

PROCUREMENT AND THE THIRD SECTOR

POLICY ISSUE

UK outsourcing or external procurement is huge and significant. “Just Another Paperclip,” a Report for the Business Services Association (the private outsourcers’ group) shows that “in 2014-15, UK government spent £242bn – almost one-third of total government expenditure – on external suppliers, compared with £194bn on staff. Around £100bn is spent on the procurement of services by external providers”.

From 1997, the concept of social enterprise was promoted by New Labour as a welfare reform initiative. Since then, a raft of New Labour and Conservative funding and policies has encouraged third sector delivery of public services because social enterprises, cooperatives and mutuals are viewed as low cost delivery structures. For public sector workers, outsourcing to third sector organisations of local government and NHS delivery represents as big a threat as the private sector.

Many current procurement processes are now dominated by policies and programmes to shift more delivery to cooperatives, social enterprises and third sector organisations, including:

- Article 77 of EU Procurement Directive 2014/24/EU, as transposed into the 2015 UK Public Procurement Regulations, which permits service delivery to be reserved for third sector organisations in a restricted tendering process for three year contracts, after which there is open competition with the private sector
- the Social Services and Wellbeing (Wales) Act 2014, which prioritises third sector delivery through a duty for local authorities to promote social enterprises and cooperatives
- a wide range of programmes and proposals, from Big Society Capital and Big Lottery support for social impact bonds and social investment to initiatives from Cooperative Councils’ Innovation Network, Coops UK, New Economics Foundation, NESTA and others and funding from Department of Health for social prescribing and “Health as a Social Movement”. Their cumulative effect is stimulation of a market in public service delivery

ANALYSIS

A range of private and third sector structures is emerging within this marketised approach for outsourcing and spinning out public services. The September 2017 Government Departments’ “Social Enterprise Market Trends” identifies that 44% of organisations which are ‘social enterprises’ are private companies.

The intended impact of these outsourcing proposals is to reduce public spending by ensuring that the public purse pays no more than the marginal cost of delivery, leaving the delivery organisation to fund setup, development and other costs, increasingly from private sources. The latest Flip Finance report shows that £1bn has now been spent by Government to subsidise social investment, including private funds, in these services. Within this third sector role, external

delivery of public services is increasingly dominated by payment by results, often with irrelevant, meaningless or “easiest to measure” outputs.

None of this should be a direction of travel for a future Labour Government. Labour’s default position should surely be one against outsourcing and external procurement. In the meantime, unions, users and third sector organisations should all be included in drawing up and implementing procurement and commissioning processes, with all contracts funded to pay at least the Real Living Wage.

In the meantime, cooperatives, mutuals, social enterprises and third sector organisations are now institutionalised as deliverers of low cost public services. As an example, at the September 2017 Cooperative Councils’ Innovation Network AGM, its Vice Chair said that services could be delivered by working with communities to set up co-ops and community enterprises. “We need to look at new models of delivering services and co-ops will have a major role to play in that.”

All of this is reinforced by a new local government career grade of ‘Transformation Officers’, working in parallel to NHS Sustainability and Transformation Programmes.

EU Procurement Directive

Under the UK interpretation of EU Procurement Directive 2014/24/EU, local councils are promoting cooperatives, mutuals and third sector organisations as interim steps towards full private sector competition.

The UK transposition of the EU Directive, it is legally possible to restrict some markets to specific suppliers, referred to in the UK Procurement Regulation as “qualifying organisations”. The UK Regulations’ listed categories include health, social and cultural services, medical services, personal services, educational and training services (including eLearning), sports and cultural services.

Crown Commercial Service “Guidance on Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016: Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts” says “Participation in any such competition is reserved to qualifying organisations that meet criteria, including:

- its objective is the pursuit of a public service mission linked to the delivery of the services covered under the reserved contracts provision
- its profits are reinvested with a view to achieving the organisation’s objective, and where profits are distributed or redistributed, this should be based on participatory considerations
- the structures of management and ownership of the organisation performing the contract are (or will be, when it performs the contract) based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders

The insertion of “or will be, if and when it performs the contract”, means that a private for profit company may bid and then become a “qualifying organisation” only if it wins the contract. This also gives comfort where a local authority seeks to spin out a service from the public sector.

Public Service Mutuals

In 2010, the Cabinet Office defined a new variant - 'public service mutuals' – as "organisations that have left the public sector but continue delivering public services. Employee control plays a significant role in their operation". But this does not mean that these mutuals are controlled by former public sector employees. As an example, MyCSP was formerly the Civil Service Pensions Department. The Financial Times of October 01 2014 reported that "a private company has taken a controlling stake in the organisation that administers the UK civil service pension scheme." MyCSP was established in 2012 as a "mutual joint venture" in which the private Equiniti Group owned 40%, the Government 35%; and employees 25%. Now that the Government has now sold a further 11% of its stake, Equiniti now owns 51%, with 24% by Government and 25% by employees". This means that representation may be minimised through an employees' trust within a private sector.

Welsh Government Approach

A different approach features in the Social Services and Wellbeing (Wales) Act 2014. Section 16 prioritises delivery by third sector structures. A local authority must promote "(a) the development in its area of social enterprises to provide care and support and preventative services and (b) the development in its area of cooperative organisations or arrangements to provide care and support and preventative services"

Since its inception in April 06 2016, few local authorities have yet implemented plans to promote social enterprises. But all this is still subject to the UK Government's Procurement Regulations to interpret Article 77 of the EU Directive.

Difficulties with Cooperative Approaches

Despite these difficulties, Coops UK in "Cooperative Approaches to Care and Wellbeing in England" proposes cooperative models for health and social care, but accepts that "bigger standardised contracts are easier for stretched public authorities to manage", with a "deeper tendency to contract in competitive, highly commercialised public service markets, rather than creating nurturing 'public-social partnerships'. But Coops UK still wants the Government to "make sure the Mutuals Reservation in Public Procurement is maintained through Brexit".

Another approach to cooperative health and social care - "Social Care as a Local Economic Solution for the West Midlands" - by New Economics Foundation and Localise West Midlands, shows similar failings. It seeks to "set a top line strategic objective for the region to increase the provision of care from community care-scale enterprises." But all this is aimed at a new Tory Metro Mayor, with different priorities.

Meanwhile, the ground is shifting all the time. Examples include the VCSE Health and Wellbeing Fund 2017-2018, where the Department of Health offers up to £300,000 funding for social prescribing - "generally understood to be an intervention through which people are supported to access non-medical services in the community." Alongside this, under the "Health as a Social Movement" programme, NESTA, New Economics Foundation and the Royal Society of Arts were part of a £700,000 project to create six "health vanguard sites". The NESTA Report shows that members of these "social movements" are "people managing chronic health conditions or adhering to complex medication regimes"

All this means that local communities are being conditioned to provide more services for themselves, so that third sector approaches might be more favoured.

Meanwhile, private sector bidders with fulltime professional teams of bid writers often economise on mentioning previous experience, especially where a “self-cleansing” process is permitted, which allows concealment of past contractual failings with details of self rectification. Each round of procurement usually requires savings – often of 10%, 15% or even 20%. In labour intensive service delivery in health and care, reduced wages, terms and conditions are the only way these cost reductions can be achieved.

POLICY FRAMEWORK

As one example of an alternative approach, for health and care, instead of a marketised third sector approach, Labour might return returning to its ‘Better Government for Older People’ (BGOP) programme, which it funded in 1998 to oversee 28 research projects for engagement of older people in a variety of services. This national action research initiative was steered by a consortium of six partners: Service First Unit in the Cabinet Office (Office of Public Service), Age Concern, Anchor Trust, Carnegie Third Age Programme, Help the Aged and Warwick University Local Authorities’ Research Consortium. As an example, the Programme in Devon included work on:

- engaging older people in the Exeter City best value programme and the Mid Devon locality GP commissioning group national pilot
- employment prospects for the over-50s in a rural area
- engaging elders in planning and community profiling initiatives
- working with older volunteers as peer researchers looking at users’ views of a community re-ablement service
- the authority’s own position as an employer of older people
- social services care management arrangements to enable older people to take more control of the services they require.

The emerging Fair Care model was for all people engaged in giving and receiving care, including workers, informal carers and, importantly, people traditionally labelled 'service users'. Fair Care Coops sought to develop a “Circle of Care” for each service user for person centred support. People seeking care, seeking ownership and control of their own care, were in a mutual setting, where they share responsibility for the wellbeing of all other members of the coop, including workers and unpaid carers. Using Fair Care Coops, supportive adult health and care models might be developed outside the marketised commissioning and procurement system.

Finally, we should not forget Labour’s previous success following the 1976 Industrial Common Ownership Act, after during the 1970s and 1980s, at least 2,000 cooperatives were successfully created. But these were not promoted to deliver public services. Labour should now consider returning cooperatives, mutuals, social enterprises and third sector organisations to their original function of employment provision and generation, community support and self defence.