. This is a symptom of market failure.
- An unknown amount of public money is being taken out of the social economy and redistributed to private individuals and investors through shareholder dividends, rather than being retained in areas where services are commissioned, or being reinvested in service improvements. There are many examples of contracts that include multiple layers of sub-contracting, with profit taken at each level. This turns considerable amounts of public money into private wealth when it could be reinvested in services. It also exacerbates the sort of inequalities that public services are trying to tackle.
- Government policy can be undermined or become irrelevant when commissioners have little choice over who they can purchase services from. For example, the drive towards localism is stopped in its tracks where local authorities can only buy from multi-nationals that funnel money out of an area and out of the country.
- In many cases a saving in one part of the public purse creates an equal or greater loss in another – for example bidding on price usually creates a race to the bottom on wages, fuelling low pay and inequalities. Low pay has a huge social impact, necessitating in-work benefits which taxpayers must fund, and making it impossible for large sections of the workforce to prepare financially for their old-age and retirement. This also means we are storing up further costs for future taxpayers.
- The drive to cut costs and maximise profit incentivises businesses to act in ways that are inconsistent with Government aims. For example, there is much evidence to show that private firms are placing vulnerable children and adults in parts of the country often many miles from home, but where care is cheapest for the firms to deliver it. This creates a strain on public services in already poorer boroughs and has a great human cost.
- When problems do arise in cases such as the closure of Southern Cross as a result of complex financial deals designed to maximise financial gain, taxpayers are forced to pick up the pieces. The problem of privatised gains and socialised losses that we became familiar with during the banking crisis has many parallels here.

- Public understanding is lacking. For example, in public polling carried out for this report, only one in five people knew that the majority of children's homes are now owned by private companies. Respondents were much more likely to think that the state is still the main provider.
- Public support for shareholder profit being made from public services is low. In polling for this report, two-thirds (66%) of adults said it is unacceptable for shareholders to make a profit from running children's care homes, hospitals and health services, and policing.
- The majority of people polled for this report have never heard of Atos or Serco, yet these firms and others like them, are receiving and are responsible for many billions of pounds of taxpayers' money. The public are more likely to have heard of G4S, possibly due to media coverage of its failures in the run-up to the Olympics.

Disjointed purchasing costs money

The Government is not merely a luckless buyer in markets that it can't control. In fact, it is the main, and in many sectors the only, purchaser of services. Its power as a market force is almost as great as its power to legislate.

The full weight of the public sector's purchasing power must be directed at delivering social, environmental and economic value. Yet for decades public spending seems to have been done with a separate mindset from social and wider economic policy. Successive governments have failed to use their spending power to get the markets they need to deliver government policy.

Governments can commission in such a way as to drive standards up, in both employment and delivery, and to boost local economies in the service of society's needs. They could use their huge buying power to get the best deal for taxpayers. Instead, after years of fragmentation and incremental change, local authorities and central government departments are shifting cost-burdens around from one to another, and incurring heavy costs as they do it.

The issue of lowest immediate cost is critically important, and there is growing recognition of the fact that the seemingly cheapest option can often, in the long run, end up being the most expensive. A recent draft resolution in the European Parliament, in response to a public procurement Green Paper, stated:

"In order to develop the full potential of public procurement, the criterion of lowest price should no longer be the determining one for the award of contracts, and it should, in general, be replaced by the criterion of most economically advantageous tender, in terms of economic, social and environmental benefits - taking into account the entire life-cycle costs of the relevant goods, services or works."¹

¹ www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0326&language=EN

A national and a local problem

Nationally, contracts are increasingly offered at such scale that only a clutch of the largest private sector providers can bid for them. When other providers are squeezed out, commissioners see their options reduced. But similar problems exist at a local level. Years of purchasing services from the lowest bidder on price has left authorities with little real choice over who they can buy services from. For example, children's and adult social care markets are dominated by private providers and the largest players are often private equity companies who that have bought out other providers. Costs can skyrocket when there is little or no choice of provider.

Charity and social enterprise providers squeezed out of public-sector markets

Social enterprises and charities, who have a social mission and reinvest their profits, have been delivering public services for decades and many have a strong track record and have been highly praised. Successive governments have promised a greater role for them in delivering public services. Social enterprise has repeatedly been cited as a key vehicle for the Government's vision of reformed public services. Charities and social enterprises delivering public services was a much-repeated promise in the argument for the Big Society vision. And major charities such as Age UK and St Mungo's have created social enterprises so that they can trade more and win contracts.

There are around 68,000 social enterprises in the UK, contributing more than £24 billion to the economy.² While a public limited company (PLC) has a legal responsibility to maximise shareholder value, a social enterprise's legal responsibility is the pursuit of its social aim - to maximize its social value. They are Community Interest Companies (CICs), co-operatives, trading charities, and other types of business. What unites them is that their main mission is social. This is enshrined in their governing documents. They act like businesses, but they reinvest or give away their profits. Many are asset-locked so that they cannot be bought and sold by firms that seek to make profits for shareholders. Successive governments have advocated for a greater role for social enterprises in public service delivery. The UK is home to a burgeoning social investment and social finance market, with strong Government support for innovations like the Social Impact Bond, which helps social sector organizations to compete through improving the supply of funding available to them.

While social enterprises are growing and gaining confidence in consumer and business-to-business markets, our research shows that the ones working mostly in public service markets are drastically low in confidence. Many are making redundancies and turning away from public service markets in order to survive, just when they are needed most. They cite public-sector procurement policy as one of their biggest barriers to sustainability.³ They often lack the scale, balance sheets or ability to ruthlessly cut short-term costs in order to win out in the current climate.

² Annual Small Business Survey, BIS 2012

³ Fightback Britain, Social Enterprise UK, 2011

Shareholder profit in public services

Many agree that specialised services can be contracted out with no fundamental threat to democracy or perversion of public spending – and we would agree that a range of goods and services are best purchased from expert providers, often currently operating in the private sector.

But when you examine a great tranche of the work undertaken on society's behalf, the most important and expensive elements often boil down to a human relationship. Adult social care and children's homes, probation services and border agencies, rehabilitation programmes and Surestart and domiciliary care, the Work Programme – all live or die by the quality of the relationship between the client and the worker. We do not believe that relationship needs to be paid for in such a way as to deliver considerable profits to outside agents who are not only removed from the public service and its beneficiaries, but are naturally more interested in short-term profit than the long-term future of the service and its sustainability.

And how does shareholder profit boost the economy overall? It is tempting to think that the dividends earned from public-service profits have one key benefit – enabling pension funds to provide for citizens in later life. But an increasing amount of the money goes to overseas investors. A 2010 report by the Office for National Statistics showed that more than 40% of shares in UK companies are held by overseas investors, this had increased by almost 25% in just two years. At the end of 2010, insurance companies held 8.6 per cent and pension funds held 5.1 per cent by value of shares in UK companies. These are the lowest percentages since the share ownership survey began in 1963.⁴

Isolating one area of public services is difficult, but the market for children's care illustrates important issues. More than two-thirds of residential care home places for children are provided by the private sector and a large proportion of these homes are now owned by private equity companies. It is very hard to pinpoint which firm owns what; their waters seem to be in perpetual motion, as they buy one another and take one another over, and offload assets. Private equity companies work to extract as much financial value as they can from the companies they take over, in a relatively short timeframe. One of the ways they do this is through sale-and-leaseback deals on residential care homes for children and adults. This leads to extreme volatility in a market where stability is a fundamental requirement.

Councils can expect to pay an average of £200,000 per year, per child for residential care. This is a very high figure, and yet a report by a committee of MPs this year on looked-after children cites 'current low standards of care' in children's homes.⁵ Add to this the problems that go with companies concentrating children's homes where accommodation can be bought most cheaply, and it is difficult to understand why local authorities keep buying from these companies. This is a strong indicator of market failure.

⁴ Ownership of UK Quoted Shares, Office for National Statistics, 2010

⁵ Report from the Joint Inquiry into Children Who Go Missing, APPG for Runaway and Missing Children and Adults and All Party Parliamentary Group for Looked After Children and Care Leavers, June 2012.

Storing up financial problems for the future

In the adult social care sector, where residential and domiciliary care are also dominated by private equity companies, staff are often paid not by the hour, but by the minute. Home care staff are not paid travelling time to get from one appointment to the next and 2009-10 saw an increase in 15 and 30-minute appointments, and a decrease in 60-minute appointments, ramping up the amount of hours that workers spend in unpaid transit.

In bidding processes, companies are making offers to supply adult social care at a rate that should be mathematically impossible if they are paying the minimum wage, making National Insurance contributions, putting in to a pension scheme and providing training. No local authority should make that deal: even just on the pragmatic basis that it will be their own residents who are on the receiving end of that low wage, their own housing benefit department making up the carer's rent shortfall, their own health and children's services that come under strain when poverty is rife. And these care workers are storing up poverty for their own retirement.

Public awareness is low

We believe that public understanding of outsourcing and how it is done, is lacking. Polling carried out for this report bears this out. For example, only one in five people (21%) knew that the majority of children's homes are now run by private companies. They were much more likely (43%) to think that the state is still the major provider, and 19% thought charities and social enterprises are the main providers. In fact, 65% of children's homes are run by private companies.

The majority of people polled for this report have never heard of Atos or Serco, yet these firms and others like them, are responsible for billions of pounds of taxpayers' money. Less than a quarter (24%) had heard of Atos, who are responsible for £3 billion in public money.⁶ More than two-thirds (67%) had heard of G4S. This may be as a result of the volume of news coverage in summer 2012 around their failure to deliver sufficient security guards for the Olympics.

⁶ <http://www.guardian.co.uk/society/2012/aug/28/atos-3bn-government-contracts-paralympics>

What do we mean by 'too big or too complex to fail'?

Some of the largest providers are supplying many government departments and public bodies, with many different kinds of service. They have complex stakes in many markets. It is difficult to imagine them being easily allowed to fail because taxpayers are now dependent on a few companies for a great many services. It is not easy to see who would quickly or easily fill the large gaps they have carved out across public services. For example, Serco operates public transport services such as the Docklands Light Railway and Barclays Cycle Hire Scheme. It manages laboratories including the National Nuclear Laboratory. It runs prisons and young offenders institutions, provides a range of security services to the National Borders Agency and other clients, such as accommodation and detention services for asylum seekers; it also supplies electronic tagging systems. It provides maintenance services for missile defence systems and military bases; it provides air traffic control services, facilities and management for hospitals, as well as pathology services. It manages leisure services, administers government websites including Business Link, provides a range of IT services, and operates waste collection services for local councils. It also manages education authorities on behalf of local governments. Its failure would cause extreme turbulence in public services. No business should be too big to be allowed to fail.

What are the alternatives?

New legislation will help commissioners to tackle the problem

In January 2013 the Public Services (Social Value) Act becomes law. Passed in March 2012, Chris White MP's Private Member's Bill achieved cross-party support. For the first time, by law, the Act will require all public bodies in England and Wales to consider the wider social or economic benefit to an area of any contract they are awarding. This applies to any contract over the value of £113,000 for central government departments and £173,000 for all other public bodies.

Many commissioners have told us that the Act finally gives them the justification to commission in ways that they have previously wanted to, but could not.

Any company, large or small, can create social value and therefore offer good value for taxpayer money. Whether they can do this while taking very large profits and paying the lowest wages is another matter. Social enterprises, charities and small and medium-sized enterprises (SMEs) with an encompassing interest in their locality might all, in this new environment, stand a better chance of bidding and winning on their own terms.

Pioneering commissioning practices

Even before the Act comes into force, there is growing evidence of an appetite for change in national and local government, and among communities. In October 2012 the Cabinet Office awarded contracts for the National Citizen Service. Management fees were capped at 5%, payment was made in advance, so that smaller charities and community groups without large capital reserves could afford to bid. 90% of organisations involved were locally based. This is a good example of a different way of commissioning.

Community action is also essential to the process of change. From community energy co-operatives to community land purchase schemes, collective action is producing real dividends. Some of these activities have received Government backing through the Localism Act.

In Lambeth Council, the commissioning process is being stripped down to its first principles, and remade to reflect the requirements of the people who live in the area. This doesn't necessarily eject large companies from all council business – if a large private provider is still the best solution for IT, that's where they'll go. But already it looks profoundly unlikely that locally devised solutions will involve many global corporations.

Many local authorities are readying themselves to change the way they do things: some in radical ways, others in more modest terms, beginning with at least making an audit of their procurement process and the contracts it has thrown up. The financial squeeze may yet turn out to have positive outcomes for councils and central government departments alike. Innovators have traditionally been told that public bodies can't afford to commission differently; now some of them realise they can't afford not to.

By the beginning of November 2012, 93 organisations, including nine local authorities, had become accredited Living Wage Employers.⁷ The Institute for Fiscal Studies (IFS) reported in 2010 that, for every person moving onto the Living Wage, the saving to The Treasury would be about £1,000 a year.

The recommendations we make on page 17 should help public bodies nationally and locally get much further in the fight for social value.

⁷ www.livingwage.org.uk

2. Key Findings

- Oxford Economics estimates the current outsourced market for public services has an annual turnover of £82 billion, representing around 24 per cent of the total spend on public services in the UK.⁸
- The analysts Seymour Pierce predicted in 2010 that this figure could rise to £140 billion by 2014.⁹ Recent legislation and policy – notably, the Health and Social Care Act, the Work Programme and the Welfare Reform Act – could well take the value of public-sector commissioning well past that forecast.
- The public services industry directly employs 1.2 million people.¹⁰ This is equivalent to the tenth largest employer in the world.
- Even though contracts are a matter of public record, it is usually impossible to find out key details, like how much profit is built into each one.
- An increasing proportion of shareholders in UK companies are overseas investors. More than 40% of UK-listed shares were owned by overseas investors in 2010.¹¹
- The private firm Atos is now in receipt of £3 billion worth of government contracts.¹²
- In March this year, the UK Border Agency issued contracts worth £1.7 billion¹³ for a variety of asylum seeker services, which ‘predominantly included the provision of accommodation’ – all eight contracts went to three companies, G4S, Serco and Clearel.
- When the Department for Work and Pensions (DWP) offered contracts to administer the Government’s Work Programme, nearly a quarter of the £3.3 billion total went to just one company (Ingeus).

⁸ The Size of the UK Outsourcing Market Across the Private and Public Sector, Oxford Economics, April 2011

⁹ <http://www.unison.org.uk/carebeforeprofit/>

¹⁰ <http://www.cbi.org.uk/business-issues/public-services/public-services-and-business/the-role-of-business/>

¹¹ Ownership of UK Quoted Shares, Office for National Statistics, 2010

¹² <http://www.guardian.co.uk/society/2012/aug/28/atos-3bn-government-contracts-paralympics>

¹³ <http://www.contractsfinder.businesslink.gov.uk/SearchContracts/SearchContractsResults.aspx?site=1000&lang=en&sc=c128e01b-afd6-4134-8fb4-4584e73b31c1&osc=8de87174-146a-4d24-8a16-c575b38fc401&rb=1>

Children’s Care

- The private sector now runs 65% of residential homes for children. Of the homes registered with Ofsted in September 2011, 76% were in the private or voluntary sector¹⁴. Only 11% of children’s home places are now run by charities¹⁵.
- Two of England’s three biggest private providers of foster placements are owned by private equity firms; the value of fostering services to the private sector has grown by a fifth in two years, to reach £584 million.¹⁶
- Five thousand children and young people are in residential care¹⁷, costing £1 billion a year.¹⁸ The children’s care homes that are meant to look after the most vulnerable youngsters in England currently have ‘low standards of care’ despite costing around £200,000 per child¹⁹, a parliamentary inquiry has found.
- Profit-making and cost-cutting in children’s services are exacerbating regional inequalities as the firms who provide children’s residential care do so where it is cheapest for them – children are placed away from their home boroughs where property prices are lowest. This cuts children off from social and familial relationships and, as has recently been shown in the Rochdale care home scandal, makes them more vulnerable to abuse.
- Two London boroughs now have no children’s homes at all; London overall has 130 homes, for a population of 7.8 million²⁰. The North West has 514 homes for a population of 6.9 million²¹. There are 101 homes in Lancashire alone, even though Lancashire has a population of less than 1.5 million²². Rochdale has 41 homes even though the borough has a population of just over 200,000.

¹⁴ Children’s Homes in England Datapack, Department for Education, 2012

¹⁵ The Rise of the ‘Public Services Industry’, Unison, September 2008

¹⁶ <http://www.fosteringthroughsocialenterprise.org.uk/1/category/the-times/1.html>

¹⁷ Children’s Homes in England Datapack, Department for Education, 2012

¹⁸ House of Commons Written Answer 77679, 3 November 2011

¹⁹ Children’s Homes in England Datapack, Department for Education, 2012

²⁰ Ofsted March 2012

²¹ Ibid

²² Ibid

Adult social care

- As with children's homes, adult social care is quite fragmented, but dominated by private companies. In adult social care 65% of the jobs come from the private sector, 20% from direct payment by recipient, 11% from local authorities, and 4% from the NHS.²³
- Staff are often paid, not by the hour, but by the minute; they are not paid travelling time to get from one appointment to the next and 2009-10 saw an increase in 15 and 30-minute appointments, and a decrease in 60-minute appointments, ramping up the amount of every hour that workers spend in unpaid transit.²⁴

Prisons

- The private sector runs 12 prisons in the UK, accommodating 13% of the nation's prisoners.²⁵ Nine more were put out to tender in November 2011, and private-sector bidders are favoured in four of them – Northumberland, Moorland, Hatfield and Lindholm. This is in spite of high-profile failures in private sector-run prisons. In the same bidding round, the Wolds was returned to the public sector following the expiration of G4S's contract; their time in charge of the prison having seen poor inmate behaviour and high levels of drug use.
- Staff pay is lower in private prisons – 40% lower on average.²⁶

²³ Cuts in Social Care, UNISON Local Government Report, February 2011

²⁴ http://www.lowpay.gov.uk/lowpay/report/pdf/8990-BIS-Low%20Pay_Tagged.pdf

²⁵ <http://www.howardleague.org/public-slams-private-prisons/>

²⁶ http://www.prisonreformtrust.org.uk/Portals/0/Documents/private_punishment_who_profits.pdf

Welfare to work

- The £3billion - £5 billion DWP Work Programme is made up of 'prime' contractors, who have a direct relationship with the Government and 'sub' contractors. While in the Programme's previous incarnation, charities and social enterprises were likely to be primes and have the direct relationship with Government, now most have been relegated to sub-contractor status, and most of the primes are large shareholder-profit distributing companies.
- Under the Programme, the deals favour the prime contractors and by June 2012, 96 charity providers had dropped out of the delivery of the Work Programme,²⁷ unable to make it work. A survey by the National Council for Voluntary Organisations (NCVO) found that 48% of charity respondents were subsidising the delivery of the Work Programme from their own reserves.²⁸ The homelessness charity St Mungo's pulled out of three five-year contracts because it had not been able to help anyone into employment since the contracts started in June 2011.
- NCVO, based on a small sample of information from charities, estimates the management fee charged by prime contractors at 15–20%.²⁹
- In both Australia and the Netherlands, governments have stopped asking welfare to work contractors to compete on grounds of price, because it had such grave unintended consequences.³⁰

²⁷ <http://www.guardian.co.uk/politics/2012/jun/09/work-programme-welfare-jobs-private-sector>

²⁸ http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf

²⁹ Ibid

³⁰ <http://www.jrf.org.uk/publications/lessons-contracting-out-welfare-work-programmes-australia-and-netherlands>

Is there another way?

- The contracts for the National Citizen Service were recently announced, and gave an example of the way large projects could be commissioned differently. First, the management fee for all lead organisations was capped at 5%; second, 75% of the payment was made in advance, so that smaller social enterprises and charities without large capital reserves could afford to bid (23% of the groups had an annual turnover of less than £1 million); third, 90% of organisations involved were locally-based.
- The Public Services (Social Value) Act comes into force in January 2013 and for the first time commissioners will have permission to consider the wider social or economic benefit to their community when awarding a contract. Rather than choose a provider on cost, they will be allowed to consider the best overall value they can secure for their local area. It gives councils and central government scope to look not just at piecemeal outcomes but at the social value generated (or lost) in the production of those outcomes.
- Liverpool City Council has adopted a groundbreaking approach, in which it will award contracts on the basis of local value, pay-spine multiplier (that is, the difference between salary at the top and at the bottom) and social interest (companies that reinvest their profits and are, preferably, asset locked – such as social enterprises).³¹

What do voters think?

For this report we polled two thousand adults about their views on outsourced public services. We found that their support for company shareholders profiting from services was low, although how low depended on the type of service in question. We asked ‘To what extent do you think it is acceptable or unacceptable for shareholders to make a profit from running a (named) range of public services. According to the results:

- Two-thirds (66%) of UK adults believe it is unacceptable for shareholders to profit from running hospitals and health services, children’s homes (66%) and policing (66%). Only a fifth (21%) said it was acceptable for shareholders to profit from children’s homes – with 12% saying they were unsure.
- Closely following these are care homes for elderly and disabled people –where 63% of people feel it is unacceptable for shareholders to profit. A quarter (26%) thought it was acceptable for shareholders to profit from care homes for elderly and disabled people, with 11% being unsure.
- Half of UK adults (52%) think it is unacceptable for private companies to run prisons with shareholders making a profit, while 34% think it is acceptable.
- 45% feel it is acceptable for bin collections and recycling services to make profit among shareholders, where only 43% feel it is unacceptable.
- Half of UK adults (49%) feel it is acceptable for shareholders to profit from services that get people into work or training and 51% think it is acceptable for shareholders to profit from private companies running public transport services.

³¹ <http://www.liverpoolecho.co.uk/liverpool-news/local-news/2012/10/05/social-enterprises-to-get-head-start-in-race-for-liverpool-council-contracts-100252-31969608/-ixzz28PommdjG>

3. Recommendations

Recommendation 1

The Public Services (Social Value) Act currently requires commissioners to consider social value at the pre-procurement phase for public service contracts.

We believe that the Act should be strengthened in the following ways:

- Public bodies should be obliged to include social value in its commissioning and procurement and account for how this is generated.
- The Act should be extended to apply to the purchasing of goods and works and the management of assets as well as services.
- The Act should be supported with Statutory Guidance.

Recommendation 2

The Freedom of Information (FOI) Act and the powers that support transparency urgently need reviewing. As outsourcing of public services expands, the public’s right to information is shrinking. The Act only applies to information that a public authority holds about a contract or which it can compel a contractor to supply to it – rendering the powers of the act no longer fit for purpose.

FOI powers should be extended to companies delivering public services – but these should be revised to take account of proportional cost burdens on smaller providers, appropriate timeframes for independent contractors, and clear guidelines on information that contractors are required to provide under FOI.

Recommendation 3

An independent contracting oversight body should be established to scrutinise contracting decisions and prevent unfair competition.

It should be overseen by the National Audit Office but have sufficient weight and power to challenge and overturn departmental decisions.

It should have the powers to issue penalties when organisations fail to deliver outcomes and these result in cost to the public purse.

Recommendation 4

Performance under previous contracts should be explicitly weighed up as part of the decision-making process in procurement decisions. At present, when evaluating tenders public authorities rarely have information on whether bidders have previously breached their commitments in other tenders with other public authorities.

Public authorities should be allowed to take into account relevant information ‘a priori’ (during the selection phase) on bidders, including bidders’ prior track record both positive and negative. Consideration should be given to the development on ‘quality of work’ indicators that would help public authorities in this process.

Recommendation 5

Open book accounting should be rolled out with supportive guidance for all public-sector contracts worth more than £250,000. When adopted effectively, open book accounting can mitigate against excessive profiteering, increase transparency, improve the sharing of risk and promote more effective partnerships where all partners are motivated to find the most effective solutions.

Recommendation 6

When the Government is contracting – by-results, the balance of interest should be aligned through joint governance arrangements, such as the creation of a community interest joint venture or the inclusion of community-appointed, non-executive directors. This allows for the protection of public funds through appropriate governance, which aligns incentives between taxpayer, providers and service users – reducing complexity, transaction cost and perverse incentives.

4. Introduction

There are a number of problems with public-sector commissioning, and the first is that the phrase itself makes people glaze over. It conjures up images of fat, unreadable documents, barely understood even by those who framed them.³² Boredom, complexity and commercial confidentiality prevent public scrutiny of the whole commissioning process.

And yet, this is worth a large and constantly growing sum of money. The 2011 value of the outsourced market for public services had an annual turnover of £80 billion.³³ The analysts Seymour Pierce predicted in 2010 that this figure could rise to £140 billion by 2014.³⁴ The change of government and implementation of legislation and policy – notably, the Health and Social Care Act, the Work Programme and the Welfare Reform Act – may easily take public-sector commissioning of services well past that forecast.

Consider the latest numbers: the probation services are commissioning £600 million worth of their work a year (this amounts to 60% of their annual spend);³⁵ Atos is now in receipt of £3 billion worth of government contracts³⁶; the estimated value of NHS contracts, since the passage of the Health and Social Care Act is £20 billion³⁷; the Welfare Reform Bill, passed in March 2012, is expected to yield another tranche of contracts worth between £300 million and £5 billion.³⁸

In short, the sheer amount of money at stake here makes it a matter of civic duty to take an interest in where it goes, and the impact it has. While public spending has been a key battleground for social justice campaigners since the credit crunch began, debate has polarised around whether cuts should be made or avoided. But while this is happening, the landscape is being quietly rearranged to ensure that remaining public spending favours a certain type of organisation – this has important ramifications and they need to be understood.

³² This is not as far-fetched as it sounds: in one select committee enquiry into the failures of G4S during the Olympics, chief executive Nick Buckles cited a 'very, very complex' and, later, 'seriously complex contract'. <http://www.insidethegames.biz/olympics/summer-olympics/2012/1010769-london-2012-security-contract-is-one-of-kind-says-g4s-chief-following-qhumiliating-shamblesq>

³³ The Size of the UK Outsourcing Market Across the Private and Public Sector, Oxford Economics, April 2011

³⁴ <http://www.unison.org.uk/carebeforeprofit/>

³⁵ <http://www.ft.com/cms/s/0/5c9f0f42-cd11-11e1-92c1-00144feabdc0.html#axzz26l7WPQON>

³⁶ Parliamentary Questions from Tom Greatrex – published in Hansard between 22 May and 2 July 2012, full set available on request from Social Enterprise UK

³⁷ http://www.catalystcf.co.uk/uploads/Catalyst_Healthcare_2012.pdf

³⁸ <http://www.ft.com/cms/s/0/25e62d3a-71ab-11e1-b853-00144feab49a.html#axzz25omOfmNP>

“As public spending gets tighter, the default position seems to be not commissioning to develop public services to suit the needs of a community, but instead trying to get the same thing, only cheaper.”

Victor Adebowale, Chief Executive, Turning Point

The Oxford Economics study estimates that the public services industry employs 1.2 million people, and once you include indirect and induced impacts, it creates or supports over 2.3 million jobs – it is a larger employer than the four major supermarkets (which employ 900,000 people), and of equivalent size to Hon Hai Precision Industry,³⁹ the tenth largest employer in the world.

It matters a great deal who the employers are of these millions of people. It matters a great deal how they do business, how they purchase and procure, how they treat the recipients of their services. The Government has a great deal of control and can dictate its own terms. So why is pay so notoriously low and why are service failures so rife in this industry? Outsourced public services have an enormous economic and social impact: the wages and conditions of each one of those workers feeds into the economy as a whole, determines consumer spending power, sets the demand for in-work benefits and contributes to wage levels across the board. And that is before you consider the importance of the services that have been commissioned, the knock-on and long-term effects that a badly run children's home have on any given area, or the way poor adult social care interrupts the working lives of the relatives of those adults.

The Government is not merely a luckless buyer in markets that it can't control. It is the main, and in many sectors the only, purchaser of services. It can commission in such a way as to drive standards up, in both employment and delivery; to boost local economies in the service of society's needs, rather than divert profits to multinationals. But for decades, this has not been the direction of travel. Increasing public alarm is expressed when there is a mistake or failure (as in the case of G4S and the Olympic security delivery failure). But it is our genuine belief that the public is unaware of the number of Government contracts that end up in the hands of a few very large, private-sector providers. Contracts are increasingly offered at such scale that only a clutch of the largest private-sector providers can bid for them.

Even at a local and regional level, where the contracts are smaller, years of purchasing from the lowest bidder on price with little consideration for the wider social and economic impact of the deals, have left local authorities with little choice over who to buy vital services like children's care or adult social care from. At both a national and a local level, there is much evidence of market failure and of a damaging effect on local economies and the national economy.

³⁹ <http://www.bbc.co.uk/news/magazine-17429786>

5. Payment by results, and why size matters

In March this year, the UK Border Agency issued contracts worth £1.7 billion⁴⁰ for a variety of asylum seeker services, which 'predominantly included the provision of accommodation' – all eight contracts went to three companies, G4S, Serco and Clearel. But even if those eight had been divided between eight companies, it is the size of the contracts to begin with that pollutes the process. All are over £100 million; none other than very large-scale providers with large existing balance sheets can enter the market at that level. Yet the provision of accommodation is a service that could conceivably be provided by a diversity of regional and local providers, spreading the benefits of these contracts widely.

When the contracts were offered to administer the Government's Work Programme, nearly a quarter of the £3.3 billion total went to just one company (Ingeus); nine very large private companies incontrovertibly dominate the landscape. Even though each contract is a matter of public record, it is impossible to find out key details, like, how much profit is built into the business model.

These large contractors on the Work Programme – the primes – often enlist the services of charities and social enterprises, but the deal favours the main contractor. By June 2012, 97 charity providers had dropped out of the delivery of the Work Programme, unable to make it work.⁴¹ Sir Stuart Etherington, Head of the National Council for Voluntary Organisations, said: “I fear we may be seeing a slow-motion car crash in the form of the Work Programme”⁴² and pointed rather ominously to the fact that his sector as a whole had lost 70,000 workers in the past 12 months.

The sector's future is blighted by a contractual structure in which the lion's share of the business goes to very large private providers, on the basis that they have the capital to take the risk. The first thing often subcontracted is that risk: in simple terms, the 'hard-to-reach' cases, the riskiest proposition in many areas (probation, skills and learning, addiction, unemployment) are parcelled out to the third sector, who have a track record in solving more knotty social problems. But the terms for these organisations have usually proved impossible to meet.

⁴⁰ <http://www.contractsfinder.businesslink.gov.uk/Search%20Contracts/Search%20Contracts%20Results.aspx?site=1000&lang=en&sc=c128e01b-afd6-4134-8fb4-4584e73b31c1&osc=8de87174-146a-4d24-8a16-c575b38fc401&rb=1>

⁴¹ <http://www.guardian.co.uk/politics/2012/jun/09/work-programme-welfare-jobs-private-sector>

⁴² <http://www.thirdsector.co.uk/go/news/article/1120432/spending-cuts-knocking-out-sectors-capacity-support-big-society-ncvo-head-says/>

'On the one hand, we're proud of that, because those are the people we wanted to reach,' says Amanda Vickers, from Involve Yorkshire & Humber, a voluntary sector organisation with a history of provision in this area. But that pride is somewhat exploited by the payment-by-results (PBR) system. Payments for these hard-to-reach cases may be some time coming, if they come at all. Not-for-profit organisations, having failed by definition to build in a layer of profit to their business model, don't have the capital reserves to wait for results. They need the money they earn quickly as they are not able to play the waiting game like the very large private providers.

The pressure for contracts to become larger is due to the conception – often, as we shall see, a misconception – that scaling a process up will always represent a saving. It takes less time to manage; it theoretically has fewer transaction costs; there may be shared infrastructure. But often, the larger a contract becomes, the greater the asymmetry in expertise between the commissioner (that is, the Government's representative) and the supplier. And as many of the services being delivered under these contracts ultimately depend on human relationships, it is difficult to see how much value can be created or real saving made through scaling ever upward. In fact, interest in diseconomies of scale is growing in the social sector.⁴³

Risk aversion among commissioners is in evidence from the interviews we have conducted, especially since large companies, when they don't win a contract, are more likely to launch a legal challenge against the decision.

The larger the contract size, the more likely it is that the company awarded it will become too big to fail. With public-sector commissioning, this would more accurately, if verbosely, be termed: too important to fail, with too many areas of responsibility that are statutory or politically sensitive, or relate to national security.

⁴³ <http://locality.org.uk/news/diseconomies-scale/>

6. Openness and accountability

Transparency has been a pledge of governments since 1997, and there is no reason to doubt anybody's commitment to it. New Labour gave us the Freedom of Information Act, and the Coalition Government has honoured its promise of more financial openness – every contract worth over £100,000 is published;⁴⁴ many are in the public domain that are worth much less. However, where openness clashes with commercial confidentiality, the latter often wins.⁴⁵ Key details often cannot be discovered. So, for instance, you may be able to find out exactly how much Serco bid for the contract to run probation services, but you can't tease out how much lower their bid was than that of the next lowest bidder. You have no way of telling whether it represents such a significant under-bid that it must entail a depletion of the service. You have a number, but no sense of context.

The concept of commercial confidentiality has been imported wholesale from the private sector, but in business, there are mechanisms for upholding accountability even in processes that aren't transparent. The chief executive officer (CEO) will be answerable to non-executive directors, who can ask questions on behalf of the shareholders. MPs should, in theory, see themselves as non-executive directors. But instead they have to accept that there is a whole layer of information they can't be given.

Deeper questions should be asked about the place of a shareholder profit motive in the delivery of public services. Few people are in favour of remunicipalising everything, and most people agree that specialised services – tree surgery, say – can be commissioned out with no fundamental threat to democracy or perversion of public spending. But when you examine the work undertaken on society's behalf, the most important – and most expensive – elements often boil down to a human relationship. Adult social care and children's homes, probation services and border agencies, rehabilitation programmes and Surestart and domiciliary care, the Work Programme – everything from the elemental services that created the welfare state, to training schemes that few people have even heard of, all live or die by the quality of the relationship between the client and the worker – or, more accurately, the person who needs help and the person who helps them.

Why does that relationship need to be paid for in such a way as to deliver 20 per cent in profit to an outside agent who will never have any part in it? How does a profit count as an incentive, when it is delivered to people many degrees of separation away from those doing the actual work?

⁴⁴ www.contractsfinder.gov.uk

⁴⁵ Tom Greatrex letter (See appendix 1)

“I have nothing against the private sector in public services. But private sector organizations are making money from the taxpayer, and from the taxpayer’s point of view that money needs to stay in public services. It’s not as if we’re talking about selling Ipads to China. They’re not generating more money. If you’re taking money out of social services or health, it doesn’t really matter if you’re more efficient, ultimately it could still cost us all more. Because you’re taking money out of the public realm.”

Victor Adebowale, Chief Executive, Turning Point

And while a national government body or a local authority can outsource work, it can’t outsource its statutory responsibility. It remains accountable for the work that is carried out on its behalf. If a local authority’s children’s centres are commissioned out to a large company that then fails to fulfill its duties, the council still has a responsibility to undertake that nursery care. If a company managing old people’s homes goes under, those old people still need residential care. If a private equity firm in charge of a children’s home inadvertently allows its charges to be raped, the supervising responsibility is still with the social services. If a Work Programme supplier is known to be reaping profits which urgently need to be reinvested into the service itself, there is very little room to penalise it, without endangering the Programme itself. In all probability, there’s nothing even in the contract to stipulate how much the CEO can pay her or himself. These are dramatic examples, but they are taken from real life.

7. What do the alternatives look like?

There is evidence of a growing appetite, discernible not just from public debate but also from recently-passed legislation, to turn the tide of this style of commissioning and look for social and local value. The Public Services (Social Value) Act was passed in March this year and comes into force in January 2013. It gives local councils and central government bodies scope to approach commissioning in a more tailored, intelligent way; to look not just at outcomes but at the social value generated (or lost) in the production of those outcomes. Social enterprises, small or medium-sized not-for-profits, businesses with an encompassing interest in their locality (and not just ‘employing local people’, a phrase that is bandied about as a virtue, but which, in fact, is almost always the cheapest and most obvious way to hire) might all, in this environment, stand a chance of bidding and winning on their own terms.

In October 2012, the contracts for the National Citizen Service were announced,⁴⁶ and gave an example of the way large projects could be commissioned differently. First, the management fee for all lead organisations was capped at 5%; second, 75% of the payment was made in advance, so that smaller charities and community groups without large capital reserves could afford to bid (23% of the groups had an annual turnover of less than £1 million); third, 90% of organisations involved were locally based. Large contracts do not necessarily have to be funnelled towards a handful of large providers. Smaller contracts, too, can change, if not the world, at least their patch of it.

“You could do really smart stuff. In my area, Hillingdon Council, BlueSky do the landscaping. Their motto is, ‘we’re the only company in the country where you have to have a criminal record to work’. It’s the first chance to prove yourself, to prove that you can be trusted. From Hillingdon’s perspective, they get a good service at a good price. But they also reduce reoffending. For me, that’s smart commissioning.”

Nick Hurd, Under-Secretary of State for Charities, Social Enterprise and Volunteering

Many local authorities are readying themselves to change the way they do things: some in radical ways, others in more modest terms, beginning with at least making an audit of their procurement process and the contracts it has thrown up.

By the beginning of November 2012, 93 organisations, including nine local authorities, had become accredited Living Wage Employers.⁴⁷ The Institute for Fiscal Studies reported in 2010 that, for every person moving onto the Living Wage, the saving to The Treasury would be about £1,000 a year.

⁴⁶ <http://eyeshareinfo.com/2012/09/serco-consortium-ncs-contracts/>

⁴⁷ www.livingwage.org.uk

The financial squeeze may yet turn out to be a blessing in disguise for councils (granted, a pretty good disguise); innovators have traditionally been told that councils can't afford to commission differently. Now, some of them realise, they can't afford not to.

“A lot of our services have been outsourced, in a standard, cheapest-available-provider way. What we're trying to do now is move towards an organisational structure which supports community commissioning; where citizens are involved throughout; where the method of delivery is as important as the thing that's being delivered; where the social value becomes as important to us as a judgment about the cash.”

Sophia Looney, Director of Policy, Equalities and Performance, Lambeth Council

The social enterprise sector is growing in the UK – with a large start-up ratio. Successive governments have promised them a greater role in the delivery of public services. They are businesses with a social aim, and their profits are reinvested. While a PLC's legal responsibility is to maximise shareholder value, a social enterprise's legal responsibility is the pursuit of its social aim – to maximise its social value. Social enterprises can be asset-locked. If you concur that public money, spent on public service delivery, will be better spent without losing layers of profit, then before you even consider the outcome of one contract over another, this method of delivery is preferable. However, social enterprises are often limited in size, partly because their purpose is often built around the needs of a particular locale, and partly because they don't have the same expansionist logic as a purely profit-driven operation. This means that they are finding themselves squeezed in a market that increasingly favours the largest contract-size, while Government promises localism and community empowerment.

8. How we got here – the rise of outsourcing

Some work has been outsourced since before the word 'outsourcing' was invented – the public sector never built its own motorways. But in the broadest possible brush stroke, commissioning began in earnest when John Major brought in compulsory competitive tendering (CCT) in the 1990s. It was something between an open sore and a running battle between central and local government, being seen – in its original conception, as well as in tightening of legislation around it – to favour private contractors at every opportunity, over the commissioning body itself. A study of local government during that period found that the tendering process – regardless of whether the contract ended up with a private firm or was kept in house – always resulted in the worsening of terms and conditions for employees.⁴⁸ In other words, and this will be a recurring theme, it is not the nature of the private sector, so much as the nature of competition on the grounds of price alone, that pares down wages.

Another recurring theme of this report will be the difference between 'cost' and 'value'. We will see in every sector that we have reviewed, that the onus is on each department, team or unit to continually look to make 'cost' savings – usually by buying their service as cheaply as possible from the lowest bidder. And we will see that these cost savings are of little or negative value to the taxpayer and to citizens when they have a knock-on effect on the public purse elsewhere. In fact, their cumulative effect seems extremely expensive and detrimental to the nation's economic wellbeing.

Recognising the unpopularity of CCT, though determined to stick to the principle that 'local authorities only carry out work if they do so competitively',⁴⁹ Tony Blair's Government brought in 'Best Value', along with Best Value Performance Indicators, Performance Plans, Performance Reviews, and the message, overall, that good commissioning meant more than spot-purchasing services at the lowest possible price. A commissioning document should be muscular, flexible, devised by councils or other authorities in conjunction with their communities, subject to review under established criteria, with rewards and penalties built in. If it sounds very much like the ideal commissioning we'd describe today, that's because it was – New Labour wanted to counter the problems that had already, after a short time, become apparent: authorities had lost a lot of flexibility and a lot of power in the commissioning process; their ability to support local economic development had been reduced, while their duties to the locality had remained.

⁴⁸ Public sector restructuring and regional development: the impact of compulsory competitive tendering in the UK, Patterson, A. and Pinch, P. L.

⁴⁹ DoE, 1997b

There were flaws in this, which differed from sector to sector – generally, there was a lack of expertise and, as a result, confidence, among the commissioning agents. Major’s big competitive push was backed up with fleets of consultants, who worked with local authorities in framing the tender documents. Consultants are always used in political rhetoric as shorthand for a waste of money; in fact, where they bring in expertise that the organisation doesn’t have, they can be extremely good value. One might question whether or not CCT should have been introduced before commissioning expertise was available in-house, but only if you wanted to go back in time.

So even the changes that Best Value should have wrought 12 years ago were stymied by risk aversion; thirty years later, our needs have changed radically in every sector. From waste management to adult social care, from children’s services to parole, society’s requirements, demands and conventions have changed. But in many cases, the way these needs are met through commissioning, has not. Our research suggests that contracts don’t reflect these changes; commissioners have often been using timid bolt-ons rather than tearing the whole contract up and starting again, as a result of which, the territory looks ever more unnavigable and would take ever more courage and expertise to change.

In central government, the abiding concerns were different, and so were the practices. Central government commissioning is in its nature more joined up than local authority commissioning, as a result of which good practice is amplified but mistakes, of course, have more scope for havoc. If the problem of public-sector delivery was that it was inefficient, and served sectional interests rather than the public interest, those features would be reproduced if the government ended up commissioning from just two or three juggernaut corporations.

However, to be against monopolies in the business of government commissioning sounds easier than it is: whatever guidelines you might put out, large companies will always be better placed to meet them.

“One of the funny stories I heard about this is that the government wanted to move into agile commissioning. And immediately, all the large providers employed a Head of Agile. Of course, smaller providers can’t afford a Head of Agile.”

Matthew Taylor, Former Director of Policy for the Labour Party and Adviser to Tony Blair, now Chief Executive of The RSA

Furthermore, there was a general agreement that, whatever the terms of competition in commissioning – whether it was entirely based on price, or some other metric played a part – that process wouldn’t work if it were burdened by regulation. The private sector is brought in to innovate, which it can’t do if burdened by exactly the same regulations and bureaucracy as beset the public sector. This had long been understood, and was set down explicitly in the CBI’s definitive report on the public services industry:

Multiple objectives for wider social and environmental goals should be used sparingly and applied consistently through the bidding process, so that requirements are clear and assessment is more transparent.

Dr DeAnne Julius, Public Sector Services Review, 2008

But this thinking fails to see a government as an entity, with a purpose, rather than a distributor of money to a series of individual projects. If it does have environmental aims, it has to prosecute those relentlessly, in every area of its governance; its power as a market force could and should be as great as its power to legislate.

Moreover, it has transpired that the silos of provision are real, and are totally counterproductive. There is no point shaving money off your wages budget in adult social care, if you are just going to have to make it up with in-work benefits. A cost-cutting exercise for one local authority that crops up as a bill for another almost invariably costs more overall. So you cannot talk about a ‘social goal’ as an additional extra, to be undertaken once the hard yards of economical contracting have already been travelled: there is almost no public service that isn’t part of a social goal, and no social goal that can be meaningfully reached by a route other than public service.

It is the inexorable logic of the economy of scale, that contract size would be driven up: the larger the contract, the less ready a small or medium-sized organisation would be to bid.

The greater the organisation’s size, the less likely it is to be a social enterprise. This doesn’t mean large organisations don’t have aspirations towards social titles: A4E was banned earlier this year from calling itself a ‘social purpose company’⁵⁰, since its primary purpose is shareholder profit. Nor does it mean that it’s impossible for a company scaled at contract-winning size to have a meaningfully inventive business model – Prospect, for instance, which won one Work Programme contract, is employee-owned.

Sometimes rushed, at other times ramshackle, almost always fragmented, the business of public-sector commissioning looks very different in different services and between local and central authorities. But there is one interesting aspect: the main similarities they share in outcome, given the circuitous and varied routes they have taken to reach it. Most sectors are dominated by a handful of large providers, rarely fewer than three, rarely more than nine.

We looked at a number of sectors to try to understand more about what is happening in local government and central government commissioning – what are the similarities, what are the effects on services and on citizens, and how can commissioning be improved in the future?

⁵⁰ http://www.civilsociety.co.uk/finance/news/content/13215/asa_bans_a4e_from_calling_itself_a_social_purpose_company

9. What is happening in different parts of the market

Children's social care

“The children's home market is somewhat murky to say the least. Until this year, nobody had undertaken a piece of comprehensive research on it. Basically, local authorities divested themselves of children's homes about 20 years ago. Some provision at that point came from the voluntary sector, but the thing about voluntary organisations is that they are more reputable, the culture is more reputable, they have better standards of pay, and they strive to provide a caring environment, because their reputation is very important. That costs money, and probably, they have not found themselves able to provide the service they want to provide at the levels councils want to pay.

So the private sector grew to meet this need. But of course, you could only have had the private sector market you wanted if you had had very good commissioning arrangements. It is not clear the local authorities do commissioning in the real sense of the word. They do procurement; they pay for places. But do they set out their requirements, create a market, and control that market? There is no evidence of that.”

Ann Coffey, MP for Stockport, Chair of the All Party Parliamentary Group on Missing Children

According to the highly respected previous Children's Minister, Tim Loughton, five thousand children and young people are in residential care, costing £1 billion a year. This works out at an average of £200,000 per child per year.⁵¹

It is difficult to imagine how an average annual cost per child of £200,000 a year could be considered reasonable. Imagine the immense quality of care you could provide for £200,000 per year, per child. And then consider the picture below

Only 11% of children's home places are now run by charities⁵² – unofficially, charities will tell you that they used to bid for council contracts, particularly in the area of caring for deeply troubled children, which they knew they couldn't afford to execute to their own standards on the money the authority would pay. So they would cross-subsidise themselves from their own fundraising income or reserves. However, this is not a sustainable way to do things, and smaller charities, over time, went bust or moved into other services.

⁵¹ Report from the Joint Inquiry into Children Who Go Missing From Care, APPG Inquiry into Children Missing from Care, June 2012

⁵² <http://www.unison.org.uk/acrobat/PP8917.pdf>

In the meantime, private equity firms moved in. Sovereign and 3i are the big contenders, but it is hard to pinpoint which firm owns what; their waters seem to be in perpetual motion, as they buy one another and take one another over, and offload assets. Advanced Childcare was England's biggest operator, with 143 homes and 1,400 staff; it was bought in 2011 by American private equity house, GI partners, having previously been owned by Bowmark Capital. Advanced Childcare went on to purchase Continuum Care and Education, which was previously owned by 3i. Castlecare, in Northamptonshire, runs 40 children's homes; it was bought by Baird Capital Partners Europe for £9 million in 2004. The company has expanded by buying two smaller childcare companies, Quantum Care and Sovereign Care, for £1 million and £1.3 million respectively.⁵³

Companies buy up housing stock in cheap areas – Lancashire in the North, Kent in the South – and children are moved from their responsible authority to a home that may be many miles away. The process is rather brutal.

They may take a child into care for the first time, after a final event has happened. So a child may have gone one more time, missing from home, and he or she is removed. The authority then thinks, 'Where the hell have we got a place?' Not 'What does this child need?' It's the most terrible market failure.

Ann Coffey, MP for Stockport, Chair of the All Party Parliamentary Group on Missing Children

This has had stark results and in consequence, the preference has shifted towards foster care.

But private equity companies soon came to dominate that too: two of England's three biggest private providers of foster placements are owned by private equity firms: Sovereign Capital bought the National Fostering Agency in 2006 and sold it this year to Graphite Capital for £130 million, tripling its original investment. Acorn Care and Education, which owns Fostering Solutions, was bought from a private equity firm for £150 million in 2010 by Teachers' Private Capital, the direct investment division of a Canadian teachers' pension fund.

One reason for this is that councils seem to be squeamish about paying foster parents a proper wage, and assuring them a steady stream of children to care for. There's an understandable fear of attracting the wrong people; people who seek to profit from troubled children. Foster parents share this anxiety, feeling that they can't pressure the council for placements because they don't want to appear mercenary. But the reality is that people do have to give up work to do this vital job, and if they could only be compensated realistically, that would save authorities hundreds of thousands of pounds that they currently spend on private-equity middlemen, who then try to recruit altruists from a diminishing pool. Squeamishness hasn't eradicated profit from this sensitive area: far from it; it has delivered profit, in vast amounts, into the hands of those whose primary interest is profit.

⁵³ http://menmedia.co.uk/manchestereveningnews/news/business/s/1492531_advanced-childcare-acquires-the-continuum-care-and-education-group

At the same time, control of residential homes has moved pretty consistently into the private sector, which now controls 65% of these homes. Councils are reported to typically pay £200,000 a year⁵⁴ for the spot-purchase of residential care for a child who has been removed from his or her family. Generally, it's impossible to find out how much each council pays per child, and how many children a council has moved out of its own borough. Manchester, for instance, was found to have 'dumped' (moved out of borough) 1,128 children in 2011, following an investigation by the Manchester Evening News. However, the council insisted that it was unable to break down its £60 million placement budget, into inside and outside borough placements, which means no one can prove whether and how much money is being saved by this manoeuvre.

At the other end of the chain, we know that large amounts of profit are made by private equity funds in the sale and purchase of residential and fostering agencies, but a pincer movement of commercial confidentiality and protection of child identity makes it extremely challenging to get any better, more specific information. This process – where profits are driven up by advantageous property deals that see children placed many miles from where they've grown up – has left children vulnerable to sexual exploitation. Ofsted figures published in May 2012 revealed that children's homes in England – caring for 4,840 children, including 1,800 girls – had reported 631 suspected cases of young residents being sold for sex in the past five years.⁵⁵ Place that against a slew of findings that children often don't report sex trafficking, and when they do, they're often disbelieved: 631 will be, at best, a low estimate.

There are two principal reasons for this: first, once a child is removed from its own authority, it loses contact with its team of social workers. Children in care should have a key worker, and a 'virtual school area lead' who acts in loco parentis regarding the child's choice of school, attendance; in theory, also the child's happiness. Sometimes a placing authority will commission this work out to the social services in the area to which they've sent the child, sometimes they'll undertake to do it themselves but they rarely do. In fairness to them, it could be 100 or more miles away, and even 20 miles would eat into a social worker's workload to an unrealistic degree.

So the child is no longer supervised by his or her key worker; furthermore, if he or she is playing truant persistently, other adults who might normally notice signs of abuse – teachers, teaching assistants – are also out of the picture. Since the child has been moved from his or her home, none of the surrounding features of a normal life – grandparents or other family members, neighbours, the parents of school friends – are present.

In the case of one girl at the centre of the Rochdale abuse, she was moved from Essex and placed in a one-to-one home, where she was the only resident. If that sounds like a foster placement, there's one crucial difference – she never woke up with the same staff member in the home who had been there when she went to sleep. It was not unusual for members of staff to be charged with her care who had never met her. It's a template you might devise for a wild animal.

⁵⁴ Report from the Joint Inquiry into Children Who Go Missing From Care, APPG Inquiry into Children Missing from Care, June 2012

⁵⁵ <http://www.thetimes.co.uk/tto/news/uk/crime/article3408724.ece>

Whenever these cases are described, they always sound like failures so multiple that it's impossible to find a solution, against a context of abuse – specifically, the racial profiles of the rapists – that leads us to blame our inaction on cultural sensitivity. And of course, when a child is taken away from his or her family, and doesn't go to school, and doesn't trust the police, and repeatedly runs away, and isn't adequately cared for, there will be people up and down that chain who wish they had done better by that child. But the core decision, the one that scotches any hope of meaningful protection, is that first move to a different town. It is hard to see the point of it, aside from a profit motive; harder still to justify that profit, at such significant expense.

Two London boroughs have no children's homes at all; London overall has 130 homes, for a population of 7.8 million.⁵⁶ The North West has 514 homes for a population of 6.9 million⁵⁷. There are 101 homes in Lancashire alone, which has a population of less than 1.5 million. Rochdale has 41 homes for a population of just over 200,000.⁵⁸

Adult social care

Local authorities talk about the 'graph of doom' – when you plot the projections of the money councils have to spend on care, against forecasts of the elderly in each borough. There comes a point in the not-too-distant future where all their money goes on adult social care. This underlines two things, both of which we already know: first, caring for the elderly is ferociously expensive; second, there is an urgent need to change the way things are done.

The market is worth £15 billion per year, expected to rise by 3.1% annually over the next decade. It employs 1.75 million people and this – brace yourself for rather a large tolerance band in this next projection – is expected to grow by between 24% and 82% over the next 15 years.⁵⁹

As with children's homes, it's quite fragmented, but often the largest providers are private equity firms. In social care for adults 11% of the jobs in the market come from local authorities, 4% from the NHS, 65% independent, 20% direct payment by recipient.⁶⁰ Charterhouse Capital Partners owns Saga Homecare, which, with the purchase of Nestor Healthcare and Allied Healthcare last year, became the largest provider, supporting 50,000 mainly older people (they provide a mix of residential and domiciliary services). Terra Firma took over Four Seasons in April this year; the £825 million pound deal was the last in a complex and, for residents and their families, hair-raising few years. In 2009, Four Seasons was £1.6 billion in debt. In November 2012, Corporate Watch and The Independent on Sunday reported that three private companies own nearly 800 homes between them.⁶¹

⁵⁶ Ofsted March 2012

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Cuts in Social Care, Unison Local Government Report, February 2011

⁶⁰ Ibid

⁶¹ <http://www.independent.co.uk/news/uk/home-news/britains-biggest-care-home-owners-have-debts-of-more-than-45bn-8281270.html?origin=internalSearch>

The lay person's puzzle is why exclusively profit-motivated companies would be interested in a sector that looks so volatile. Here you have to look at the source of the instability. It is typical to do sale-and-leaseback schemes, also known as opco-propco deals, where you split the business between the operations side and the property side, sell the property to another company and lease it back. There are sound arguments for it – if you enter the sector to provide quality care, you didn't necessarily want to be a property developer. It makes sense for you to realise the property as an asset, so that you can invest in other areas of your business. However, there are also inherent problems with it, even if you're a social enterprise and you're not realising the asset as profit. The upshot of opco-propco on residential care homes is that, ultimately, all the homes end up in areas where property is cheaper, which drives down wages in that area and intensifies the geographical divide that made property cheaper there in the first place. Many of those older people will also end up further away from their families, and more isolated. Sale and leasebacks leave the business very vulnerable to market tergiversations. But as troubling as all that is, the main problem with the involvement of private equity companies is not that they are more likely to do opco-propco deals – although they are. The problem is this naked profit motive. How do you make a service cheaper, when it consists almost entirely of human relationships? By driving down wages.

What we understood, very early on, was that if we wanted the people we cared for treated with dignity and respect, treated properly and made to feel good about themselves, we had to do the same for the people who cared for them. There is a real link between how we feel about ourselves, and how we treat other people.

Geoff Walker, Chief Executive, Sandwell Community Caring Trust

It is well known that the minimum wage is not a living wage, and that the zero-hours contract has left many people struggling to manage even when they have work. In the care sector, to be paid the minimum wage for a predictable number of hours per week would seem like luxury. Staff are often paid, not by the hour, but by the minute; they are not paid travelling time to get from one appointment to the next. 2009-10 saw an increase in 15 and 30-minute appointments, and a decrease in 60-minute appointments, ramping up the amount of every hour that workers spend in unpaid transit⁶². That's all in the area of domiciliary care. In both residential and home care, there's very little training, and almost no career progression – both would interfere with the minimum-wage business model, but in their absence, staff turnover is high and morale is low. This feeds into the client's experience of the care, of course – 15 minutes being given a bath by a stranger who hasn't had time to take her coat off is going to be radically different to even the same amount of time spent with someone who you know well.

⁶² http://www.lowpay.gov.uk/lowpay/report/pdf/8990-BIS-Low%20Pay_Tagged.pdf

These conditions appear to determine the demographic profile of those who work in care. 83% of the workforce is female, reinforcing the irksome truism that women negotiate less effectively for themselves than men do. The proportion of foreign-born workers has doubled over the last decade, so that now, in London, more than 60% of all care workers were born abroad.⁶³ It often creeps into political rhetoric – indeed, is an open part of some political factions' narrative – that immigrants work harder than the indigenous population because British people are inherently lazy. It seems much more likely, looking at these terms and conditions, that care work involves such long hours to earn so little money that you could only justify it financially if you had limited access to state benefits.

Looking into the longer term, people who are earning so little are storing up poverty for their own retirement, which will just intensify the problem, as more people have less money to fund their own care. At the root of all this is a business practice that treats the carers 'instrumentally' – they are merely instruments for the care of others.

Some points to consider: even in these conditions, there are many carers, across every sector, doing inspiring work. Railing against private equity companies serves little purpose. They are merely doing what they said they were going to do: viz, maximise profit. Rather than expect pro-social behaviour from private equity companies, we need to consider whether or not we can afford their business ethos, in an area with burgeoning need and shrinking resources.

The moral duty rests with the commissioner. In bidding processes which become ever more feverishly competitive, companies are making offers to supply adult social care at a rate that would be mathematically impossible if they were paying the minimum wage, making NI contributions, putting in to a pension scheme and providing training. No local authority should make that deal: just on the pragmatic basis that it will be their own residents who are on the receiving end of that low wage, their own housing benefit department making up the carer's rent shortfall, their own health and children's services that come under strain when poverty is rife.

Having said that, the public sector was not perfect at delivering these services, either. It was one of the first to be outsourced wholeheartedly, and there are few – even among unions – who think it would be possible or desirable to remunicipalise it.

There are, however, many inventive, humane, stimulating, worthwhile ways to deliver care to this group, as we will see. The first mental hurdle to clear is to stop thinking that cheapest is always best: not only is it almost always worst, it generally, in the round, ends up the most expensive.

⁶³ Cuts in Social Care, Ibid

10. Low wages: a tale of two care workers

If you're looking for an accurate picture of employee conditions in the care sector, you will not see much difference in the way the major providers promote themselves as employers. Everybody in this area uses the same language – they all talk about training staff and investing in them, about career progression and personnel retention, about welfare at both ends of the equation.

And yet, the jobs advertised by the large companies are almost all at the UK minimum wage. There is generally a note on the vacancy to indicate that it is suitable for an Apprenticeship scheme, but rarely is it openly stated that people who are quite well advanced into their careers may be taken on as apprentices, thereby subverting minimum wage legislation.

It's not surprising that companies do not announce as part of their ethos the intention to drive down wages, back to the legal minimum and beyond. And it is observable that people can be paid very little and still go out of their way to provide a great service; it's undeniable that there are some excellent homes which are owned by private equity firms.

The Labour Force Survey data from 2007 to 2010 show a much higher proportion of staff on under a year's tenure in the private sector than any other sector: so this could be a deliberate strategy on the employer's part to avoid responsibilities that only kick in after an employee has been on the books for a year. Or it could be simple dissatisfaction on the part of the employee. Either way, if your aim is to create a happy, skilled workforce, building meaningful and lasting relationships with the people they care for, this is not the way to go about it. The same Labour Force Survey finds much higher numbers of people in the private care sector working over 48 hours a week,⁶⁴ which we will have to assume is a result of low pay, and we can say with some confidence will have an effect on their availability for their own families.

A report by the Equality and Human Rights Commission (EHRC) this year found that only a very small number of local authority commissions included any specification at all about the terms and conditions of homecare workers, and only one local authority in the country said that their pay rates should be above National Minimum Wage to take into account their travelling time.⁶⁵

It doesn't have to work like that: Sandwell Community Caring Trust is a social enterprise that provides residential care for £328 per person, per week – this is the rate that the local authority had been commissioning it out to the private sector, having spent £650pp/pw providing it in-house.

⁶⁴ The Shrinking State, Howard Reed, Landman Economics, 2011

⁶⁵ Close to home. An inquiry into older people and human rights in home care, Equality and Human Rights Commission, December 2012

How did Sandwell do it? First, they tackled staff turnover – it was 30% for the workforce they TUPEd over from the local authority, now it's 6%. It's very expensive to lose a third of your employees every year, even if it looks cheaper on paper because you don't have to worry about their hypothetical maternity leave.

“If you get turnover down, you also start to deliver a quality service. Reliable and consistent. ‘Will I know them long enough to get to like them? Will I know them long enough to get to love them?’ These are questions which have been professionalised out of this business.”

Geoff Walker, Sandwell Community Care Trust

Second, they brought down sick leave, which was previously running at 23 days per person, per year. The terms and conditions for long-term and/ or serious illness remained the same, but an end-of-year bonus for zero days off – combined with higher morale – brought that down to 0.7 days pp/pa.

Once they had achieved that, they were able to remove a huge amount of management, which went from 22% of their costs to 10%. Managers, in general, sort out cover, organise leave, work out rotas and resolve differences – when there's very little absenteeism, there's no need for cover. At Sandwell, the staff self-manage within each home, self-rota and work out holidays between themselves. They only need intervention if this fails. This is a classic economy of the small scale: there are many tiers of management between a care worker at Four Seasons and the CEO of Terra Firma. There are layers protecting one company from its parent company, for ease of divestiture. There are layers protecting each company from each agency it uses, and in that way no-one is responsible for the lowest of the low wages.

If someone has a problem at Sandwell, by contrast, it is not unusual for them to pick up the phone and get straight through to Geoff Walker.

Anonymous worker, doing domiciliary care for a sizeable private provider in early 2012:

You could have a list of clients to go and visit, and the shortest call would be 15 minutes, the longest an hour and a half. In practical terms, I was working in Islington, so everything was on bus routes. Sometimes you'd have no time to get from one appointment to another, so you'd always be running late.

You were treated as though you, the carer, were always at fault. You would say to the agency ‘I can't get from here to there in that time,’ and they'd say, ‘Ok, we'll cross that off your rota’. And then you'd get a call the next day, saying ‘Where are you? Get over there now.’ Everything can be blamed on the carer. Most of the carers don't have English as a first language. It's always the minimum wage.

When I was there, it was paid per minute, so it was 14 pence per minute. You log in when you get there, you log out when you leave.

Travelling between calls you're not paid anything at all. You're scrimping and saving, you've earned £3.50 here and £4 there and then 45 minutes of nothing. It was slightly more for weekends.

The company does not pay contractual sick pay, although workers who qualify would receive sick pay under statutory sick pay conditions

An average day that I was doing at the time, and this wasn't very long because I couldn't afford to keep it going, I'd start at 9, do 45 minutes with one person, another 45 minutes at 10, a half hour at 12, a break, a quarter hour at 4, another 15 minutes at 4.30, a half hour at 5 and another hour from 8 til 9. So that's a 12-hour day for 4 hours' money.

There were people who had it better, they had clients they always went to, they knew how to wangle the shifts so they could be working pretty solidly for the 12 hours they did - not that they'd be getting 12 hours' pay, but they might get eight hours in that time.

The pattern was that the agency welcomed you in and trained you, and people didn't last, because people couldn't afford to do it. They'd just do the NVQ that you have to have. There was talk about specialising in Alzheimers or various things, but I didn't know anybody who was actually offered it, or who could have afforded it if it hadn't been paid.

The public face of the company is all very welcoming. They're always very hazy around money. It's all, 'Don't you worry, there'll be lots and lots of work for you'. We were all on zero hours contracts, so basically they weren't obliged to give us any work. There are hundreds of people out there working like this, I'd meet people all the time, for jobs that required two carers, and I never met anybody who was being paid any differently.

I know the hours for tax credits have changed now, but most people were on housing benefit.

Emma Boswell, Sandwell Community Caring Trust:

This is massively differently to anywhere else I've worked. I'm not a number, the chief exec knows who I am, I know who he is, I'm not having to go through 20 people for a decision to be made, if I want to implement something in my own home, I can do it.

The other side to it is, for instance, the family friendly policy that we've got, the sickness bonus that we've got. If you've got a kid who's got a problem, to save somebody going off sick, which they might think was the only way to cope with it, this organisation will support them. Same as if you're going through a messy divorce. It's not just Sandwell Trust for the clients, it's also for the staff.

I manage my units, I manage my staff, so I know, say, for instance, I've got some staff that can't work a Thursday night because their son plays football. By doing that for them, they'll support me if I need it. You get that nice easy balance.

As a company, what you set out to do is what you need to continue with, no matter how big you become; it's about making sure all your clients are cared for to the high standards that you wanted to have. But if you want to do that, you've got to look after those staff.

That's why we're working managers, not office managers. So I wouldn't expect Lisa to do anything more than I would do. That's where you gain your respect, because if your staff can see that you would do it, they know that it works both ways.

The thing of it is, you value the family as well, you make them part of it, you don't take it away. Their loved one hasn't come in because they've failed. They can't physically cope any more, but that doesn't mean that they've failed. You've got to make them just as important as the patient.

I've got no reason to move. What I've done in the last 15 years, somebody at the age of 60 would never have done, in their entire career. You are given opportunities. You are allowed to excel. And when decisions are made, you're part of it. You're not told, you're part of what goes on in this organisation.

[Sandwell are running a pilot programme to provide end-of-life care for people who want to die at home but whose homes aren't suitable, and who would otherwise have to stay in hospital. If it works, it will save the NHS, and the local authority, thousands of pounds per person.]

The other side to it is about how much you're prepared to invest in staff to meet the training. I'll go on anything I can to meet the standards. With this, with the end-of-life, I've had an awful lot of training

If I can get this off the ground, and come the end of October we'll be able to prove that it's worked, it could go national. It's so important. It gives somebody the right to die at home. Families can be here 24/7, there are no visiting hours. It's an open kitchen, you won't see anybody walk around with a name badge or a uniform on. It's whatever we can do for someone's last wishes. It's something I feel extremely passionate about. I don't think people should have to die in hospital. I don't think a light should be turned off. I don't think a trolley should be wheeled around. My dying patients don't want to pick off a menu, if they're hungry, they're hungry when they're hungry and they fancy what they fancy.

If you want to have a bottle of red wine and a Chinese Take-away, you've got that choice.

11. Prisons

The private sector was brought in to the prison service in the early 1990s for two reasons – to reduce costs by means of innovation and efficiency; and to improve the culture among the staff, to make it more rehabilitative and respectful. If that sounds counter-intuitive – that the introduction of a profit margin, coupled with a drop in wages and conditions, would improve staff behaviour – it has nevertheless been borne out in some cases. Various studies have found private-sector prisons outperforming those run by the public sector in measures like fairness and respect for prisoners⁶⁶. However, these good attitudes are not consistent across the private sector – nor would one expect them to be – and they don't always help, when the immiseration of the workforce has led to high turnover, low levels of training and a shortage of overall 'jailcraft'.

The private sector runs 12 prisons in the UK, accommodating 13% of the nation's prisoners.⁶⁷ Nine more were put out to tender in November 2011. Predictably, pay is lower in the private sector – 40% lower on average,⁶⁸ but if you take terms and conditions into account, the differential is higher. As with other sectors, the marketisation of justice delivery drives down wages in the public as well as the private sector. Indeed, the Prison Service Pay Review Body explicitly mentions the need to keep public-sector salaries comparable to those in the private sector.

Both NOMS [National Offender Management Service] and POA [Prison Officers Association] were mindful of the Government policy placing more emphasis on market testing and we can understand why it is important that salaries are set at a level which allows the public sector to compete in such an environment.⁶⁹

It was not low pay, however, that made the difference in officers' accounts of their work and its pressures: rather, the combination of lower staffing levels and fewer skills meant that the staff had less agency in private jails. Individual officers were more likely to be overruled or undermined by managers, and were less likely to feel that they were self-determining in their work. Their inexperience, frequently married to youth, was exploited or derided by the inmates: but this was not unreasonable, since the naivety of the staff obviously affected the sense of security among the inmates.

So far this is a portrait of rather traditional outsourcing practice – in some ways quality deteriorates, in others it improves. Wages are driven down, but over time, that affects both public and private, so it is difficult to blame one sector over another. Workers are seen more instrumentally, which affects their well-being, but the changes are rather subtle and, over time, you come to associate them generally with a sluggish labour market, rather than particular outsourcing decisions.

⁶⁶ NAO (2003) The Operational Performance of PFI Prisons Report by the Comptroller and Auditor General. London: The Stationery Office HC Session 2002-3: 18 June 2003.

⁶⁷ <http://www.howardleague.org/public-slams-private-prisons>

⁶⁸ <http://www.prisonreformtrust.org.uk/portals/0/Documents/privatepunishmentwhoprofits>

⁶⁹ Eleventh Report on England and Wales, 2012 Prison Service Pay Review Body

For a more cutting-edge portrait of prison outsourcing, we have HMP Oakwood, a new prison opened by G4S in April 2012. With a capacity of 1,605 prisoners, it is one of the largest prisons in the country; it's currently a Category C prison, but has the security infrastructure in place to take Category A prisoners, if the terms of their 15-year contract change.

This is G4S's sixth British prison, so the change is not of provider, nor of service – rather, of price. The contractor was asked to tender at a radically reduced cost per prisoner, per year, and came back with £16,000, when the prison is run at capacity. Normally, prisoners in this category would cost £28–30,000 per annum. Only some of that can be achieved through scale – not many savings can even be found from wages, given frozen incomes across the piece over the past two years.

Anecdotes are now emerging about how these savings come about. According to an anonymous prisoner who arrived in May, and has written about the establishment for the prison newspaper Inside Time⁷⁰: in October 2012, all 809 prisoners were without 'kit', which is basically prison-speak for underwear; prisoners are expected to buy their own bedding, but it has to be from a specific supplier, at high prices; their families are not allowed to send or bring sheets in. It is designated as a working prison, but contracts with external companies who might provide work have not been set up. Some manual work for recycling companies is available, but this is not tremendously rehabilitative, and there are only 480 jobs. Inmates allege profiteering on the in-cell equipment like phones; Release on Temporary License and Home Detention Curfew possibilities are being missed because prisoners don't have a personal officer. Wages for prisoners who work – one of the key areas of innovation, since the promise was not the piecemeal jobs of the old system, but proper employment yielding something akin to a normal salary – turn out to be very low, either £7, £8 or £9 a week.

In sum, HMP Oakwood has more in common with the large US prisons run by the private sector than it necessarily does with G4S's other UK prisons. American prisons are a classic product of the unfettered market – one-quarter of US prisons are run by a single company. The economic output of prisoner work is built into the business model, so that the private providers aren't incentivised to speed up the parole or rehab process, nor to prevent reoffending; they're incentivised to keep prisoners in for as long as possible. In 2006, the value of their work reached \$6 billion. Hourly rates for the prisoners themselves varied, but could be as low as 23 cents. Two large providers of American correction are bidding for contracts over here – MTC and Geo. Both companies organise prisoners to do repetitive, manual work like stitching body bags, for very low wages. This has a knock-on effect on wages in the non-prison population, and does nothing to address recidivism. The dignity of prisoners has not played a central part in either company's business model. Geo runs Guantanamo Bay; an MTC executive set up Abu Ghraib.

Geo is monocultural – all its profits come from government contracts – and 80% un-unionised. MTC does not recognise unions and has been taken to court in America for alleged underpayment and non-payment of overtime.

⁷⁰ http://www.insidetime.org/articleview.asp?a=1310&c=private_prison_not_working

12. Profit in prisons

If we accept that good and bad practice can come out of both the public and private sectors, it would be churlish to reject the private sector's involvement. At the same time, to try to scale down the public sector's role would also be a mistake, wasting expertise and ignoring its many strengths, which in the field of incarceration have been markedly 'un-public' – experimentation, ambition and vision are all manifest in publicly run prisons across the country.

Nevertheless, there's one vital point that abides regardless of who's supplying the imprisonment – innovation often brings savings, but putting savings first does not create the best environment for innovation. Furthermore, there's a difference between innovation in the service of a more productive experience for the prisoner, and innovation with the aim of cutting costs, and it can be somewhat unhelpful that they're all travelling under the same banner. Compare, for instance, HMP Oakwood with the RSA's suggestion for Transitions, the so-called 'John Lewis' prison.

Transitions is hypothetical, of course, and if the RSA were running a prison tomorrow, they might well find the same difficulty attracting local business partners that private providers have. But their aim is quite different: rather than getting prisoners to do low-skilled work that pays, they set out to give them skills. Realistically, an ex-offender is more likely to make a living working for him or herself than getting a job with a criminal record. He doesn't need to learn how to pack nails for £7 a week. He needs to learn something he can build a business out of. The innovation is both in recognising and being honest about the hurdles that will face ex-convicts in finding work after prison, along with recognising and being honest about the skills they already have.

To be a successful drug dealer, you've got to be an entrepreneur. You are a successful business person. You're looking at margins, you're looking at cost. People succeed out on the street using all kinds of skills and talents, and those are what they should be using when they come out.

If we want to change prisons, and prospects after prison, we have to be imaginative. It's about looking at local economies, prisons looking to their communities, members of the community passing through, involving local housing associations.

John Podmore, ex-prison governor and inspector

Podmore and the Transitions team suggest transitional projects at the gates of the prison, Sure Start centres for families, crèche facilities, parenting classes, volunteer centres, workshops for ex-offenders. A health centre or hospital would exist inside the prison, but would work in conjunction with addiction services, health centres and mental health services, in the 'community hub'. The whole binary model of imprisonment – you're either in or you're out – is torn up.

In all probability, while this would require some investment, the approach would save money – if recidivism were brought down, it would save money; if families were strengthened and employment post-imprisonment went up, that would bring down reoffending; if the so-called 'multi-agency intervention' that is unleashed upon convicts and their families was better coordinated, it would cost less.

But if you were to lay down on paper what the cost per head would be in the Transitions prison, it would most probably not look like a nearly 50% reduction on the cost of traditional imprisonment. Private companies look at raw numbers, but Government has to look at longer term outcomes, for its own sake – it will still be financially liable for these inmates long after its contracts have expired.

13. The Work Programme

In the beginning was the New Deal, and then came the Flexible New Deal, and these had their seed in Australia's Working Action, introduced in 1993. All of these programmes had problems from their inception, but the idea of creating a market around welfare was well intended. In the UK, it was funded by a £5 billion windfall tax on utilities. Geoffrey Robinson gave this rationale at the time:

The windfall tax will fund the New Deal for the young and long-term unemployed, lone parents and schools announced by the Chancellor in his Budget speech. It is a one-off tax which puts right the bad deal which customers and taxpayers got from the privatisation of the utilities.

Hansard, 10 July, 1997

The New Deal paid too much upfront, didn't have proper mechanisms to cross-check the figures it was given by its suppliers and, as a result, left itself open to fraud. The Flexible New Deal was more advanced in its design – one key difference being that it checked the figures of clients placed in employment against HMRC records – but was still fairly open to abuse: £529,770 was lost from staff fraud or abuse in 2010–11.⁷¹ The bigger controversies recently have been A4E's company director payments, which saw the then CEO Emma Harrison pay herself £8.6 million, in a year when results were poor, and fewer than 4 in every 100 unemployed people seen by the firm managed to secure jobs for longer than 13 weeks.⁷²

In an effort to address concerns both specific to A4E and general to the programme as a whole, the Work Programme was devised and came into force in June 2011.

It had two key points of difference from the schemes that went before it – first, the payments were almost entirely by results. This was intended to avert fraud and maximise efficiency, but it also meant that only organisations with very significant capital reserves could bid. Secondly, in many if not all cases, bidders were asked to offer a discount on the existing price of the programme; again, this biased the process in favour of companies who could offer huge discounts, on the basis that it would be worth it to get them into the market, even if they couldn't, in the short-term, make a profit.

This wasn't undertaken blindly – it was taken as given that there would be 'primes', that is, major firms who would have a direct relationship with the Government; and they would contract some of the work out to 'subs', possibly third sector or social enterprise organisations, to ensure a mixed economy in a market that has, by convention, been quite active in supporting local communities and the grass roots groups that help them prosper.

⁷¹ Preventing Fraud in Contracted Employment Programmes, Comptroller and Auditor General, May 2012

⁷² <http://www.channel4.com/news/46m-payout-for-a4e-despite-missing-work-programme-targets>

The contracts were awarded thus:

Ingeus: £778,063,445

A4E: £438,219,685

Working links: £307,752,305

Avanta: £267,193,620

Rehab Jobfit: £252,202,775

Seetec: £220,177,010

G4S: £183,752,040

Maximus: £176,388,190

Serco: £114,620,065

NCG: £100,901,965

CDG: £96,920,210

Pertemps: £90,044,825

EOS: £90,044,260

Reed: £69,153,965

Best: £65,327,770

Prospects: £50,392,740

JHP: £43,765,525

Certain things immediately show up: first, this contractual system is not very reactive. It doesn't set much store by past performance, good or bad. A4E is the second largest provider, despite a history of allegations of fraud dating back to 2009⁷³, (although a recent DWP audit gave them a clean bill of health). Their success rate was low in the Flexible New Deal, and continued to be low when the programme changed.

Meanwhile, in the bidding process for the Work Programme in Scotland, the Wise Group, a social enterprise with a highly successful record, was the incumbent, and had been the fourth most successful provider in the UK for the Flexible New Deal (the job shortage in their area – south of Edinburgh, across to Glasgow – was severe, so this was considered quite an achievement). The contracts went out on a 60: 40 ratio, quality: cost, and bidders were asked to offer a discount. However, the quality section was not assessed by precedent; that wouldn't work contractually, since it would always favour the incumbent. So essentially, as long as all the bidders were promising the same sort of service – and they were – the decision came down entirely to price. The Wise Group offered a 12% discount: Ingeus offered 64%. For an organisation with large capital reserves, even an impossibly low bid would become profitable if it netted them enough other contracts. This calculation appears to have been correct for Ingeus, although of course it is possible that they will have put in unrealistically low bids on all £778 million worth of their government contracts: however, as we have seen from the experience of A4E, poor performance is usually punished with more work, so this may not affect business success.

⁷³ <http://www.guardian.co.uk/politics/2009/jun/28/fraud-inquiry-government-jobs-scheme>

During this process, the Wise Group did not go to the wall, but they couldn't bid as subcontractors for Ingeus's work, because the deal was too unfavourable, so they've had to move into other areas. A lot of local expertise and social benefit has therefore been lost, in order to deliver this contract into the hands of a company that is based in Australia.

This brings us to two other points: first, the contracts are designed to work like this, on the basis that it encourages – or, to put it another way, forces the private sector to take the risk. The more stringent the results on which the payment is based – for instance, a job for two years, rather than six months – the more money a company needs to front the work. The intention was always that the third sector and social enterprise providers already working in this field would continue to do so, but without direct contact with the government, rather, by cutting deals with primes.

However, making these high demands of companies at rock bottom prices encourages the practice of 'park and skim', described thus:

“There are three types of client; the rent-seeking client, they walk in in a suit, you get them a job for doing nothing. Then there's the target group, you might make a marginal impact on them if you're good and effective. There are questions about this. In the end, you're not actually generating new jobs. Then there's a third group who you basically park, because they're on drugs, or they're depressed, the amount of money you'd have to spend on them is more than the government is prepared to pay you. There were people with great ambitions to do more than parking and skimming, but they got driven out by the process.”

Matthew Taylor, Former Director of Policy for the Labour Party and Adviser to Tony Blair

It's not as though the primes set out to deliver a poor service – rather, at the prices they've bid, their employees have very large caseloads.

“A number of our staff transferred to Ingeus and Working Links under TUPE, and we know that their caseloads are two and a half to three times what they would have been here. They spend much less time with customers. If you're handling 250 customers at any one time, and you're driven very hard on your targets and you're on performance-related pay, that just encourages you to park and skim.”

Laurie Russell, The Wise Group

One way of redressing this imbalance – between what is required of you, and what you can realistically deliver – is to try and subcontract your hardest-to-reach cases onto more socially motivated providers. This emerges as not a terribly good deal for the socially motivated.

Some companies – Serco, G4S – have purely bid to manage the contract, and never intended to deliver any of the services themselves. Their relationship with their subcontractors – or at least, what the subcontractors say about them – appears to be more positive than the relationship between supplier-primes and supplier-sub. Naturally, though, when a contract is awarded to a company that doesn't plan to deliver it, there are questions to ask about that purely managerial layer, and whether or not it represents value for money.

These welfare-to-work markets have been tested extensively in Australia, America and the Netherlands⁷⁴. Studies in the Netherlands show a typical improvement of between 5 and 10% in short-term job prospects, though flag up a difficulty in calculating this against transaction costs. But a key finding for us is that in both Australia and the Netherlands, governments have stopped asking contractors to compete on grounds of price, because it had such grave unintended consequences.⁷⁵

Here, the issue of company size becomes more salient than ever – this outsourcing model specifically invited a market of juggernaut providers, on the basis that the larger they were, the more of the risk burden they could shoulder on the government's behalf. But it does affect the power balance between government and supplier: realistically, the DWP cannot let Ingeus fail, whatever their results. The losses incurred would be too great, the embarrassment too public, the impact too geographically widespread, and the legal ramifications too lengthy and expensive. Knowing this – with no particular aspersions cast on any provider – any company that didn't try to renegotiate part way into a problematic contract would be failing its shareholders. Or, to put it more simply, this is a game in which one side can change the rules, and so can't lose.

⁷⁴ <http://www.jrf.org.uk/publications/lessons-contracting-out-welfare-work-programmes-australia-and-netherlands>

⁷⁵ Ibid

14. Is the Work Programme working?

Full analysis of the contracts signed in 2011 won't be complete until the end of this year; in the meantime, the only means of auditing come from the figures for referral and the figures for attachment – that is, the number of clients that have been sent to each prime, and whether or not those clients have had an appointment. It's not hopeless data – if there were a large discrepancy between the numbers expected by the DWP and the numbers referred, that would show up, and if any of these prime suppliers were failing to contact clients that, too, would become evident.

However, this leaves us with not much information on how successful contractors have been at placing clients in work. What we do know, however, is that the contracts will only function if there is a good relationship between prime contractors and the subs. Any fracturing between them will amount to the loss of valuable small organisations which were set up with the specific needs and opportunities of a particular area in mind. It will lead to the loss of specialist services for unemployed people – none of those primes specialises in people with addictions, or English as a second language, or mental health problems; niche requirements were always intended to be served by subs.

Furthermore, the sheer numbers involved mean that even primes who intended to run some of the service themselves cannot manage the work they have been contracted to do on their own. Preliminary figures released to Channel 4 have already demonstrated that A4E, the second largest provider, was lagging far behind its targets, 10 months in.⁷⁶ As soon as the contracts had been signed, there were concerns about transparency, specifically, how much profit the primes were making, and what the terms of their contract were. This problem stretches right back to the Flexible New Deal and the New Deal – there has never been a statutory requirement for firms to reveal their margins.

It is almost impossible to get information on how much money these organisations make out of these kinds of contracts. I managed to get a question in to the Select Committee hearing on A4E, just asking, 'what do you think is a reasonable rate of return? What are you looking for?' And they said 10%.

Professor Dan Finn, Professor of Social, Historical and Literary Studies, University of Portsmouth

Other agencies are skeptical: a social enterprise that went bankrupt waiting for clients to be referred from A4E compared DWP data to what the prime was proposing to offer them; Anna Burke from the now defunct Eco-Actif said their profit was more likely to be between 30 and 50%. The National Council of Voluntary Organisations, based on a small sample of information from charities, estimates the prime's management fee at 15–20%.⁷⁷

⁷⁶ By June 2012, 10 months after the contracts were signed, 115,000 people had been referred to A4E, of whom only 4,000 had obtained jobs lasting more than 13 weeks; this is less than 4% (the DWP minimum is 5.5%).

⁷⁷ http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf

Subs also point to eye-poppingly high salaries at the top of the Work Programme pyramid – Harrison's famous £8.6 million dividend as CEO of A4E – and a fundamental lack of transparency. There are now a number of companies with Ingeus in the title – Ingeus Social Ventures Ltd, Ingeus UK Ltd – all in receipt of money from the DWP, but with very little transparency about who holds which contract. Its founder, Therese Rein, owns 97% of the company, which paid £3.8 million in dividends in 2011.⁷⁸

There's a story, possibly apocryphal, that during the last Labour government market-style adjustments were proposed for the new deal model for getting long-term unemployed people back into work. The proposals were binned, it is said, with the minister responsible declaring: 'I don't want to be remembered as the politician who killed the voluntary sector.'

Patrick Butler, The Guardian, 11 October 2012

Social enterprises, including co-operatives and charities seem to share a quirk, whereby they are hard to bring to life, but harder to kill. Some social enterprises have undoubtedly gone to the wall, which is particularly galling for those who, like Eco-Actif, felt they were used as 'bid candy' during the tender, and for those who were successfully built from the wreckage of a careers service that was publicly run until the last welfare shake-up. Other organisations – such as the London Citizens Network – had been frozen out of the contractual process, but continued to find work for citizens anyway, on an unfunded basis. Others paint a more ambiguous picture, in which they get some referrals from primes, but the supply is too patchy, or the clients too dependent on one thing or another, for the deal to make financial sense, so they're cross-subsidising from reserves. Where the option of dipping into a legacy isn't available – for organisations like the Wise Group, registered as a charity but it never took grants and donations – the solution is to move into other areas. Some charities have had to pull out of the Work Programme altogether, being unable to continue subsidising it, or unable to justify spending their reserves in that way. This holds even for charities like St Mungo's, which have quite healthy balance sheets.

An NCVO report published earlier this year⁷⁹ highlighted the following: the number of referrals, from prime to sub, are lower than expected. Over a third of subs – and these are named organisations on the original bid's supply chain – have had no referrals at all; 15% have had between one and ten; 40% have had 50 or more. For that bottom half, it is impossible to see how this is financially viable, and even the top 40% were expecting greater numbers.

These low referrals could be a sign of the 'parking and creaming' that the Australian system witnessed when contractors had competed too aggressively on price, or it could be a lower-than-expected flow of people coming off disability benefit, as many more people than predicted are appealing the ATOS decisions (as an aside, this move from disability benefit to JSA, also has a forerunner in Australian welfare – they found that it led to a surge in clients being referred for sanction because they weren't turning up to appointments, only for it to transpire that they weren't turning up because of the health condition whose seriousness had been underestimated by the assessor. The process of discovering that, in fact, people had been ill all along, was quite expensive and the cause of some hardship).

⁷⁸ <http://www.guardian.co.uk/society/2012/feb/25/public-services-private-sector>

⁷⁹ http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf

Seven out of 10 charities have said they may have to pull out of the scheme because they couldn't make it work financially – half expect to fail within six months, the other quarter before the end of the contract. There's significant evidence of primes not paying subs on time.

There's something else missing from the contracts – the DWP requires primes to conduct customer satisfaction surveys, but there is no lower limit, below which the prime would be in breach of its contract.⁸⁰ The surveys are only conducted for the provider itself to identify areas of improvement – it is an echo of the way that G4S is allowed to investigate complaints about its own behaviour. In this respect – their freedom to self-police, despite there being little evidence that they hold themselves to terribly strict account – private companies have a significant accountability loophole.

Previously, employment service systems were evaluated by Ofsted. There was an ambiguity about this, it may have needed review: but one of the things I used to like about Ofsted was that its inspectors used to talk to people who did the programme. I suspect that nobody ever speaks to people anymore. At best, they look through action plans.

Professor Dan Finn, Professor of Social, Historical and Literary Studies, University of Portsmouth

The picture is incomplete, not just because the DWP's audit has not been published yet, also because subs have signed clauses, undertaking not to say anything that will attract 'adverse publicity' for the Work Programme. This is an unfamiliar position for many charities and social enterprises, who are more used to sharing good and bad practice and working collaboratively. It's also relatively unfamiliar from a research perspective, to be fenced out by considerations of commercial sensitivity, of an area of such significant public expenditure. Hopefully this will resolve as more data becomes available.

Chris Grayling averred in 2011 that: 'If the big guys stuff the little guys then we'll stuff the big guys. If a prime contractor wins the bid with a sexy list of sub contractors then dumps them the day after, then we will dump them in return.'⁸¹ But it seems unlikely that stuffing anybody will be on the DWP's menu of options.

⁸⁰ <http://unemployednet.org/unemployednet-foi-no-minimum-standards-unemployed-satisfaction-wp>

⁸¹ <http://www.socialenterpriselive.com/section/news/public-services/20110204/you-have-more-power-you-realise-grayling-tells-sector>

15. Other contracts and sub-contracts (same companies – different sectors)

A similar financial motive has grown up around the award of the UK Border Agency contracts for housing asylum seekers. In the regular way, bids were put in at costs well below the incumbent providers, on the understanding that G4S, Serco or Clearel could sub-contract the accommodation to cheaper private landlords.

Even before the standards were redrawn, there was one obvious way to make accommodation cheaper, which was to remove tenants from major cities, and send them to less accessible, therefore less expensive, satellite towns. The immediate problem was a surge in racist abuse; cities like Sheffield are cosmopolitan and proud of their multi-cultural heritage (Sheffield was, in fact, the UK's first 'city of sanctuary'⁸²); they had quite vibrant refugee communities, unlike the small mining towns surrounding them.

However, charitable agencies working in the area were more worried about two things: first, that G4S has a reputation among asylum seekers, for running detention centres, and that reputation was not good: in 2010 there were 773 complaints, including 48 claims of assault. G4S were allowed to investigate themselves. Three complaints of assault and two of racism were upheld.⁸³

Second, the new standards of accommodation are creating slum conditions: lone women with children can now be housed with other lone women with children, which has opened the door to the use of hostels. Four children can now be housed in one room, with their parents in another room, so two-bedroom accommodation is deemed suitable for six people⁸⁴.

This private company, Jomast, has a 40-bed hostel in Stockton, for women and children under 2, in tiny rooms. G4S and UKBA promised that that hostel would not be used. UKBA are just having it repainted so it can have long-term use. It's appalling. You're talking about very vulnerable people to start with; these are people who've escaped torture. I've been doing this a long time as a volunteer but even I'm getting stressed out by what I'm seeing. I thought that had died out with Cathy Come Home, putting mothers and tiny children in prison.

John Grayson, researcher at Sheffield Hallam University and volunteer for the South Yorkshire Migration and Asylum Action Group (SYMAAG)

⁸² <http://www.cityofsanctuary.org/>

⁸³ Letter from the Institute of Race Relations, <http://www.irr.org.uk/news/g4s-and-asylum-seekers-housing/>

⁸⁴ <http://www.symaag.org.uk/2012/08/>

Economically, it's rather opaque – Jomast put in a bid for asylum-seeker accommodation that was 38% lower than that of the local authority in Sheffield, which had previously been doing this work on behalf of the UKBA. Overall, the outsourcing of asylum-seeker related work is thought to have shaved 13% off UK Border Agency costs. However, campaigners point to the following transaction costs: there are now three or even four tiers of management from the UKBA to any given asylum seeker. G4S takes an undisclosed profit – naturally, they are primarily a security company, not a social landlord; so they sub-contract to a medium-sized agency, like Target or Jomast, who again take an undisclosed profit; they may supply some of the housing stock themselves – they provide enough of it to have already driven down staffing levels at hostels – but some of it they will then sub-contract to small private landlords, who in all probability could not rent their property on the open market because of its poor quality. They, too, take a profit. So if the UKBA is saving 13%, when you build in three different profiteers, it is a fair guess that the asylum seekers' conditions are substantially more than 13% worse.

In the meantime, third sector and social purpose housing agencies have been squeezed out of the process, and are now reduced to the role of campaigning against these large contracts, and supporting refugees through eviction processes that will see them alienated from their social and employment networks.

It almost goes without saying that these costs will come back to the council – every child whose progress in school is stymied by a relocation, every parent who can't get a job because their new accommodation is too far from where employment can be found, every pressure on families that live in these communities will find its way to the surface as a cost to these communities. The savings, meanwhile, have largely gone to a selection of private companies, for varying amounts of effort, in varying proportions. So again, one feels for the local authority, which has retained responsibility for the people who comprise its population, while losing any real power over their welfare.

16. How can the tide be turned?

Public services have been opening up to marketisation for decades. According to the sector-by-sector research we have done, the more mature the private market – the longer it is since charities, social enterprises and smaller providers were squeezed out and choice of provider has been reduced. This in itself is a strong argument for changing the way commissioning is done. But more than this, the layers of profit that are involved in outsourcing as it's currently done, coupled with the downward pressure on wages and tax revenues, and the knock-on effects in other areas of public spending when one firm cuts costs dramatically in one area, suggests that the current model is simply unaffordable in financially straitened times.

What's your answer to people who say, we'd love to change, but there's no money left?

That's my answer – the money looks like it's going to run out, it's shifting so dramatically. That gives us the burning platform. We've got to change our practice.

Sophia Looney, Lambeth Council

Change will look different in each sector, but there are some broad observations that apply across the piece. First, it's not as simple as just removing the shareholder profit motive and turning everything over to the third sector. The culture of encouraging aggressive competition on price is as destructive to the voluntary sector as it is to the private sector, and would probably have the same effect on service quality and downward pressure on wages. Social value must be factored into commissioning so that taxpayers get the maximum all-round value for their money.

And size matters a great deal – the drive towards ever-larger contracts in the name of efficiency has to be interrogated more closely. How many layers of management come with this “efficiency” and what are its transaction costs? Where savings are genuinely made, is it the commissioner who benefits from them, or is it mainly the contractor? Does the tendering process actively exclude people who were already working well in a given area or sector, in effect discriminating against incumbents? And is it ever realistic to hope that they can be brought back in via benevolent arrangements with the organisation that won the contract?

You've got Suffolk County Council, bless them, who decided that they were going to take a different approach to commissioning their drug and alcohol programme. So they ran a county-wide process, and decided they were only going to employ someone who could deliver on a county-wide level. Through that process, they lost Icen, an absolute diamond, the most effective charity in Ipswich, and Ipswich is 65% of the drug problem in Suffolk.

Nick Hurd, Under-Secretary of State for Charities, Social Enterprise and Volunteering

This is an issue that can and must be depoliticised: there is nothing left wing in saying a local community could and should benefit from a local contract. There is nothing in the right wing to relish or encourage private companies buying up assets, loading them with debt, and passing that debt back to the service user.

It ought to be very difficult to enter a public contract to deliver a service that you've got no track record of delivering. That would force large companies to partner with people who were already in the sector.

Victor Adebowale

Social enterprises and charities that have a social mission and reinvest or redistribute their profits, have been delivering public services for decades and many have a strong track record and have been highly praised. Successive governments have promised a greater role for them in delivering public services. Social enterprise has repeatedly been cited as a key vehicle for the Government's vision of reformed public services. Charities and social enterprises delivering public services was a much-repeated promise in the argument for the Big Society vision. Major charities such as Age UK have created social enterprises so that they can trade more and win contracts.

While social enterprises are growing and gaining confidence in consumer markets and when trading with businesses, our research shows that those who are working in public service markets are drastically low in confidence⁸⁵. Many are making redundancies and turning away from public-service markets in order to survive, just when they are needed most. They cite public-sector procurement policy as one of their biggest barriers to sustainability. They often lack the scale, balance sheets or ability to ruthlessly cut costs in order to win out in the current climate.

One objection we have heard in the course of our research is that commissioning processes can't be changed because of EU competition laws. It's true that the law has some bearing on the process, of course it is; you couldn't open a tender for a prison and directly exclude the private sector. But there is nothing to stop you from introducing elements to the contracts that encourage a diversity of provision. You can also expressly require contractors to pay a living wage, and many councils are considering or are already implementing this.⁸⁶ The risk aversion that warns central and local departments off inventive commissioning is wholly understandable – the larger the corporation, the more litigious it is likely to be, and high-profile cases with railway contracts show how costly and politically hazardous it is to be embroiled in such a case.

However, commissioners must bear in mind that the avoidance of legal challenge, by simply delivering the contracts to the people who are most likely to lodge them, will lead to the most predatory companies having an advantage from the start.

What we hear from the sector is that there are commissioners who use the law as a smokescreen to buy at the cheapest level. We have this really radical transparency agenda, The Right to Challenge. We will help commissioners get into a better place.

Nick Hurd, Under-Secretary of State for Charities, Social Enterprise and Volunteering

⁸⁵ Fightback Britain, Social Enterprise UK, 2011

⁸⁶ <http://www.onesociety.org.uk/research/leading-the-way-on-fair-pay/>

There are bold, sophisticated, original changes being made, both locally and nationally, to change tack on public-sector spending. Centrally, of course, we have the Public Services (Social Value) Act, coming in to force in January 2013; crucially, it underlines the difference between greatest overall value and lowest cost, and allows commissioners to take the whole picture of their community into account when they make their decisions. It will be as influential as we allow it to be, and it is vital that commissioners keep it in mind as a signal that the need to change tack is understood, fervently, across the political spectrum. The Act, when it was a Bill, had cross-party support. In short, everyone knows that the lack of social value in many public service markets, is a problem.

There is also some subtle but important provision in the Localism Act, passed in November 2011.⁸⁷ This is a bit more politically divisive, for reasons too involved to go into here, and it is more concerned with the planning process than with procurement, but the right to challenge commissioning decisions is laid out as part of a right to challenge the local authority more generally. While there doesn't seem to be much hope of communities coming together to take over children's homes, earlier this year Social Enterprise UK was approached by a group of elderly people whose retirement village has been repeatedly bought and sold by private equity companies. Following the collapse of the company that most recently owned the village, the residents now aim to turn the village into a resident-owned co-operative. There is every reason to believe they will be successful.

As part of the Open Public Services Agenda,⁸⁸ the Government has undertaken to set up 'commissioning academies'; the aim is to support and encourage good practice. It may sound simplistic, but there is a genuine problem of expertise at the most basic level. Locally, two decades of reluctance to employ consultants, for well-intended reasons of thrift, have led to a situation in which the people making the decisions often don't fully understand the difference between procurement – the act of buying something – and commissioning – the act of delineating the nature and boundaries of what you want to buy.

Centrally, as well as asymmetry of expertise, we are concerned about conflict of interest. There is a significant 'revolving doors' culture – both revolving in, with corporate staff appointed to government posts, and revolving out, with public servants taking on high-ranking private sector jobs once they leave office. Recently, Alan Cave, a central architect of the Work Programme as a civil servant, left to join Serco, one of its main beneficiaries. The same trajectory is observable across criminal justice (Phil Wheatley, former head of the National Offender Management Service, is now a G4S adviser), and many, if not all, other sectors. Social policy academic Professor David Beetham⁸⁹ makes a rigorous case against this culture altogether, but for pragmatic, immediate purposes, the key seems to be that the process has to be more open to scrutiny and more scrutinised. If we want the public interest to be represented as robustly as the private interest then we, the public, need to take an interest.

⁸⁷ <http://www.communities.gov.uk/documents/localgovernment/pdf/1896534.pdf>

⁸⁸ http://files.openpublicservices.cabinetoffice.gov.uk/HMG_OpenPublicServices_web.pdf

⁸⁹ Unelected Oligarchy, 2011

At a local level, authorities are in a state of flux; third sector organisations and social enterprises are grouping together to bid as consortia, to overcome the inevitable private-sector bias of the large-scale contract. In some places, this works well. In other places, charities and smaller companies are told that this whole model is part of a bygone era, and large-scale commissioning from large-scale private companies is the only thing they can afford.

So the outlook isn't sunny, by any means, but there are enough commissioners taking the consortium route, taking a more considered route generally, that they provide exemplar and defence against more defeatist councils. On the ground, Liverpool Council has adopted a groundbreaking approach, in which it will award contracts on the basis of local value, pay-spine multiplier (that is, the difference between salary at the top and at the bottom) and social interest (companies that reinvest their profits and are, preferably, asset locked).⁹⁰ In Lambeth, as discussed, the commissioning process is being stripped down to its first principles, remade in every way to reflect the requirements of the people who actually live in the area. This doesn't necessarily eject large companies from all council business – if a large private provider is still the best solution for their IT, that's where they'll go. But already it looks profoundly unlikely that locally devised solutions will involve very many global corporations.

Our belief is that civic duty is extremely hard to kill. Even now, as all the mainstream rhetoric around public services is fixated on how stretched their finances will be, that serves not to dispirit communities but to enliven them. Innovation and passion are everywhere, from the Lambeth locals who sat in a sports hall for an entire weekend, thrashing out what they want from their youth services, to the Barnet residents who are occupying Friern Library to prevent its being realised as an asset. The consequences of inaction, the failure to change direction on this, will result in the steady, often imperceptible slide into a public life that has been wholly commercialised; some bits will work, most bits won't work as well as they could, some bits will go hideously awry. But the consequences of action are inspiring – to retake this vast market and use it in the service of its communities; to reflect the needs of the public in the spending of public money; this is something worth fighting for. And the legislation that is coming in January 2013 is a start. We believe it is the first step on the road to ensuring this is a fight that can be won.

⁹⁰ <http://www.liverpoolecho.co.uk/liverpool-news/local-news/2012/10/05/social-enterprises-to-get-head-start-in-race-for-liverpool-council-contracts-100252-31969608/#ixzz28PommdjG>

Appendix 1: Social enterprises delivering public services

GLL – one of the most successful social enterprises in the UK

GLL is a charitable social enterprise that started life in the public sector. It was born 20 years ago when Greenwich Council needed to find a new way to run its leisure facilities to cut costs. It became a non-profit-distributing co-operative and has gone on to become one of the most successful social enterprises in the UK. It employs more than 6,000 staff and runs more than 115 leisure centres and sporting facilities across the UK, as well as recent diversification into the libraries sector. GLL was awarded a 10-year contract to run the Aquatics Centre and Copper Box (Multi-use Arena) after the London 2012 Olympic and Paralympic Games. With more than 500,000 members, GLL is highly successful in the fiercely competitive leisure sector, now under its new consumer-facing brand, Better. As well as ensuring their facilities are affordable and accessible to everyone in the community, all profits generated are reinvested in the facilities and services provided.

Sandwell Community Caring Trust – saving vital services and improving them

Sandwell Community Caring Trust (SCCT) cares for more than 700 disabled and disadvantaged adults. They first 'spun out' from their local authority in 1997 to help make savings – Sandwell Metropolitan Borough Council needed to reduce its social care budget by more than £8 million and a range of highly-valued services were in danger of being closed down. More than 80 staff were transferred across to SCCT, which was given a five-year contract to run a number of care homes on behalf of the local authority. As a result of its success, SCCT has expanded the range of services it offers including respite care, and supported living for children and adults with physical and learning disabilities.

SCCT devolved more control to staff, cutting management and administration costs from 20% to 6%. SCCT empower their staff who get more say over the services they provide, the way they work and how they can best meet the needs of their patients and communities. Staff sickness levels are down from an average of 22 days a year to 0.7 days. Staff turnover is also down to below 4%, enabling the company to invest more in resources and long-term training while retaining staff terms and conditions.

P3 – transforming the lives of people that others have given up on

P3 provides a range of services including supported housing, homeless hostels, offender support, mental health services, job-shops and youth services. This social enterprise has grown from a turnover of under £1 million in 2003 to £10 million today. Clients are involved in the design, development and delivery of services and P3 is repeatedly ranked as one of the Best Companies to Work For by The Sunday Times.

P3's Sandwell Complex Needs service supports adults with complex needs in their recovery, helping them integrate into society. An independent report on the service published this year, found that in the absence of the service, each person would cost the public purse £250,000 per annum, four times the cost of the service.

HCT Group – creating community, not shareholder, value

HCT Group (known then as Hackney Community Transport) started in 1982 in the grip of a recession. With a handful of minibuses and reliant on volunteers, it provided subsidised transport for older people, people with disabilities and community groups in the London borough. In 1993 it decided to replace its grant income with profits from commercial contracts. To deliver those contracts the social enterprise hired and trained people who had been long-term unemployed. This is something HCT Group continues to do, having a positive impact on people's lives and communities across the country.

The organisation increased its turnover from £202K in 1993 to £28 million in 2011. It has depots across London, Yorkshire, Humberside, the South West and Channel Islands, a fleet of over 360 vehicles and employs 630 people. HCT Group reinvests its profits in the communities where they work and into training the long-term unemployed.

Central Surrey Health – a pioneering social enterprise owned by the nurses and therapists it employs

Central Surrey Health provides award-winning therapy and community nursing services in hospitals, clinics and homes, serving the 280,000 strong population of central Surrey. It was the first social enterprise to come out of the NHS in 2006 and since then, its focus on quality means patients and commissioners now benefit from better, safer services, evidenced through high levels of patient satisfaction.

It has achieved higher quality care because its clinicians are motivated and engaged in their work: 99% say their work is worthwhile, 99% say they willingly go beyond what is normally required, and 99% say they are motivated to make a difference for patients, even if they don't have direct contact with patients. The result is an absence rate that's less than half the NHS average.

Staff are motivated because everyone employed by Central Surrey Health is a 'co-owner' as in the John Lewis model. This means they are involved in and have a real say in how their services are run, so they feel listened to and respected. Central Surrey Health's ethos is to combine the values and principles of the NHS with the 'can do' culture of a successfully run business. Any profit Central Surrey Health makes is re-invested back into improving patient care.

Appendix 2: polling carried out for this report by Opinium Research LLP

Full data set is available on request from celia.richardson@socialenterprise.org.uk.

Social Enterprise UK

Social Enterprise UK is the national membership body for social enterprise. We offer business support, do research, develop policy, campaign, build networks, share knowledge and understanding and raise awareness of social enterprise and what it can achieve. We also provide training and consultancy to organizations in the public, private and social sectors.

Our members come from all sectors. What unites them is their belief in the power of social enterprise – business where society profits.

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