This pamphlet argues that public private partnerships (PPP) are crucial to successful and long-term public service reform. Far-reaching socio-economic changes in the 21st century make reform inevitable and public services need to respond accordingly. Reform can be sustained through improvements based around better choice, subsidiarity and greater diversity in supply. In this respect, the UK's approach to PPP can act as a catalyst for wider public service reform in Europe.

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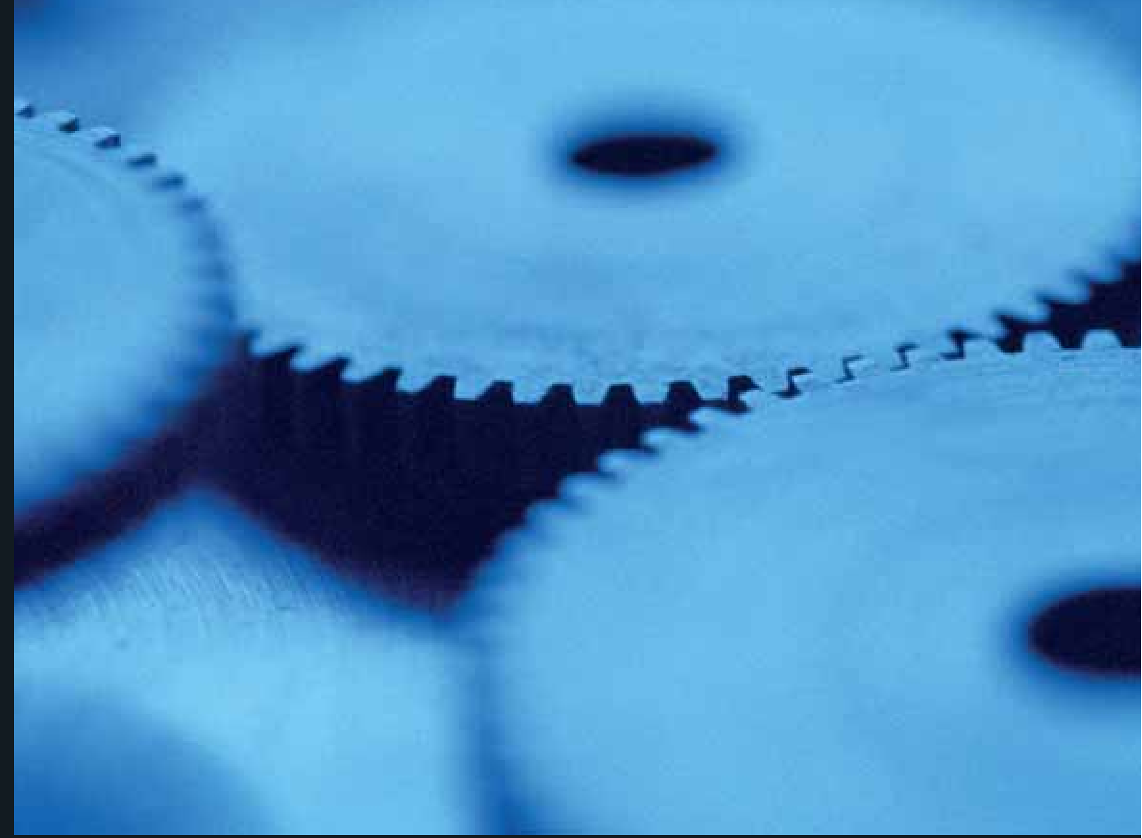

Private Investment for Public Success

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Ken Anderson · Gary Sturgess and Briony Smith · Stelio Stefanou

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About Policy Network

} Policy Network

Policy Network is an international think tank launched in December 2000 with the support of Tony Blair, Gerhard Schröder, Giuliano Amato and Göran Persson following the Progressive Governance Summits in New York, Florence and Berlin. In July 2003, *Policy Network* organised the London Progressive Governance Conference, which brought together 12 world leaders, and over 600 progressive politicians, thinkers and strategists. In October 2004, *Policy Network* built on this success by organising the Budapest Progressive Governance Summit, hosted by the Hungarian Prime Minister Ferenc Gyurcsány. In July 2005, *Policy Network* co-organised with the Africa Institute of South Africa and the Presidency of South Africa, the first Regional African Progressive Governance Conference in Johannesburg. Most recently, *Policy Network* hosted a Progressive Governance Summit on 11th and 12th February 2006, in Hammanskraal, South Africa.

} A Progressive Network

Policy Network's objective is the promotion and cross fertilisation of progressive policy ideas among centre-left modernisers. Acting as the secretariat to the Progressive Governance Network, *Policy Network* facilitates dialogue between politicians, policy makers and experts across Europe and from democratic countries around the world. By providing a forum that promotes debate and shares ideas, *Policy Network* strengthens the hand of modernisers and the case for permanent renewal.

} Our Common Challenge

Progressive governments and parties in Europe are facing similar problems and looking for modern social democratic responses. There are increasingly rising fears for security – economic, political and social – combined with the contradictions of combining the traditional welfare state with employment policies, rapid change in science and technology, and pressing global issues. All of which should be tackled in common, as part of the need for fundamental democratic renewal.

In the past, progressives used to work independently to resolve these problems. Today, there is a growing consensus that we must engage with progressives from other countries, and to situate European and national responses within a broader international framework of progressive thinking, rooted in our social democratic values.

} Activities

Policy Network is animated through a series of regular events, particularly the annual Spring Conference and the 18-monthly Progressive Governance Conferences and Summits. In addition to these, we organise symposia, working groups and one-day conferences that focus on particular policy problems. The outcome and results of the discussions are published in the three annual issues of *Policy Network*'s journal *Progressive Politics* and a series of individual pamphlets that are distributed throughout the network, placed on our website and used as the basis for discussions at *Policy Network* events.

Our interests in the past few years have centred on: Economic Reform, Public Services, Democratic Renewal, Community and Inequality as well as Global Governance. During 2005 and 2006, we have concentrated our energies on the renewal of the European Social Model. Our programme on the European Social Model was launched during the UK Presidency of the European Union and has investigated the principal means through which the various models for welfare states in Europe can be adapted to meet the challenges of the 21st century. Fifteen working papers were commissioned for the project and six presented for discussion at a private seminar for held at 10 Downing Street prior to the European Summit at Hampton Court. Since then and following a symposium organised at the end of November 2005, the debate has widened in a series of discussions across Europe in collaboration with other European centre-left think tanks in Italy, the Netherlands, France, Hungary, Germany, Spain and Finland in the second half of 2005 and 2006. Similar discussions also took place

around the UK. The first results have been published in a policy pamphlet, *Hampton Court Agenda: a Social Model for Europe*, published by *Policy Network* in March 2006. A further book, *Global Europe, Social Europe*, was published by *Polity Press* in October 2006.

In the second half of 2006, we will continue our work on the European Social Model, and begin preparations for the next Progressive Governance Conference to be held in 2007.

} Global Partnership

Since its inception in 2000, *Policy Network* has strived to contribute to the new policy agenda for the centre-left, not only in Europe, but also across the world. These meetings have been held in the UK and around the world in partnership with a variety of national think tanks such as the *Fondazione Italianieuropei*, the *Wiardi Beckman Stichting*, the *Global Progressive Forum*, the *Fundacion Alternativas*, *A Gauche en Europe*, the *Friedrich-Ebert-Stiftung*, the *EPC*, the *Progressive Policy Institute*, and the *Centre for American Progress*.

We have always prided ourselves on being the first in the field of policy innovation, an achievement that has been greatly aided by the strength of the network of international partners we have built up.

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Alan Milburn has been Member of Parliament for Darlington since 1992. As Chancellor of the Duchy of Lancaster (2004-5), he was Co-ordinator of the Labour Party's 2005 general election campaign. Previously, he was Secretary of State for Health (1999-2003), Chief Secretary to the Treasury (1998-1999), and Minister of State, Health Department (1997-1998). Before being elected for Parliament, Alan worked in business development and for a trade union research centre.

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Executive Summary

In an era of sustained public service reform, public private partnerships are crucial to the longevity and success of reform programmes. Public services must offer provisions that are modern, responsive, high-quality and, most importantly, universal.

Public private partnerships allow for the successful implementation of private sector resources and funds in public services. This is quick and vital additional investment and wholly beneficial for the public sector.

Opposition to public private partnerships has been widespread and there are two lessons that have to be learnt. Firstly, it is important to anticipate change and not lag behind public opinion. Secondly, progressives must overcome political and ideological opposition to PPP by illustrating their practical benefits.

Changes in the economy – globalisation and long-term investment, for instance – and changes in society – the emergence of an informal consumer society, coupled with an expectation of high-quality services – mean reform is inevitable.

Sustainable and successful reform is achievable through three principle improvements. Firstly, there needs to be greater choice – consumer power means public services have to focus on individuals and be rewarded through performance-based incentives. Secondly, subsidiarity should be increasingly prevalent because community control will ensure public services are responsive to those they are designed for. Finally, there needs to be greater diversity in supply – dedication to quality will allow for the emergence of new forms of PPP.

Through PPP the UK can become a catalyst for successful and sustainable public services reform throughout Europe.

"In Europe we stand on the cusp of a new relationship between citizen and public services. It is a future in which the public realm is not just bigger but better and fairer. Where centralised States have less power and communities and citizens have more. At the heart of this reform process lies the modernisation of public services. This is the future for Europe. Our job together is to make it happen."

Preface

ALAN MILBURN

This pamphlet is an important contribution to the debate on public private partnerships (PPPs), which I welcome. In this preface, I want to do three things. First, I describe how PPPs have become embedded as a core part of the Government's modernisation programme for the public services. Second, I set out how these partnerships can develop in the future. Third, I want to outline what government and industry can do together to make PPPs a major modern British export as interest in the concept develops both in Europe and across the wider world.

Since 1997, the Labour government has signed PFI projects worth around £40 billion. Over £20 billion is going into PPPs to modernise transport infrastructure alone. The private finance initiative (PFI) is helping deliver the biggest hospital building programme the country has ever seen with dozens of new hospital developments already open, as are hundreds of new and refurbished schools, alongside scores of fire and police stations, courts and prisons all built through the PFI. It now comprises around 13 per cent of capital spending which itself is set to more than double as we eat into a decades-long legacy of neglect of our key public services infrastructure. Today around 600 PFI projects are in operation. For the remainder of this decade and beyond, billions of pounds' worth of new PFI contracts will make a major contribution, not just to defence and transport, but to the Government's ambitious target of building 100 new hospitals and a major programme to modernise every secondary school in the country. In the future, the Government also wants to extend the existing PFI into urban regeneration, waste management and social housing while new forms of PPP are likely to develop in other sectors.

The PFI and PPPs are means to an end. They harness the resources and skills of the private sector to bring about improvements in services for the public – in a way that gets vital additional investment into frontline services in the shortest possible time, consistent with prudent management of the public finances. That is why the Government uses the PFI where it is appropriate and can deliver value for money.

PFI is now indeed delivering results for consumers and good value for money for taxpayers. By sharing risks and putting in place the right incentives to build in quality from the outset and to maintain it over time, the PFI has allowed the mistakes of the past, inherent in much of traditional public sector procurement, to be overcome. According to the National Audit Office whereas just 27 per cent of projects built under the old regime were delivered on budget, 78 per cent of PFI projects came in at cost. 76 per cent have been delivered on time under PFI compared to just 30 per cent using traditional methods of procurement.

Although the Government has no bias in favour of any particular form of procurement, PFI is a partnership that works. It is now an intrinsic part of the UK Government's modernisation of the public services. It is here – and it is here to stay.

Yet it has been subject to a fierce media and political onslaught. It has been accused of cutting bed numbers in NHS hospitals, cutting staff terms and conditions, even putting patients' lives in danger by cutting corners to make profits. On all these counts, the PFI has been judged guilty – and yet, on examination, is innocent. And this is where important lessons need to be learned if PPPs are to be extended successfully both in this country and elsewhere in Europe.

The first lesson is to anticipate change rather than just letting it happen. Over recent years, in response to many of the criticisms levelled at the PFI, the Government has reformed the way it operates. The PFI of today is a far better form than Labour inherited from the previous Conservative government nine years ago. Indeed then it was more a theory than it was practice.

Since then, we have passed legislation to give it a firm legal basis.

It was actually the first act of parliament passed by the new Labour government in 1997. We have standardised contracts and built expertise at the centre of government so that the cost, complexity and time taken to deliver the PFI in different settings and sectors is reduced. Admittedly there is some way still to go here and concerns still to address – not least from industry over high bidding costs, more consistent phasing of contracts and shortages of project management capacity – but progress is undoubtedly being made. We have started to batch smaller contracts, for example, to make for better economies of scale. We have become more discriminating about where PFI offers good value for money and where – such as projects in IT and those under about £20 million – it does not.

We have become more transparent about the operation of the PFI, vital in a post-Enron world where public trust in big business has declined. Crucially, we have taken action to protect staff terms and conditions so that the efficiencies that the PFI offers are not based on worse wages for already low paid workers. In my view, the future spread and success of the PFI will depend on the adoption of similar reforms. But it will depend on something else too.

And this is the second lesson to learn. Whatever the benefits of new buildings and better services brought by the PFI they will not be enough – on their own – to win the argument for the PFI. In truth, the battle over the PFI has been political more than it has been practical. Much of the opposition to it is at root ideological. What PPPs are doing is to challenge a decades-old mindset about the nature of government in general and how public services are delivered in particular. Reform questions the traditional conceptualisation that has been prevalent in much of Europe about the State's monopoly role as the provider of public services. It is for this reason that public service reform is so deeply controversial, as we first found in this country and as others are now finding elsewhere.

Political opposition to PPP requires a political case to be made for it and a strategy to communicate it consistently. For many in the private sector I know this may sound unreasonable. After all, if the PFI is delivering what it promises, actions surely speak louder than words.

Sadly, this is to misunderstand one simple truth fundamentally. Public services are part of the political arena. And in a modern civil society like ours with its vocal pressure groups and its influential media, the pre-condition for securing progress lies increasingly in the ability to win public support. Unless we can demonstrate that PPP delivers better services, its progress will falter as it hits the roadblock of public hostility. So this is not an argument the private sector can ignore or leave to politicians alone to win. Instead industry, government and services need to develop a shared agenda to more positively communicate the benefits that PPPs bring to the table. I know the PPP Forum is committed to making that happen.

So far, then, so bad. Now for the good. Nobody ever said reform would be easy. It is hard. But I believe it is inevitable for two reasons: first changes in the economy; and, second, changes in society.

First, globalisation is placing all of Europe under intensive competitive pressure and forcing change. Faced with the intense heat of global competition, a Europe of low growth, high unemployment and sluggish productivity cannot succeed without reform to enhance flexibility in product, capital and labour markets. These are long overdue and hold the key to success. Demographic change and the pressure brought by an ageing population mean that reforms to the welfare state are needed too. And alongside these structural reforms well-targeted public investment in transport, health and education can provide the economic basis in improved infrastructure, labour productivity and skills to maximise growth and make Europe more competitive. Overall levels of public investment in Europe have fallen over recent decades but that trend is now being reversed, particularly in countries such as the UK and Ireland, as recognition grows of the economic benefits that prudent investment brings. It is now a matter of common agreement, for example, that improving Europe's productivity rates requires major investment in its key transport networks.

But in a global economy where investors place a premium on economic stability and financial prudence, governments have to find new ways of raising resources for long term investment. This is clearly

the case in the European Union which has codified rules covering public sector borrowing. That is the beauty of PPP. It kills two birds with one stone. It levers in essential investment in a way that is consistent with modern budgetary disciplines.

Second, changes that have taken place in society are at least as profound as those in the economy. They too make the ground fertile for reform. The European welfare settlement – based on uniformity in provision – was born amidst the hardships of the immediate post-war years. It was the era of the ration book and the demob suit. People expected little say and experienced precious little choice. Then deference was higher, expectations lower. Now it is the other way round. In a more informed consumer society, where first universal education and now the internet are redistributing knowledge so that information that once was the preserve of doctors can now be accessed by patients, people are seeking services more responsive to individual need and offering greater choice. They expect services that are responsive and high quality. And they demand a greater say.

People nowadays see services, public or private, through consumer eyes. Drab buildings and indifferent service will not do. As prosperity grows, so do expectations. As more people can afford to opt out of public services, the danger for those of us concerned about social justice is that we will be left with the nightmare scenario described by the British sociologist Richard Titmuss 40 years ago: poor services serving only poor people. Retaining middle class involvement in universally-used public services is a key objective for any government serious about social cohesion. For parties of the centre left, the motivation is about maintaining public support for the proposition that the best and fairest way of providing services such as education and health is through a system of collective funding as opposed to individual provision.

Hence the need to reform the one-size-fits-all culture that for so long has characterised so much of public service provision. In today's world, sustaining public confidence in public services means they need to dance to the tune of the consumer.

It is these seismic changes – social and economic – that make reform inevitable. Since 1997 reform has begun to take hold across the public services. After decades of under-investment, record levels of resources are going in. New standards and systems of inspection are in place. Results are coming through. It is always tempting with improvements taking hold – in crime, transport, health and education – to say enough is enough and to take the foot off the accelerator and put it on the brake.

As the Prime Minister set out last week the reverse is true. Sustaining improvement in public services requires more than sustained investment; it requires sustained reform. This is not the time to slow down on reform. It is the time to speed up.

It is reform for a purpose. To open up more opportunities for more people so that excellence in services is available to all and not just some in our country. It is this for reason I oppose those such as the Liberals who oppose reform in all its forms and those such as the Conservatives whose main form of reform is to subsidise the few to opt out of the public services at the expense of the many. And it is why I support Tony Blair in his determination to recast fundamentally the 1945 welfare state so that while its values of equality of access are preserved, it is reformed to give parents, patients and citizens personalised services offering real choice.

Twelve years ago the creation of New Labour was a recognition that the world had changed and that the role of government had to change too. In economic policy the top down approach of the past, based on the policy of nationalisation, has been abandoned in favour of flexibility and the benefits brought by a market economy. In a world where the consumer is king, public services can no longer be run by diktat from the top down. In this next period, power and accountability needs to move downwards and outwards from the State towards consumers and communities.

I believe that three principal drivers of public service improvement are likely to emerge. First, more consumer choice; second, greater community involvement; and third, increasing diversity in supply.

All three are likely to grow in significance over the remainder of this decade.

First, choice. In this consumer age, providers of services can no longer expect to call the shots. A new accountability – to consumers – is needed. We are moving to a system where for the first time within the National Health Service, patients will be able to choose the hospital, the time of treatment and even the doctor that is best for them. And they will be able do so without compromising the founding principle of health care in our country – that it should be free at the point of use, based on need and not ability to pay.

There is a compelling social justice case for extending choice. For too long, those who can afford it have been able to buy choice in health and education. Those without, do without. This is unfair and in my view must be changed. More choice is about enhancing equity and opportunity, not undermining it. When the dam is breached – and patients are able to choose hospitals, rather than hospitals choosing patients – there is no precedent I know of in history for people once they have tasted greater choice to want less. Rightly, they will want more.

That is why I believe reforms to extend choice should be driven forward in education and housing as well as hospitals and surgeries so that parents get new rights to choose their children's schools and tenants get new rights to buy or part buy their homes. The choices patients, parents and tenants make must always be linked to the resources individual providers receive. In this way there will be new incentives for local services to improve performance. With cash following choice the schools, hospitals, surgeries or services that do more to a higher standard will earn more. Those that do not, will not. This discipline, familiar enough to the private sector, should become an essential part of a modern public sector throughout Europe.

It would mean every local service using customer surveys and other forms of public feedback to score how well services are responding to consumer demands. Users' views about performance could form a growing proportion of the scores given to local services in the league tables and performance measurements central government publishes.

Instead of services being scored purely by top down inspections, they would be scored by patients and parents themselves. And this reform should apply to PFI delivered services just as much as it applies to other forms of public service delivery. Indeed the views of users could be used to reward or penalise PPP service providers through the payment mechanism. This would provide a direct incentive for contractors to take users' views into account more fully and help overcome the accountability deficit that lies behind much of the hostility to PPPs.

Second, the new principle at the heart of public service governance should be one of subsidiarity. Power should be devolved to the lowest possible level. Where it is feasible for users to exercise individual choice – as over care for the elderly or hospital operations – that should be the norm. And where there is less opportunity for individuals to choose – policing being a good example – it will mean passing power downwards and outwards to local communities. In other words, the accent should be on strengthening both individual and community power. Either way the move has to be away from top down and towards bottom up control.

Securing services that are responsive requires decision-making to be located locally not nationally. That is why local government is being given more freedom. Specialist schools and city academies are being given the same. In the NHS, new Foundation hospitals have their accountability, not to Government Ministers, but to local communities which elect their local boards. Within a framework of clear national standards, locally-run primary care trusts have been established to control NHS resources so they can commission the services that can best meet the needs of the local communities they serve.

Quite simply local communities need to be given a greater say. It is now widely recognised for example that if urban regeneration is to be sustainable it needs to extend real power into the hands of local communities themselves. In cities as diverse as Chicago in the United States and Porto Alegre in Brazil, local people already control budgets and services. The results are impressive both in terms of public engagement and service improvement. We should be seeking to apply

the same lessons in towns and cities across Europe. I would like to see Government at all levels focus more explicitly on helping local communities run things themselves. Police and health services could work more closely with local communities to prevent crime and ill-health. Schools could open their doors to become community resources. More direct elections to the boards of local services could take place building on the NHS Foundation hospital model we have put in place. Local colleges and housing estates could be opened up to direct community control, drawing on the imagination and creativity of citizens themselves, using the Government's plans for community interest companies.

That brings me then to the third big driver of public service reform: greater diversity in supply. In recent years the first steps have been taken. In local government more services are now provided by the private and voluntary sectors. In social services residential and domiciliary care for the elderly is now dominated by private providers. In education partnerships between local businesses and local schools are being taken forward through a new generation of city academies. In prisons the limited use of private sector providers appears to have galvanised change across the whole system. There is growing interest in how privately built and operated motorway toll roads could ease traffic congestion and speed economic growth. In health, the agreement I signed as health secretary with the private sector has increased usage of independent sector hospitals to treat NHS patients. New private sector providers from overseas are now also being introduced. A new generation of diagnostic and treatment centres, focused particularly on providing fast track surgery, is not only bringing new overseas private providers into NHS mainstream clinical services but, through competitive pressure, is bringing down the price of operations. These new providers will become a permanent feature of the new NHS landscape. They will provide NHS services to NHS patients according to NHS principles. In the process more diversity in provision will open up more choices for NHS patients.

The test increasingly will be less the origin of the provider and more the quality of services they provide. The implications for partnerships between the public and private sectors are profound. The PFI, of course, will continue and it will extend. But as PPPs evolve from design and build towards design, build and operate new alliances will be forged between the construction industry and service providers. Already in the UK all the major construction firms have formed consortia with leading facilities management providers and specialist equity providers. In this next phase we are likely to see new alliances being struck with specialist service providers such as diagnostic companies in health or maybe even in time teacher-run companies in education.

It is likely too that as private sector involvement grows, so too will competition. In the UK we can see that already in recent takeovers and in the growing involvement of large European service and construction groups like Skanska from Sweden and Bittinger and Berger from Germany.

And just as we will see the emergence of new alliances to deliver PPPs, it is likely that new forms of PPP will also emerge. As partnerships develop, the PFI will not be the only egg in the PPP basket. This reflects the fact that the challenges in providing new roads and public transit systems are very different from those in delivering new schools or primary care services. It also reflects the need to win the public argument over PPP.

In health, for example, the model being used to deliver PFI in primary care, NHS LIFT, has features which may commend it for broader use. By forming a genuine local partnership in a jointly owned venture between the private sector, public sector and a specially established national investment vehicle building and managing community health facilities, NHS LIFT gives investors a seat at the planning and not just the providing table. It also provides the potential to reach out and involve local people in developing services for the use of local communities. It is one potential way of overcoming the argument that the interests of private and public are invariably at loggerheads. We need to find others too. Taking the PFI into the voluntary sector, with organisations being able to borrow against longer term revenue contracts, is one such example.

So the private sector will have to adapt. And its role in public services means it will have to become accustomed to greater scrutiny and tougher accountability. A bigger role for PPP will not just happen. It needs to be won. It cannot be won by governments alone. It will require partnership and it will require us to get off the back foot and onto the front. We must become more open and transparent about how PPP works, more engaged with local communities in developing PPPs and more assertive with media and pressure groups about the benefits that PPP can bring. We also have to be more consistent in communicating those benefits to those working in the public services and the people who use them.

Winning the argument for PPP is doubly important. It is not just that its further development in this country relies on it. Its further development elsewhere in Europe relies on it too.

The UK is at the leading edge of PPP internationally. This is a market where the UK really does lead the world. Indeed, the UK Government has provided advice about developing PPP to countries as diverse as China and Australia, Japan and Canada, Israel and Chile, Mexico and Germany, South Africa and the Czech Republic. In particular, the foundations of success laid in the UK provide a potential bridgehead into the rest of Europe. PPP can become a major modern export securing the UK billions of pounds of new trade and thousands of new jobs as European interest in the concept grows.

Partnerships between the public and private sectors to improve public services are now taking root in most European countries. Progress has admittedly sometimes been slow or limited to the traditional terrain of transport infrastructure. The Netherlands and much of Germany fall into this category. In Hungary and many of the new accession countries from Eastern Europe, plans for PPPs are not yet off the drawing board but interest there is real and growing. In France legal changes open the door to a more rapid expansion. In Ireland and Italy they have already dipped a toe in the water and want to go further. In Portugal and Spain they have already done so. Even the European Union itself is catching up fast with new procurement rules and plans to use PPPs to deliver major trans-European transport projects.

Driving PPPs forward in Europe will require advocates. The UK is well placed to make the case for PPPs. I also hope that British industry will consider ways in which it can join with the Government in becoming ambassadors across the whole of Europe for the benefits that PPP can bring.

In conclusion, it is worth underlining one thing: public service reform is likely to be one of the defining characteristics of this period of public policy making in Europe. It is happening as much in Spain and Italy as it is in France and Germany. This is a new tide that is sweeping Europe. No one – certainly no government – can escape it.

Old attitudes take time to change and different countries face different challenges. Inevitably this will be reflected in some differences in approach. But for governments everywhere, improvements in public services are the bread and butter of politics today. Delivery is the new mantra – and the new yardstick. Ducking the challenge of reform – easy enough for governments to contemplate in the short term – is not an option over the medium term.

This is why I believe pamphlets such as this one are so important. They are a forum for an open debate about PPPs, and provide an opportunity to make the case for this innovative and forward-looking means of ensuring that the public services deliver.

In Europe, we stand on the cusp of a new relationship between citizen and public services. It is a future in which the public realm is not just bigger, but qualitatively better. It also a future in which reform takes hold not just in some parts but in all, and where centralised States have less power, but communities and citizens have more. At the heart of all of this lies the modernisation of public services: this is our key objective. This is the future for Europe. Our job together is to make it happen.

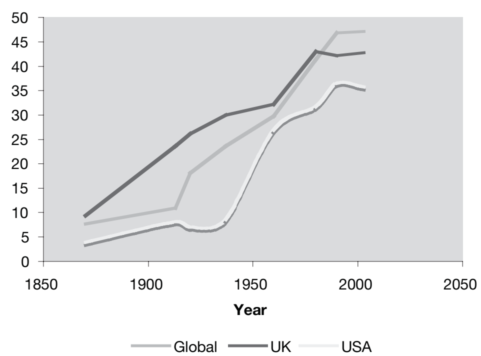
Public Service Reform

TIM STONE

Introduction

Around the globe, a combination of the changes forced upon individuals by virtue of the unfolding of macro-economic and socio-economic alterations, creates a fermenting broth of uncertainty. The embers of the 20th century accompanied the confirmation of the end of expectations of a job for life for the majority of individuals; the beginning of the 21st century has largely shattered the dream of early retirement with stable and comfortable pension payments. The implicit trust between citizen and government has deteriorated markedly; this has not merely been replaced by cynicism but by a greater willingness to question authority. The next 20 to 30 years may well see far greater changes as the increasing price of basic energy radically alters personal and corporate behaviour and ushers in some curtailment of freedom from force of circumstance over which no government will have ultimate control.

Ratio of public expenditure to GDP

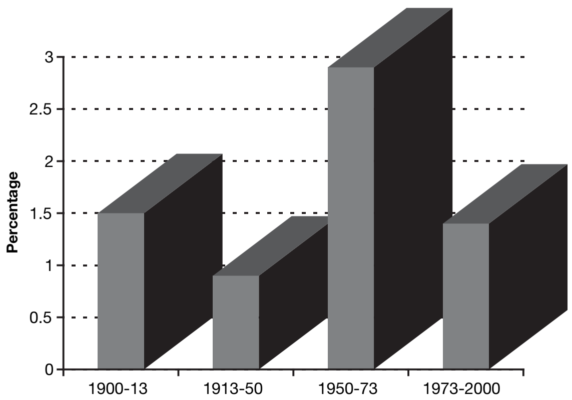


Against this background, the role of the state has altered. The development of the public sector has been one of astonishing expansion with limited true accountability. Globally, the growth has been dramatic with the ratio of public expenditure to GDP rising from about one-tenth at the beginning of the 20th century and increasing by almost a factor of five.[1] Meanwhile, growth in GDP to support this expansion of the public sector has been somewhat patchy. The period after the Second World War was, for most industrial countries, their golden age followed by the last quarter of the century in which the post Bretton-Woods era heralded the gathering pace of another phase of globalisation.

The main proportion of that staggering growth has been within the monopoly provision of the public sector itself.

Over the last couple of decades of the 20th century, many elements of public services began to be opened up to increasing contestability. The private and voluntary sectors have become increasingly involved in the provision of significant parts of public services and the overall control of the delivery of public services is being challenged and made more contestable. There has always been a complex web of relationships between the monopolistic public sector delivery agents and the other sectors.

Global per capita real GDP growth



As this web has become more complex, fundamental reform driven from the centre has become rapidly, almost combinatorially, more difficult. Driving change through a network organisation, as opposed to a more command and control structure, becomes increasingly impossible in that the linkages between the internal structures are less linear, less aligned in terms of perceived common aims and less predictable in their response to pressure. Gone are the central orders from on high; the centre now allocates resources, creates incentives to deliver outcomes and covers this with a blanket of regulation to monitor performance and impose sanctions for failure. At least, that is what is intended.

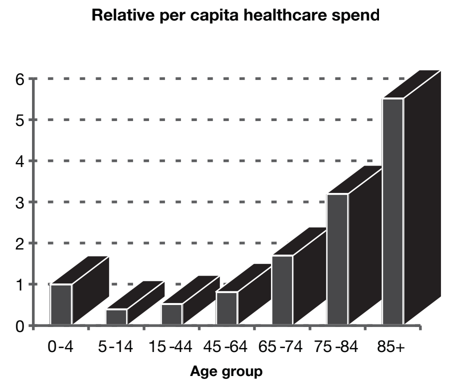
What is needed, however, is a systemic change in how governments view public services, how they are managed and how all parties within the delivery chain are held properly to account.

What are the Forces Shaping Public Sector Reform?

There are a raft of demographic challenges to the quality, quantity and accessibility of public services. As fewer and fewer countries are able to match the economic power of the largest corporations, and autonomy is surrendered through regional and global arrangements (such as the North America Free Trade Agreement or the European Union), the challenge to individual governments becomes clear: show that you make a positive difference to citizens' lives.

Increasing affluence is associated with the ever-greater expectation that governments will be responsive to citizens' needs for those services for which a government is elected to deliver. Across the board, together with decline in trust in governments in general, the tolerance of the citizen for wasteful and ineffective public services has, in most countries, diminished greatly. While there still remains an important faction that continues to insist that public services must be delivered by the public sector, major failures of either cost or quality erode the support for idealistic positions.

An ageing population is changing the whole shape of society with consequences for the expected distribution of services and the segments of society that will fund them. By 2010 there will be over one



million more people in England and Wales over 65 and one million fewer between 25-34.[3] This will bring with it a significant increase in the cost of providing the healthcare support to this ageing population. There will be a more than five-fold increase in cost of treating the over 85s compared to the 15-44 group.[3] To add to the ageing population, there are other structural changes – the increase in single households (with or without children) is adding increasing pressure to the needs of housing stock.

On top of this, the impending pressures on energy usage, whether driven by climate change issues or the simple need to replace ageing generation equipment – coal as well as nuclear – is likely to have a profound effect on social behaviour. As the need for real focus on sustainable energy use increases, one of the issues faced by individuals is the very high energy cost of transportation. Constraining the apparent freedom to travel through such mechanisms as road user pricing will become an ever more present focus of government policies.

The other pressure driving public service reform is the increasing emphasis on choice and individualisation as public services are increasingly compared with services delivered in other walks of life and as the tolerance for a public sector monopoly is increasingly challenged. By the beginning of the 21st century, as far as the public are concerned, there are signs that choice and access are likely to be a permanent part of the political narrative.

At the bottom of all these pressures, there is a major failure of basic accountability. It stems from the fact that in government, there is no equivalent of financial markets' equity. There is no mechanism where any failure within public service has an immediate, inescapable, publicly visible and damaging consequence. This is especially true where the failure is one of efficiency or completeness. The economic consequence of almost anything other than catastrophic failure – such as the systemic collapse of a public transport system as occurred in the wake of the UK's rail accident at Hatfield in October 2000 – is traditionally recorded in a manner which attributes no individual measure of cost or personal accountability. It is arguably the existence of equity measures that enables market systems to keep continuous account of the economic cost of success or failure of performance. The public sector has the unique ability to sweep all manner of costs of failure under the administrative carpet and even though the ultimate consequences may be higher taxation or lower standards or quantity of public services, there is no direct mechanism to allocate consequences to actions.

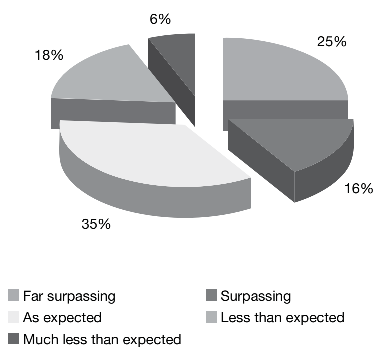
Decisions taken by politicians or bureaucrats often have obligations and consequences that stretch out for generations. Those obligations and consequences are rarely documented in any form that informs future options and potential decisions. The implementation of decisions are generally made, in modern bureaucracies, with little support from corporate memory in those forms of government in which specific functions and positions are occupied for only a small number of years and where movement between posts is unencumbered by any need for subject matter expertise and where there is little sense of skills-based career planning. The final weakness in many western government administrations is the almost total lack of personal responsibility for decisions and consequences over anything more than a very short term. While some politicians may find themselves exposed in this way, it tends to be apparent only in the cases of significant and operationally visible failure (see the litigation instigated by the UK's Railtrack Shareholders' Group).[4]

Assessing the quality of policy advice is difficult as there is a long gestation period between implementation and outcome. But the civil service inbred, generalist culture, that seeks internal consensus rather than inviting challenge and openness as a means of improvement, its pre-disposition for telling people what to do and imposing constraints, rather than recognising that successful policy design is about setting the rules of the game to enable others to deliver, all constitute a brake on improving the performance of the public sector.

How did we get where we are?

The period from 1992 onwards has seen a deepening relationship between the public and the private sectors.

PFI – meeting users' expectations



Early modes of involvement in alternative forms of public-private relationship can be seen in the IT sector where the 1970s model of large bespoke IT development was replaced by outsourcing and shared service centres. These, together with the development of alternative construction models, began to recognise increasingly explicit contractual relationships between user and supplier that, in these alternative models, provided a very visible measure of the delivery obligations that the public sector was passing across to a supplier.

The advent of the Private Finance Initiative in 1992 took the process one stage further by examining the nature of major assets in public service – such as hospital buildings, schools and roads – and realising that the asset alone contributes no value whatever to public service delivery but that it is an enabler of better public services if the asset is designed, built and maintained over its economic life in the way best suited to the delivery of the service for which it is commissioned. In the early implementations of these deals, the model became to be seen as providing serviced infrastructure to support the delivery of the fundamental public service. Thus, hospital buildings together with building maintenance, cleaning, catering, laundry, grounds and car park operation were there to provide an environment within which the clinical staff could provide the best healthcare while no longer having to focus on the safe and secure provision of their surroundings. Early evidence[5] suggests that the process has made significant improvements in terms of delivery on time and on budget and that users are far more supportive of this form of innovation than the media would imply – fewer than one-quarter of users rated their experience as below expectations.

Contractualising the relationship has enabled a dialogue to develop within which it is possible to separate the immutable roles of government – setting policy and monitoring or supervising its execution – from the act of delivering policy. It is enabling more and wider forms of contestability and providing real challenge for the naturally monopolistic tendencies that have developed in countries around the world.

What Lessons may be Learnt?

Contractually defining the relationship between the supplier of a service and the commissioner inevitably removes any 'safe harbour' within which either side can elude accountability. The supplier is subject to requirements to deliver defined outputs (or indeed, increasingly outcomes) to a defined quality for an agreed economic return. The commissioner, by contrast, has to define the requirement in the first place and so is able to be held accountable for that definition. What is becoming apparent as a by-product of these contractual relationships is that many public sector officials not only do not have the true skills to deliver many of these services, but that a significant proportion of them are probably not able to be trained to develop such skills effectively. It is likely that the increasing accountability of the public sector will reveal that the managers and the system within which they operate will not provide the capabilities to deliver public services that are subject to proper evaluation of outcome against true, long-run, economic cost.

The decentralisation and contractualisation has not yet been accompanied by the creation of appropriate information systems to enable responsible monitoring of the whole system. One of the side-effects of the PPP-PFI models, where payment is linked monotonically to the delivery of utility to the public sector by a service provider (at least, it is in the well-designed deals …), is that the service provider is required to provide a robust self-monitoring mechanism that identifies the ongoing quality and quantity of service being provided to, or on behalf of, the public sector. Such systems are not generally being created for (or imposed on) the existing public sector organisations. It would be difficult to do so for unreformed organisations since the extant data is often misleading or just plain wrong.

As contestability expands, while there are undoubtedly limits to what markets can achieve, it is entirely clear that the private sector can be increasingly harnessed to help deliver the reformed public services. To do so it needs three factors to be carefully identified and monitored:

1. Risks to be allocated between commissioner (the public sector) and the provider (the private sector) need to be properly understood by both and the public sector has to understand the ability of the other to manage and control that risk.
2. The accountability of the public sector in identifying the nature, scope and scale of the service to be delivered by the private sector has to be radically improved and, ideally, the same accountability should be required of all services delivered within the public sector for proper control, comparison and evaluation of the choices. As part of this, the recognition of the public equity in public services needs to be built into the whole public sector management process to ensure transparency and competitive neutrality.
3. The private sector market has to be managed. The private sector needs signals to identify the nature, size and duration of the new market to provide services to the public sector in order to develop supply chains for human and development capital and to make rational decisions about the deployment of that capital.

The final lesson from this whole process is that since the obligations and consequences of political & bureaucratic decisions stretch out over generations, so to an increasing extent do the contracts that will implement many parts of those decisions. These long-term contracts (with whatever sensible flexibility accompanies efficient risk allocation) represent long-dated assets. As final salary pension schemes unravel and the funds increasingly need to match their long-dated liabilities to provide pensions for an increasingly long-lived population, the attraction of investing in business with long-term contracts to provide public services becomes almost magnetic. The symmetry is compelling and the linkage of pension investments to fund public service businesses (whether private or voluntary sector operated) will provide an opportunity to engage citizens in an ever better appreciation and debate around the cost and quality of public services.

How can the Debate be Taken Forward?

First, there has to be a step change in the quality of the public debate. The UK unwittingly made a critical mistake in the development of the early PFI-PPP schemes in not informing and involving the media in the logic and narrative of the reforms. The result has been a media with probably only one balanced and informed senior journalist and an obsession throughout with any failures that accompany the change. This has noticeably harmed the development of the private sector markets.

Governments need to develop a broadly-based consensus on the reform of public services with social, voluntary and private partners. The platform for this consensus will ultimately be forced on the system, at least in the UK, as the economic climate limits the ability to inject more public finance into the provision of services and as the need for reform becomes exponentially more necessary to deliver the better quality services which are now the stuff of each party's basic offering. What goes hand-in-hand with this is that creeping incrementalism cannot and will not work. The advent of proper definition of requirement with the creation of accurate and contractually defined outputs or outcomes will mean that substantive structural reform within the civil service will be needed.

As reform is implemented, there is a need for improved accountability and that the relationships between Parliament, the executive, the delivery agents, the social partners and the private sector partners need to become more transparent and output-focused. If contestability is to have any meaning, all these bodies have a role to play in the delivery of public services and need to be given the opportunity to develop their own solutions to take part in true provider choice. The role of national audit bodies in general needs to be modified to look not merely at costs of delivery of services but at the balance of cost against output and outcome. True 'Value for Money' must balance what the system delivers, in whatever form open contestability selects, against the long-run, risk adjusted costs of so doing. Current fixation by courts of auditors in many countries obscures the true costs and risks of implementation.

In the creation of a new system, one of the most important design issues is how to ensure that the new system is stable and continues to deliver against its guiding objectives. This comes down to three points – incentives, information and skills – incentives (both positive – reward, however defined – and negative – i.e. sanctions), information (about what 'good' looks like and how well we're delivering it on a daily, or almost daily basis) and skills to implement and manage. The structures that support public sector delivery need similar emphasis on these three points.

Finally, the role of private, voluntary and social partners needs definition at government level. These, probably emotional constraints, will determine the shape of possible solutions that contestability can deliver.

The issue of public service reform is not merely a matter for progressives; it is now a matter of international economic competitiveness, as value for money in the sense defined above will focus national economic resources on the efficient delivery of policy objectives. The role of progressives is to define an approach to implementation of reform and a narrative around this, which will enable socially responsible solutions to be devised and equity in access and provision to be achieved.

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1 IMF May 2000 World Economic Outlook (table 5.4, p 172) and OECD.
2 Michael Webb, 'Demographics and the Workforce in England and Wales – Trends and Projections', Employers Organisation, November 2004.
3 Leslie Mayhew, 'Health and Elderly Care Expenditure in an Aging World', Table 2.1 (data for England and Wales) – International Institute for Applied Systems Analysis, September 2000.
4 http://www.rpsag.org.uk/pressrel2Dec03.html
5 PFI – Meeting the Investment Challenge, H.M. Treasury, July 2003.

Introduction to Public Private Partnerships

STEVE REEVE

The UK currently finds itself in a position of world leadership for *partnered public* service in terms of innovation, design and experience. Public provision through partnership between public, private and voluntary sectors is becoming an industrial sector in its own right, demonstrating rapid global growth. The specific history of the UK means that private sector companies, public sector providers, institutional models and frameworks as well as policy makers share a complex and deep knowledge base, which has evolved at an increasing pace since the early 1990s. The combination of a benign policy environment, propensity for risk and innovation, together with a steep and effective learning curve has ensured that in all practical terms, others now beat a path to the door of the UK for advice and help. This is an apt time therefore to review and consider the many different facets of this innovative form of public procurement of goods and services.

The contributors to this pamphlet are unambiguously in favour of a much wider mix for public service provision and clearly have little doubt as to the effectiveness of combining private and public sector skills, knowledge and experience. The benefits from partnership activity derive from the increased autonomy, accountability and innovation they have witnessed; new ideas around the nature of ‘positive sum’ rather than ‘zero sum’ competition; and the capability of sustainable markets to generate valuable public service provision, together with value for money. There is no doubt, however, that these are controversial topics – often evoking strongly emotional reactions.

There must be serious debate as to the appropriateness, effectiveness and extent of further expansion of public private partnering. New work has begun to explore the inner dynamics of a process that has been overwhelmingly understood up to now in structural terms[1]. It is necessary to first clear away the kind of confusion which surrounds this topic and very often prevents rational discussion. The confused context is a result of deeply entrenched positions, misunderstood definitions and disputed principles for action. An evaluation of the contribution of public private partnering must attempt some delineation between functional and operational progress and political intuition and critique. In some senses, the public-private model represents a focal point – a crucible almost – where the tenets of old and new labour are exposed in their starkest form. Continued, wider and evolving public-private activity would demonstrate ground won by the modernisers; whereas a retreat to conventional public funding and provision would signal a recapture of the agenda by traditionalists.

Firms operating in this market have received the scars and bruises of learning how to work in a new and rapidly evolving activity; workforces and employees have gone through the traumas of change and attendant lack of security; and tax payers, both local and national, have (the government would argue) benefited. However this experience has led to shared learning. The current genuine complexity of the UK scene pays ample testimony to the co-evolution of actors and institutions over time. There has been a deepening and shared understanding of what partnership might mean in terms of communal value-added, beyond merely the completion of sets of contracts. There exists now a distinct and understood difference between procurement and partnership which itself is a product of the history of the evolution of this activity. Such richness and complexity reveals the distance travelled – particularly clear where newcomers to public-private activity talk in terms of 'off-balance sheet lending' and 'disguising' state spending, concepts familiar enough in early mechanical stages but now far removed from the thoughts of any serious players within the UK context.

For some time, there has been a general sense that maturing partnerships have performed better than traditional direct provision or

procurement models. The statistics appear to confirm greater frequencies of on-time and within-budget project completions (particularly strongly in the PFI field). The Treasury's own assessment seems to corroborate such a view. At more local levels, the Audit Commission has been generous in its praise for local strategic partnerships and consequent strategic service delivery. The overview of partnership performance in general has however been muddied by specific and spectacular case issues, and the occasional industry 'own goal'. The most significant negative influence on perception has arguably been the rail saga. It remains a moot point (and perhaps an unfortunate one) that most of the deemed failure of the national rail system is a result of a policy of *privatisation* rather than any deliberate policy of public private partnership – although it might now be argued that the relationship between network Rail, the Department of Transport and the Train Operating Companies has become a *de facto* public-private partnership (PPP). Perhaps this should be contrasted with the London Underground PPP, in terms of that project's specific and deliberate PPP genealogy.

A series of partnerships going wrong or failing to deliver to what was originally expected, particularly when associated with one major company in several functional and geographic spheres, has also impacted on societal or public impression, and does become easy fodder for the tabloid or local press. The partnership cause was also dented when private companies operating conventionally (in terms of the private sector) misjudged the reputational and legitimacy damage that would accompany a very public 'windfall' based re-financing process when operating within the public-private sphere. The Government came late too with its response to the European Acquired Rights Directive,[2] and the earlier controversies around the variation in TUPE provision have left a legacy which continues to confuse and all too easily allows critics to challenge partnership, even though the two-tier workforce controversy has been technically settled.

The examples above help explain the distance and 'noise' that can often be found between the functional and outcomes-based results of PPP activities (largely positive) and the profound dislike and criticism often expressed by critics (almost always negative). In the attempt to investigate the reasons behind this form of dimensional extreme, three categories of issue come to the fore: theoretical, political and empirical.

Theoretical Issues

Starting with the theoretical, one of the real problems that public-private partnerings face is that a theoretical basis for action has never really been fully articulated. Despite a strong theoretical justification steeped in the arguments around economic principles, the current form has largely been presented as an entirely pragmatic concept connected with a policy history, rather than an intellectual rationale. The concept and practice of PPP as it is known today has evolved out of a previous Government's attempts to extract value from and for local public provision. Originally one of the academic outcomes resulting from the kind of free market analysis carried out under the aegis of Keith Joseph, the least cost, mandatory approach to what was known as *compulsory competitive tendering* in the local authority arena became a rather broad brush attempt to disenfranchise agents traditionally responsible for direct public provision by putting their work out to competitive tender.

It came from a very specific political context, where there was a political will to 'take on' the public service workforce and local party political power bases; little clarity existed around the finer points of contracting; the main contemporary focus was on cost and little consideration of value or innovation was given. The tendering game became overtly political with town halls and local municipalities learning tactics to engender a favoured direct service operation or company as the bid winner. The activity as a meaningful policy fell into disrepute. With a change in Government in 1997, competitive provision did not go away as many hoped it might. Indeed the DNA of CCT showed stubborn resilience, reappearing in the form of PFI and then PPP under the administration of New Labour. The more disturbing and negative elements of '*primitive CCT*' have been progressively ironed out such that it now stands as a clean, or neutrally 'modern' policy option.

PPP then has a history but not a very clearly spelled out theoretical rationale. Rather, an intuitive sense was discernible within early New Labour that despite traditional political distrust, the private sector was seen to display *efficient* and *effective* behaviours and resultant use of resources. Further, the direction in which the private sector itself was heading indicated increasing numbers of alliance structures and behaviour: the following quote perhaps gives a flavour of the prevailing view on the cusp of the new century.

> *Indeed, alliances are expected to account for 16 per cent to 25 per cent of median company value within five years and more than 40 percent of market value for almost one-quarter of companies … the increase in the number, scope and value of alliances is largely due to their versatility. They create new, viable options and allow companies to address more effectively the uncertainties and complexities of today's highly competitive global marketplace. Alliances open avenues to customers, giving companies access to valuable information about individual preferences and demand flows. They speed globalisation, often enabling companies to move more rapidly and expand more successfully than other growth options allow. And alliances are an essential element of disaggregation: as companies shift from vertical integration to true specialization, alliances are useful for creating links to the value chain.*[3]

In the modern parlance, *solutions provision* is demonstrable. Solutions thinking found an apt and available vehicle in the structure of CCT. The resilient *DNA* of *compulsory competitive tendering* has since been cloaked with a set of principles which stress dynamism, less bureaucracy, innovation and risk-reward sharing – in other words private-private strategic alliance or partnership drivers. A solutions-driven process is the modern *zeitgeist* behind the policy, and out of the policy has evolved the partnership behaviour now understood as PPP. The problem for proponents of a wider public private mix is that the *new* thinking inhabited an *old* model, and further one that was widely distrusted and came with a huge sack of political baggage. It was expedient, it worked, but the new paint job never really took away the fundamental concerns.

More theoretically, the *solutions provision* analysis stresses the future innovatory state which would not exist *except* under circumstances where organisations take part in alliance-partnership with each other. Although unnatural for them in competitive terms, organisations in the private sphere ally with each other by default – lacking core competence, knowledge or deep enough pockets, they forge uneasy bonds and practise partnership behaviour.[4] It is important to remember, however, that such relationships are fragile, and it is perfectly natural for them to collapse or decay well before the future state is reached. Also, once the future goal has been achieved (leaving aside take-overs, mergers etc.) the organisations go their separate ways.

Such fragility is universally understood and expected, and is an inherent part of the expected and understood nature of the jointly assumed risk. Furthermore, the probability of achieving the desired goal is known to be unpredictable or low, and hence failure is also understood and expectable. Such risk-bearing behaviour may result in the hoped-for breakthrough in innovative product or process, and the ensuing rewards will be shared.

The above attempts to distill the essence of the overriding principles (elucidated or implied) which have acted as drivers for private-public partnership activity in the recent past. A rationale, borrowed from the private sector and applied to public sector activity, which should initiate innovation, dynamism and new *solutions* to classic public sector delivery problems. It is only with the passing of time that regard has been paid to the strong theoretical underpinning for appropriate partnership behaviour in terms of more efficient allocation of resources, energy and knowledge. This perspective differs markedly from the more usual suspicion that off-balance sheet approaches to accounting, or continued punishment for the public services lie behind the ubiquitous stress on partnership.

The question then rests on whether or not such a model can effectively sit within a public sector arena. This is not only a pragmatic test, but one where theoretical issues are legitimately raised, specifically:

- Is the risk-based fragility of private-type behaviour tolerable within the public domain?
- Is risk and reward clear enough to be effectively apportioned?
- Is the nature of political risk inherently different to commercial risk?
- Does the specificity of much of the public service supply chain require very long contract terms or market failure justified monopoly provision?
- Would the security and probity of long contractual terms stifle the very innovation and dynamism that the private sector is expected to bring?

The pragmatic model as exemplified is driven by a cultural mindset of risk and anticipated reward, whereas much public service requirement is driven by the need for *security of supply*. The nature of public service therefore requires long term, understood consistency of supply. The purchase of such a supply from any third party risks both parties engaging in a potentially dangerous mutual embrace with high associated switching costs. A long-term, specific supply contract therefore might represent a very different basis for intervention than the high-risk, part-formed, visionary status associated with innovation thinking. The writing in the following chapters offers some fascinating insight into the shape, size and sustainability of private markets in public provision which may well hold the key to some of the above problems.

Political Issues

The political arena provides more fundamental challenge. As contributors to this pamphlet will show, if more and better value public service results from partnership with private and voluntary sectors, then this must be good for tax payers, citizens and the economy. Such a view demonstrates the clear modernist position that it does not matter which organisation provides a public service as long as it is more appropriate and better value than such a service provided directly by the public sector. The fact that a private sector company may be involved and will probably make profit is less material than the fact that the overall cost to the state will be lower (and the service better) than via direct provision. Such an 'optimal allocater' position holds no sway in the eyes of someone politically against private profit being made in any form through the provision of public service.

Such a view specifically encapsulates the proposition that 'wasteful' direct public service provision is still preferable to 'efficient' private provision if that entails some of the efficiency gain being routed into private profit. This is a strongly moral and political position, and is a difficult one to argue against logically. For that reason, and because this view is so prevalent within traditional Labour circles, the argument has not been met. It has usually been more expedient to 'collude' with a low key kind of procurement rationale and analysis, where technical costs are cited – thus avoiding a specific battle on the morality and profit agenda. Both sides come away from this as minor winners, with partnership remaining a conveniently (and citably) limited activity. This means however that major innovatory positive benefits from partnership cannot be trumpeted too loud; the potential for wider and greater partnership is stifled; and the deeper moral-political arguments remain unstated and dangerously radioactive.

Increasingly, this is having industrial as well as political repercussions. On-off signals being sent to the partnership industry cause confusion and exert an influence on investment and allocational decisions. There is some sense that this industry has been marched (willingly) to the top of the highest hill in the world, but now fears being led back down again. If markets are no longer set to expand within the UK context, capital, knowledge and experience may be about to take flight to other areas of the world on more clearly designated partnership expansion paths.

The modernist agenda for public service, with the future emphasis on *choice* might provide the arena for the definitive political battle to be joined. Whether the case for efficiency, innovation and value of service can successfully defeat the morally held opposition to private profit will decide if this debate charts the take-off point, or the high water mark, for multiple public service provision in the UK.

Empirical Issues

The third category – empirical issues – is really about how the citizen receives and understands information about a wider provision mix. This concerns the mediation of narrative, data and news about the operation, effectiveness and success of the private and voluntary generators of public service delivery. The mixture of innovation and political sensitivity deriving from the involvement of private organisations seems to generate an almost uniquely hostile environment for such information. This in itself might account for the comprehension gap between the technically strong performance of partnership, and the critical response it receives. The combination of the two concepts discussed earlier – theoretical and political – seem to have landed partnership in a very difficult position, where no matter how good the news is, there will always be a minor negative factor which is picked up and amplified (often obscuring the far more important performance data). There was a general background to this in that for a long period the IPPR analysis[5] that demonstrated 50-50 performance (i.e. half worked and half did not) provided the neutral context; Audit Commission findings showed some ambivalence; and highly animated accounting discussions went on as to whether the benchmark comparator was accurate or not. Somehow out of all this the industry came out with a belief that the private sector was *always* 17 per cent more efficient, and the general public that it was all to be mistrusted.

Whether the debate is national and concerns the capital city's tube provision, or extremely local about a new school, media and public discussion tend to pick up overwhelmingly on negative issues rather than any positive signals. More recent confirmation of operational effectiveness thus has to combat this general background of confusion and doubt.

Conclusion

The following chapters will explain and chart the value and success to be gained from a significant widening of the public service provision mix. Their authors are convinced and genuine in their enthusiasm and promotion for such expansion. Their arguments however must take on a public and a polity who view public-private activity in a certain light borne of history and experience. It is crucial that clear explanation is combined with a determination to engage with the three factors examined in this introduction which engender confusion and criticism, if the message about the real value of public-private provision is to succeed.

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Evaluating the PFI: the National Audit Office Perspective

ANNA SIMONS

The National Audit Office's programme of analysis and commentary on the development of private finance in government procurement is informed by the NAO's unique role. As the external auditor on behalf of Parliament of central government, our role is to provide an independent assessment of the economy, effectiveness and efficiency of the government's implementation of its policies. Our mandate, however, is not to question the policies themselves.

PFI and PPPs are now an established way of procuring public infrastructure and services, that both political parties have pledged to continue. They have become the vehicles for delivering services in many situations: hospitals, roads, prisons, schools, government buildings, defence and new areas such as waste management and social housing. Some 700 PFI contracts have been signed, with a capital value of £45billion, over half of which are now in operation.

The Prime Minister, speaking in 2002 about the National Health Service said: "PFI has a central role to play in modernising the infrastructure of the NHS – but as an addition to not an alternative to the public sector capital programme." Many overseas countries are developing their own PFI and PPP programmes and have taken a keen interest in the UK experience.

We have produced some 50 reports on PFI and PPP over the past 10 years and our work has very much evolved with the market itself. Initially, we focused on: how the contracts were awarded, how they worked and whether they were meeting our needs. These of course point to the key question: are they delivering value for money? With such a large and diverse range of projects it is difficult to draw one simple conclusion and much depends on the type of project and the people running the projects. Whatever the merits of any particular procurement tool, the human element always plays a key role. However, we have been able to draw some broad conclusions from the body of work we have put together.

In terms of bringing projects into operation, PFI and PPP have performed well. When we examined PFI Construction Performance, we found that projects had been delivered with much greater time and cost certainty than had been the case under previous conventional procurement (*PFI Construction Performance – February 2003*). Previously, some 70 per cent of conventional projects experienced time and cost overruns but, in the case of PFI construction, only 20 per cent were late, with just 8 per cent delivered more than two months late. Cost overruns occurred only where the scope of the work had been expanded at the request of the public sector. So the incentives provided by the private sector's placing its own finance at risk and not receiving payment until the asset is ready for use and the service is being delivered do appear to drive out good results in terms of efficient and effective project management.

But this is only one part of the PFI story and indeed there is now evidence from our more recent studies that conventional procurement has begun to improve, possibly in response to the stimulus that the PFI has provided (*Improving Public Service through better construction, Case Studies – March 2005*). What we need to remember is that these are long term contracts, that involve far more than just capital investment – once the project is delivered there can be as many as 40 years of service provision ahead.

So how well is PFI delivering this operational performance and does it exceed that of conventional procurement? Well here the evidence is less clear cut. Our more recent studies have focused in particular on examining this aspect of the PFI programme. When we looked at a portfolio of 21 prisons, comprising PFI as well as publicly and privately managed prisons, we found that the PFI prisons were generally performing well (*The Operational Performance of PFI prisons – June 2003*). What was striking, however, was that both the best and worst performing prisons in our portfolio were procured through the PFI.

A more detailed look at service delivery indicated, in addition, that PFI prisons scored well in terms of providing decency and regimes such as the purposeful activities for prisoners whereas the public prisons performed better in terms of safety and security. So, whilst PFI had helped deliver new prison facilities, it has not yet solved all the problems of running them.

Further work we have undertaken looking at projects that are up and running supports a similar conclusion: that, whilst PFI is performing well in operation, there is no clear evidence of PFI's providing improved service delivery compared with conventional procurement. This probably should not come as a great surprise; many public sector organisations had for several years been using outsourcing to provide a range of services, be it cleaning, catering or security, and therefore some of the benefits from this competitive procurement process were already embedded into the delivery chain and indeed many of the providers of these services are the same subcontractors into PFI vehicles.

As well as looking at portfolios of projects, we continue to examine individual projects where there are aspects of the procurement that are of special interest demonstrating emerging trends or developments in the market. Our 50th report was an in-depth look at the Darent Valley Hospital, a new build hospital in Kent providing 420 beds that was delivered not only on budget but two months early (*Darent Valley Hospital: the PFI contact in action – February 2005*). Although there were some glitches with service quality in the early stages of handover and the hospital itself had undergone a period of management problems, by the time of our report these had been resolved and the hospital was given a three star rating by the Healthcare Commission.

This was one of the earliest PFI hospitals to be completed and the aspect of this PFI project which attracted attention was the refinancing of the contract some six years after signing. To some extent, refinancing can be regarded as a mark of success given that such refinancing can take place only if the construction phase of the project has been completed satisfactorily and is operating well. However, refinancing brings with it new issues of value for money. In the case of Darent Valley, the level of private sector debt was increased, as were the liabilities the Trust will have to bear if the contract is terminated. The length of the contract was also increased from 28 to 35 years. The private sector received 70 per cent of the gains of this refinancing with the Trust receiving the remainder; although subsequent Treasury guidance seeks to ensure that gains on later deals will be equitably split. Refinancing is a complex area for public authorities to understand and negotiate so they need to tread cautiously, seeking and heeding good quality professional advice along the way. The National Audit Office has played an important role in raising the profile of these technical financing issues and the potential implications for public authorities.

Whilst in many sectors the PFI has proved to be a reasonably effective way of delivering projects, albeit the way in which they are run is still up for debate, other sectors, notably Information Technology, have proved unsuitable for this procurement vehicle. In April 1999, National Savings and Investments (NS&I) transferred its operations to Siemens Business Services; this was one of the largest outsourcing operations ever undertaken by a UK Government Department and we examined this contract soon after signing and again some four years later (*PPP in practice: National Savings and Investments' deal with Siemens Business Services, four year on – May 2003*). This has proved to be a very challenging project to implement, has run behind schedule and the contract has required modification in order to keep the project on track. Many lessons were learnt from this particular partnership and both parties, public and private, remain committed to its success but this and other similar IT related PFI deals did underscore the risks of complexity.

PFI appears to work best where the risk is well understood and can be priced accordingly. Technology risk combined with service outputs that are difficult to define does not augur well for achieving appropriate risk transfer; the risk of mispricing is high leading either to heavy transaction costs or in some cases to under pricing that can then leave the contractor facing financial pressure. These factors, combined with a high degree of integration into other business operations of the public sector client and difficulties in raising third party finance, now mean that there is a presumption against the use of PFI in future IT projects.

So what of the issues for the future? We would highlight five broad headings as the focus of future success of the PFI programme: managing the relationship; dealing with change; benchmarking; risk management; and the development of commercial skills amongst public sector employees.

As mentioned earlier, no procurement method can eliminate the human dimension. The quality of the relationships between the public and private sector will be a vital ingredient in how the project performs and how change will be managed; negotiating a good contract at the outset is a necessary but not sufficient ingredient for success. Good project management requires time, effort, commitment and communication from all parties. This requires a true spirit of partnership with authorities and contractors establishing a common vision for the project.

PFI contracts are long-term arrangements with maturities of 30 to 35 years being common. It is difficult to predict what public services will be required in five years let alone 30 years and beyond. We can take it as a given that there will be a need for these arrangements to be flexible. When we surveyed 121 PFI projects, many of which had not been in existence for very long, 55 per cent of the public authorities indicated that they had updated their contracts (*Managing the relationship to secure a successful partnership in PFI projects – November 2001*).

But equally important is that these changes can be accommodated easily and without compromising value for money. Evidence to date indicates that PFI contracts have been able to deal with major changes, for example, building an additional ward at a hospital, rather better than the minor changes that might be as straightforward as putting in storage space or moving shelves. Other changes that may need to be considered relate to the services themselves rather than the capital asset: alteration in services, new services and fine tuning of performance measurement.

As the first large wave of PFI projects completed in the years 1999-2000 approach their first round of five yearly benchmarking reviews in respect of their soft services, the strength of the contracts and the relationships will again be put to the test. Our early look at benchmarking mechanisms in our 2001 survey found that those authorities that had made use of such mechanisms found them difficult to use. Either few comparable services existed or it was not easy to find robust comparative data. Each partner will need to understand their contractual benchmarking systems and agree on how they will be interpreted; at the time of negotiation of such contracts, many of the concepts were new and untested. This creates potential for disharmony so managing the process well will be the key to ensuring value for money. The scope for large pricing impacts from benchmarking makes the process prone to significant conflict. There is already one high profile PFI contract – that of Edinburgh Royal Infirmary – where the benchmarking review has been contested, ending up in dispute resolution and there are probably others where negotiations are not going all that smoothly. The success of the current round of benchmarking will be the key to the success of the PFI programme in operation and is a topic we plan to look at in more detail in our future study programmes.

For PFI projects to provide value for money, there has to be an appropriate transfer of risk to the parties best able to manage them. This requires the public sector to be a lot more conscious of risk, how to assess it, how to manage it and how to allocate it in a sensible and realistic way. It may be tempting for authorities to transfer as much risk as possible to the private sector but the ultimate business risk, that of delivering the public service, cannot be transferred.

Even where the right contractual framework has been established, the public sector may not realise the potential benefits of the deal if it does not manage the contract effectively. There is little doubt that public sector contract management teams lack skills and experience in relation to their private sector counterparts. This is not down to the quality of personnel which may in fact be very high but more to the civil service culture of the generalist. Many public sector personnel

might negotiate and manage only one PFI deal in their careers and this lack of continuity and depth of knowledge will put them at a disadvantage. Major progress has undoubtedly been made in building public sector capacity and increased commercial awareness but there is still much room for improvement. The National Audit Office has played an important role in organising conferences, seminars and workshops over the past few years to help exchange best practice and provide a forum for representatives from the public and private sectors to share experience.

PFI is now an established procurement vehicle for the foreseeable future, capable of delivering a wide range of services. The 1990s were marked by enthusiasm, combined with some scepticism, over PFI which evolved over the next decade into a maturing market in its operational phase. Despite success in delivering project construction on time and on budget, whether PFI will prove to be value for money for the taxpayer will depend on how well the contracts perform over the long run. New and unexpected hurdles will inevitably arise with the passage of time; how they are approached and whether lessons will be learnt from the tumbles along the way will determine the programme's overall success. The National Audit Office will continue to use its unique independent viewpoint and the knowledge it has accumulated to encourage better procurement practice whatever the delivery mechanism.

Partnering with the Independent Sector to Deliver Patient Choice

KEN ANDERSON

When the Government published its NHS Plan in 2000, it set in motion an ambitious programme of modernisation for the National Health Service, which aims to transform the NHS into a truly patient-centred healthcare system, and where patients have real choices about when, where and how they are treated.

Over the last eight years, the NHS budget has grown significantly and will continue to grow to reach an annual spend of approximately £90 billion by 2007–8. This is a remarkable investment record for any public health economy and by 2008 England will be among the top 25 per cent of healthcare spends across Europe.

The case can no longer reasonably be made that the NHS is under-funded. Whereas in the past we always suffered from the complaint that the NHS did not meet expectations because of a lack of resources, with this investment comes a responsibility to ensure that the NHS maximises this additional spend in the most cost-effective way.

Sustained investment has contributed towards the government's targets, that no NHS patient should wait more than three months for an outpatient appointment and no longer than six months for the inpatient treatment they may need. However, six months remains too long and even this time does not include the long waits frequently experienced obtaining diagnostic tests prior to going on the waiting list.

The government's commitment to an 18-week 'end-to-end' target by December 2008 is a quantum leap. For the first time, the clock will start ticking at the point of contact with the GP, and the 18-week period will cover diagnostics as well as the actual wait for treatment. It is, in a sense, the first step towards measuring time in terms of the patient's perspective, instead of a hospital's waiting list.

While a tremendous amount has been done in-house to increase clinical capacity and bring down waiting times, greater change is required to meet future demand. If we are to meet the challenge set by the government we must, in simple terms, know that we can actually provide the diagnostic test and operations needed by patients to achieve this new target. We need to challenge the system to perform better by introducing new ways of working from alternative providers.

The independent sector has shown that it does possess a level of flexibility that is greatly needed at this time and as we get closer to 2008 it will need to do more.

We are turning to the independent sector to deliver competition, innovation and choice.

Within the NHS, variation in activity has been greater than can be explained simply by clinical need and so large that it is impossible to determine accurately what the level of capacity should be. Wastage most frequently stems from inappropriate activity rather than excess capacity. Though capacity planning may have kept unit costs down, it has failed to consider the patient experience as a value for money indicator.

Capacity is necessary to meet targets but this government's agenda encompasses a more philosophical shift in what is to be delivered for patients. The old concept of healthcare being top-down, where patients are told how they are to be treated, is being swept away. In its place the government is introducing choices in healthcare. The introduction of independent sector Providers is facilitating a shift of power to patients.

Modern society offers us choices unimaginable only a generation ago. There is a limitless array of choices open to us in every aspect of our lives and we rightly expect this to be part of how we live today. And yet healthcare delivery remains curiously reminiscent of the immediate post-war era of order and submission to authority.

Choice will mean that patients will have a say in when and where they receive treatment. Their decisions can be based on many personal

choices – being close to home, using a facility that specialises in their area of need, or perhaps something as basic as easy access. This will make healthcare more patient-focused and more responsive to patient needs and it will mean that providers of care will, in effect compete for patients. Private sector experience shows that consumer choice drives the best service delivery and that is what NHS patients deserve.

In order to achieve choice we must first ensure plurality of provision. This is not just a concept; it is a prerequisite to choice. The independent sector is fundamental to choice and if it is not included we will never be able to provide patients with options. Crucially, clinical quality must consistently match the standards patients have come to know from the NHS, but the choices that the independent sector provides will allow patients to vote with their feet.

Over the last couple of years, the Independent Sector Treatment Centre (ISTC) Programme has generated considerable discussion. However, despite being relatively small in number, ISTCs have changed the preconceptions of healthcare delivery in this country. Wave 1 is delivering over 177,000 operations annually over five years with an annual investment that is less than one per cent of the total NHS budget. Therefore, it is curious that there has been so much dissent and so many claims that this is 'privatising' or undermining the NHS.

As of October 2005, the ISTCs had treated over 167,000 patients and the number is growing every day as the each of the schemes become fully operational. They have helped to considerably reduce waiting times for MRI, cataract removals and orthopaedics, in some cases by several months.

The high clinical standard required of our providers explains why those within the NHS who have worked with independent sector providers are very supportive. Nevertheless, doubts and concerns remain among those who have yet to see what ISTCs can do, and some may never change their minds, but by continuing to deliver quality services to patients, this will hopefully influence their views.

The impact on the healthcare market has been no less dramatic. Initially the cost of buying operations from the independent sector was prohibitive and in general, when the NHS engaged in 'spot purchasing' from the independent sector it paid anywhere from 40 to 100 per cent more than the NHS cost. This too has been changed by ISTCs.

The programme is very focused on driving value for money. Independent sector providers only receive a small premium as they are required to recruit staff from overseas to conform to the additionality policy – a policy designed protect the excellent clinical staff of the NHS from being attracted into the independent sector market. The providers are also erecting new buildings and new operating theatres, which is another example of the tangible additional value they are bringing.

One of the ways we have driven value for money is by attracting new players to the market. It was our belief that the UK base of independent sector providers was too narrow to offer the competition needed and ensure true innovation and best practice. Many of the existing providers have demonstrated that they can deliver through new and cost-effective means without compromising quality.

The ISTC programme has also had a considerable impact on the private healthcare market. Fewer patients are now paying for private treatment out of their own pockets as the NHS is succeeding in cutting out the very longest waits for treatments. The self-pay market, where patients fund their own care rather than having it covered by private medical insurance, had experienced rapid growth in recent years. However, the introduction of competition has seen the existing UK operators start to redraw their business strategies and reshape the way their hospitals work, aiming to deliver care to private patients more competitively than in the past.

Wave 1 of the ISTC Programme has made great progress but we have yet to provide the level of independent sector engagement necessary if we are to meet the needs of the 18 week target, and if we are to provide patients with a true choice. The implementation of Wave 2 will remedy this.

Wave 2 Electives will deliver 250,000 procedures annually to provide more competition and more choice, as well as providing for another 150,000 to 200,000 operations to be made available on call-off contracts. This will allow us to create an ‘Extended Choice Network’

of providers offering operations that can be made available, as needed, to the NHS. This is intended to replace ‘spot purchasing’ and will ensure both the flexibility that is needed to offer choice and add some needed capacity. It is expected that the ‘Extended Choice Network’ will be available by the mid-2006.

Additionally, Wave 2 will also include the provision of up to two million diagnostic scans annually from the independent sector. It will provide MRIs, X-rays, cat scans and a range of other diagnostics, much needed for patients, which are all vital for meeting the 2008 target. This demonstrates the importance the government is attaching to using the independent sector to help it transform performance and cut waiting times. The provision of these additional services within the NHS will contribute to ending ‘hidden waits’ and will allow patients to be treated earlier, increasing the likelihood of a treatment working. For many it will also provide the good news that their condition is, in fact, not a serious one.

Wave 2 is more than ‘just another phase’. It is evidence of the success of the programme and that it is contributing significantly more than ‘plugging some gaps’. It means that well over £1 billion will be spent annually on the independent sector, demonstrating it is a major, sustainable and dynamic market that will continue to attract new entrants that in turn will continue to drive a more competitive spirit.

Wave 2 will end any doubts that this government intends to back away from plurality of provision. From 2008, patients will recognise and understand the role of the independent sector as a provider of NHS services in their community.

The modernised healthcare system will mean the patient has a much greater say in the provision of their healthcare services, and it will be less about what money has been allocated for a particular area or a particular specialty, it will be about who the patient wants to use.

The provision of patient choice and payment by results will start to create a contestable system where providers compete for patients on the basis of the quality of their service. As providers will have to compete for patients, this should result in all providers raising their standards so that patients can expect the highest levels of care.

A patient-led NHS will also strengthen the capabilities of local commissioners, who will be able to design, procure and manage services that are locally based, patient centred and with higher value for money.

By 2008 we can expect a healthcare market to develop in which independent sector providers will be fully integrated into the NHS. The patient will get choice but they will also come to view their health service as a collection of options, all free at the point of care, from which they select their preference. This is a historic opportunity for public-private partnership but independent sector providers must understand the importance being placed on value for money.

The improvements in public health provision in England will have an important knock-on effect on independent sector providers. It is a reasonable expectation that when waiting times fall to 18 weeks, when choice exists, the demand for private health will fall. We have already seen some evidence that the private market is contracting in response to NHS improvements and the independent sector would do well to expect this to accelerate in 2008.

There will always be some patients who will choose to go private for reasons of personal preference and private providers will always be able to deliver some extra comforts, which will appeal to them. What will cease, however, is the system in which the only way to get choice is to go private. You might say that the private sector has been a victim of its own success, as the more people have seen of choice in the private sector the more they want it from the NHS. The ISTC Programme is now enabling this choice through the NHS.

Adaptability has always been central to the private sector and it will be needed even more as the private market shrinks. To sustain their market independent sector providers will either have to join in the provision of NHS care or continue adding value to their private services, as it is unlikely they will be able to rely on patients frustrated by NHS waiting lists.

The shift will mean to the patient that the NHS meets their needs in a more responsive and tailored way and it will fulfil the dream of the founders of the NHS in ensuring that access to healthcare is truly based on clinical need.

We are continuing to make good progress. There are still a number of challenges ahead, but the approach and the commitment to working in partnership with the independent sector means that we will be able to provide better choices and services to patients.

Delivering Value and Quality in the Custodial Sector

GARY L. STURGESS AND BRIONY SMITH

Overview

One of the surprising developments in contracting of public services over the past twenty years has been in the custodial sector, where a number of governments have started to use the private sector in the provision of core and ancillary services. This has been taken furthest in the English-speaking world, where governments have contracted for the provision of front-line custodial services, but a variety of models are now being explored in different parts of the world.

Part of the explanation for this phenomenon lies in the strains that have been placed on correctional services administrations as a result of the rapid increase in incarceration rates. But the private sector would not have been engaged so widely if there had not been a widespread perception that competition and contracting had reduced costs and/or improved services.

In this chapter we explore some of the differences in prison contracting around the world, beginning with a brief history of the phenomenon and a summary of the available evidence of value-for-money savings. This is followed by a discussion of what is known about the advantages of these various models. We have tried to explore these differences in several ways: firstly, by contrasting two very different kinds of market – one based on short-term contracts and the transfer of demand risk to the private sector, which exists only in the United States, and another based on monopsonistic relationships and long-term contracts, which is used not only in the United States, but also elsewhere around the world.

A second way of comparing and contrasting the various models lies in looking at the range of services that are included in the contracts.

In the English-speaking world, it is not unusual to contract out the management of the entire prison, including front-line custodial services; elsewhere in the world, it is more usual to contract only ancillary services. A third model, pioneered in the United States, but pursued more fully in the United Kingdom, involves long-term contracting for the availability of prison places, with the private sector owning a facility built in accordance with government specifications. In the UK and Japan, these are referred to as the Private Finance Initiative (PFI) and elsewhere in the world as Public Private Partnership (PPP) prisons, and they include private design, construction, financing and ownership, with the public sector paying an availability fee over time.

Finally, we look at the quality of competition and contracting. There is still very little comparative data at this level and it is impossible to do it justice in one brief chapter. To the best of our knowledge, this is the first time that a comparison of this kind has been attempted, and we freely acknowledge that there is insufficient information to arrive at definitive conclusions. For this reason, we have concluded with a list of propositions that we would suggest are deserving of closer analysis.

I. A Brief History

Prison contracting has a long history in the English-speaking world. Until the late eighteenth century, the management of local prisons in many parts of England was 'farmed out', and the incarceration of convicts in hulks on the Thames and their transportation to North America and Australia were also undertaken by private contractors. San Quentin (in California) was the first prison in the United States to be privately-built and operated (in the early 1850s), and at various times throughout the nineteenth century, Kentucky and Texas contracted out their entire prison systems. In the final decades of that century, 13 states were leasing out prison labour to private firms.[1]

United States: Prison contracting re-emerged in the United States in the early 1980s. The private sector had long been used in the provision of minor auxiliary services – laundry, catering and

maintenance – but from the 1960s, non-governmental organisations were used to manage halfway houses in several states. It is thought that the first secure facility to be contracted out was a small juvenile treatment centre in Pennsylvania in 1975, followed by a somewhat larger establishment in Florida, which was managed by a charitable organisation from 1982. The US Marshals Service and the Immigration and Naturalisation Service also started outsourcing small facilities from the early 1980s.[2]

The first major prison management company in modern times, Corrections Corporation of America (CCA), was formed in 1983 and the same year, the Federal Bureau of Prisons and the Immigration Service sought expressions of interest for the design, construction, financing and management of a secure facility in Houston, Texas for housing illegal aliens. A number of bidders submitted proposals, and CCA won the contract in November 1983. Under the terms of the agreement, the company was required to construct the 350-bed detention centre by April of the following year, although the management of detainees in a temporary facility started some months earlier.[3]

By the end of 2004, 34 US states and the federal government were contracting with private companies to hold a total of almost 99,000 prisoners. This represented 5.6 per cent of state and 13.7 per cent of federal prisoners, although six states were holding at least one-quarter of their prisoners in private facilities.[4]

Australia was the second country to experiment with contracting prison management. The first step was taken in 1988 in the northern state of Queensland, after a review of correctional services recommended that the management of a newly-constructed prison be contracted out to serve as a benchmark for the public sector. The contract was won by a CCA subsidiary and the prison opened in late 1989. New South Wales followed the next year, with Australia's first design, construction and management (DCM) contract. The state government had intended this to be a full PPP prison, but parliament insisted that ownership and financing remain with the public sector. As a result, the first full PFI/PPP prison in Australia was not built until 1996, in the state of Victoria.

Around ten per cent of Australia's prisoners are housed in seven private prisons, with the management of the federal government's immigration detention centres also being contracted out. In Victoria, Australia's second largest state, two-thirds of female prisoners and forty per cent of male prisoners are housed in three private prisons. While there has been a moratorium on further contracting of custodial services by the Australian state governments over the past decade, Victoria has gone ahead with PPP prisons with support services only.[5]

France had also begun to move down this path, announcing in 1987 that it proposed to contract out the construction and management of 21 prisons – 21 to the private sector and four to the public sector as a means of benchmarking performance – an initiative that was known as 'Programme 13000' (referring to the number of prison places that were to be added). It had been expected that custodial services would be included in these contracts, but following concerted political opposition, only ancillary services (including vocational training) were outsourced.

The first contracts for the provision of non-custodial services started in 1990. Four private consortia were each awarded a ten-year contract for a cluster of five or six establishments in the same geographic area. These contracts were re-tendered on expiry, with the new operators taking over in early 2002. In 1995, a second tranche was let for the construction of six new 'semi-private' establishments (as they are sometimes known).

Around 2001, the government launched a new programme for the construction of an additional 27 facilities. This time the private sector will be more fully involved, providing design, construction, financing and facilities management under 30-year contracts. Contracted services include cleaning, catering and maintenance, transportation, prison work and vocational training. The contract for the first cluster of these prisons was awarded in March 2005.[6]

Britain developed a contractual model that built on the lessons learned in the United States and Australia. A parliamentary committee first recommended a trial of contract prison management in 1987, partly in order to benchmark costs, but also in the expectation of

securing improvements in service quality.[7] The first privately-managed prison opened in 1992, followed shortly thereafter by three more publicly-constructed but privately-managed facilities (two of which were subsequently won by the public sector when the contracts were re-tendered).

In 1993, the government announced that all new prisons would be commissioned from the private sector under the so-called 'Private Finance Initiative', and since that time, ten new facilities in England, Scotland and Wales have been designed, built, owned and operated by private firms, and made available to the Home Office under long-term contracts. In total, the privately-managed establishments account for around 12 per cent of the prison population of England and Wales.[8]

Other Jurisdictions. In 2000, the New Zealand government contracted the complete management of a remand prison for a five-year term, but following a change of administration, the contract was not renewed. In the same year, the South African government signed two 25-year concessions for maximum-security prisons, with the winning consortia responsible for design, construction, financing and operation of the facilities under a model that was based closely on the UK experience. The following year, the province of Ontario entered into a five-year contract to deliver a full-range of custodial and support services at a 1,200-bed prison.

The first privately-managed prison in Germany, in the province of Hessen, was due to open in January 2006. It has been publicly designed and built, and the five-year contract for non-custodial services covers education, health, psychological counselling and social services, video monitoring, prison industries and rehabilitation, as well as facilities management. The tender for Germany's first PPP prison, at Borg in Saxonia Anhalt, was underway at the time of writing, and will also reserve strictly custodial functions for state employees. Other German provinces are also looking at PPP and contract management for their new prisons.

The first PFI prison in Japan is due to receive its first occupants in April 2007, with a second to follow thereafter. The Japanese model involves private design, construction and financing of the prison, together with private provision of all support services, including training, electronic monitoring and perimeter security. Japanese law prevents medical services being contracted to the private sector and those officers having face-to-face contact with the prisoners are obliged to be public sector employees. The next two prisons are already being constructed by the public sector and will be jointly managed with the private sector.[9]

In 2004, the government of Brazil signed a contract for three PPP prisons based on the French model. At the time of writing, Israel had recently awarded a contract for the design, construction, financing and management of a prison, although the scope of the operations was still being contested. Hungary had also signed a contract for its first PPP prison. Countries that had been actively investigating PPP prisons over the previous twelve months included the Netherlands, Denmark, the Czech Republic and Hong Kong.

II. Evidence of Value-for-Money

While some have contested the proposition that competition has reduced the cost of prison management, this is not a challenging idea: there is little doubt that competitive tendering is a powerful tool for driving down costs. The real question is whether it can do so whilst preserving (or improving) the quality of service and the levels of public accountability.

Policymakers would always like more, but in truth, there is a reasonable amount of evidence from around the world demonstrating that competition and contracting are delivering lower costs. There is also evidence from a number of jurisdictions to make it clear that they are capable of delivering increased accountability. The story on service quality is much less clear, although the evidence from the United States, the United Kingdom and Australia seems to indicate that, if done well, service standards can be preserved and in some ways improved.

United States. The evidence on value-for-money in the US market is mixed, partly because the market is so complex and diverse: a recent survey of 24 different studies covering 10 states found a few

prisons where no savings had been made, with a majority in the range of 10 to 15 per cent.[10] There have been three significant studies published since that date: one from Texas and another from Arizona reporting the average costs of private prisons to be 12 per cent below those of public prisons, the other a detailed study of a federal prison in California which found net savings (taking into account transaction costs) of between six and 10 per cent.[11] These findings are even more significant when we realise that construction and operational cost savings have, in general, been a second-order objective.[12]

There have been fewer studies of service quality and, for obvious reasons, there is a vigorous debate over methodology. But a survey of 18 studies from 1989 to 2001 concluded: ‘all but two found the private facilities perform as well or better than government-run facilities’. Moreover, 45 per cent of private facilities had been accredited with the American Correctional Association as meeting national standards, while only 10 per cent of government facilities did so.[13]

Of course, some privately-managed prisons have suffered serious failings, but this alone is not evidence that competition and contracting cannot work. The question is not whether privately-managed prisons sometimes fall short of the ideal, but whether they do so more often than publicly-managed prisons and whether, given the incentives created by contractual performance regimes, they deal with the deficiencies more readily.

United Kingdom. The UK has a much simpler market than the US, with medium- to long-term contracts managed by a single central government agency. The Home Office has recently estimated that market testing of publicly-designed and constructed prisons has resulted in savings of 8.5 per cent, with savings from PFI/PPP prisons of around six per cent. The assumptions on which these estimates are based have not been released and require some clarification since earlier studies (also by government agencies) indicated savings in the order of 15 to 20 per cent from the competition and contracting of prison management, and total savings in excess of 20 per cent from full PPP contracts.[14]

The available evidence suggests that these savings have not been made at the expense of service standards: privately-managed prisons tend to outperform the public sector on decency criteria, and underperform on security and safety criteria. The National Audit Office has suggested that there may well be a trade-off between these two objectives (since the more freedom prisoners have within a facility, the greater the opportunity for misbehaviour). A recent study for the Department of Trade and Industry concluded: 'the overall evidence suggests that the procurement of prison services has been successful. The anticipated benefits of competition appear to have been realised, without suffering from any major potential detriments.'[15]

Australia: As early as 1992, the Australian Institute of Criminology was reporting that the impact of contracting appeared to have been positive, in terms of costs, conditions and accountability.[16] Unfortunately, there has been very little research since. Studies of Australia's first privately-managed prison, conducted in the early 1990s by the Queensland Corrective Services Commission, found savings of up to 15 per cent compared with a public sector benchmark prison, with the cost advantage declining over time. A 2005 report by the Public Accounts Committee of the New South Wales Parliament on a DCM prison points to significant value-for-money gains (in spite of lacking direct comparators).[17]

France: From the outset, the French Ministry of Justice was keen to study the comparative performance of the four clusters of 'mixed management' (or 'semi-private') prisons. A detailed study was carried out in 1996, when the Programme 13,000 establishments were mid-way through their first contracts, looking at both quantitative and qualitative performance.

Costs were found to vary between the clusters and between different establishments (partly explained by the different types of prison). Overall, the running costs for state and semi-private prisons in 1996 were comparable. In a recent budget statement, the French Minister of Justice has said that the cost per prisoner for the mixed management prisons in 2006 will be marginally higher than for the public prisons. Since support services comprise only a small proportion of total prison management, these findings are not surprising.

However, the 1996 study reported significant quality benefits, finding that clearer specification of requirements and closer monitoring, combined with financial incentives, had a positive impact on service standards. Contracts demanded a higher level of operational transparency and it was noted that they also contained guarantees of a public service ethos.[18]

Other Jurisdictions. A NZ business group published data in 2003 which indicated that the cost per prisoner at privately-managed Auckland Central Remand Prison (a relatively high security prison due to its remand status) was 20 per cent less than the average cost in the country's low security prisons.[19]

The two PPP prisons in South Africa are so different from their public sector counterparts that no meaningful comparison is possible. They have been commissioned to a much higher standard, so that whereas state prisons have 48 prisoners per cell, the privately-managed facilities have two to four. Inmate care, education and rehabilitation were treated in an entirely different way. In spite of having higher standards, the PPP prisons have similar operating costs and construction was both quicker and cheaper than recent public facilities.[20]

Construction of Germany's first privately-managed prison was still underway at the time of writing, although the Ministry of Justice in the state of Hessen has stated that it expects operating costs to be 15 per cent less than they would have been with a fully state-run institution.[21] According the Japanese Ministry of Justice, Japan's first PFI prison is expected to deliver savings in construction and operating costs of around 8 per cent. In part, this is because of innovation in design and technology.[22]

Wider Benefits. There is some evidence that where competition is used, some of the benefits are manifested across the system as a whole, as public prison administrators respond to the threat of competitive and learn from the innovations introduced. Research by the US Department of Justice published in 2001 concluded that 'the presence of private prisons has encouraged public facilities to adopt similar cost-saving strategies in staff deployment and procurement policies.' Another study of 46 American states by academics at Vanderbilt University found that during the period 1999-2001, 'the existence of prisoners under private management in a jurisdiction seems to have resulted in reduced growth in per diem expenditures on publicly held prisoners by 8.9 per cent' and that the growth in cost per prisoner in states with some competition was almost half that of states with no private management.[23]

In the UK, research by the Home Office published in 2003 concluded that the gap between privately and publicly-managed prisons had narrowed significantly over time because of competition. The strongest evidence for the turnaround in performance was the success of the Prison Service in winning back two contract prisons when they were re-tendered. As Martin Narey, the former Commissioner for Correctional Services in the Home Office, has noted on several occasions, 'the introduction of competition has been a key catalyst for change in the wider prison service'.[24] And the recent report of the Public Accounts Committee in Sydney, Australia also confirms the wider benefits of competition: the mere threat of competition had resulted in marked improvements in the management of overtime and sick leave in two new publicly-managed prisons.[25]

Is it possible to learn anything from these mixed results and this diverse range of contracting models about what works, what doesn't and what might be promising? In the three sections that follow, we analyse this evidence from a number of different perspectives, comparing and contrasting the different models.

III. Differences in Market Models

Compared with other countries, the US prisons market is extraordinarily complex, with some facilities that are publicly-owned but managed by the private sector under contract; some that are privately designed, built and operated under long-term contract to government; some that are privately-owned but leased to other private (or public) providers; and a number that have been constructed by private companies (or by public-private joint ventures) on a speculative basis and offered through a spot market to governments

with overcrowding problems. It is difficult to create a complete picture of this market, since where prisoners are transferred interstate and held in privately-managed facilities, the host jurisdictions do not always record the details.

At the end of 1997 (when the last detailed study was conducted), Texas had 29 privately-owned and/or operated jails and prisons, not including a number of facilities in that state exclusively serving federal or interstate agencies.[26] Looking at the market from the other side, in September 2005, Corrections Corporation of America (CCA) owned 42 facilities in 14 states, three of which were leased to other prison operators, and managed 24 facilities owned by various public or private agencies. It appears that many of the CCA-owned facilities operated in a national market with short-term contracts.[27]

Companies started building prisons 'on spec' in the mid-1980s when it became clear that state governments would be unable to construct enough facilities to cope with their overcrowding problems. Colorado, for example, started contracting with other state governments and out-of-state county governments in the late 1980s, and from 1993, out-of-state placement shifted almost exclusively to private institutions.[28] But Colorado also contracts prisoners in, with five private prisons in the state holding hundreds of inmates from Hawaii, Washington and Wyoming. Arizona contracts to place its prisoners with private institutions in Oklahoma, Texas and Mississippi, whilst also housing a significant number of prisoners from Alaska and Hawaii.[29] Wisconsin used to lead the nation in out-placement, with more than 4,000 prisoners spread across Oklahoma, Minnesota, Mississippi and Tennessee.

This is a national market marked by multiple buyers and sellers, short-term contracts and the transfer of demand risk to the private sector; it is to be contrasted with more tightly-managed in-state markets, which are characterised by a single government customer with a smaller number of long-term contracts.

In 1997 (the latest year for which data have been obtained), at least 18 per cent of contract prisons in the US were involved in this national spot market. Out-of-state contracts were typically negotiated and not competed, and in the majority, contract periods were two years or less in duration.[30] While some of these were fixed price contracts based on availability, a number of them were 'indefinite delivery/indefinite quantity' (ID/IQ) arrangements, where the government customer contracted with a prison operator but only paid for the places actually used. The advantages of this type of contract to the government customer in times of plentiful supply are obvious, although it does shift the risks associated with sentencing policy to the private sector. In a national market with excess demand, this is a risk that private companies seem willing to bear.[31]

The potential impact of out-of-state placement on prisoner well-being and rehabilitation is obvious (although it is to be noted that out-of-state placement is a policy that would still be pursued by most states in the absence of private provision). Some prison operators provide free video visitation for families and charter bus services 'at cost', but this does not appear to be common and it can ameliorate only some of the difficulties.[32] Some states locate monitors permanently onsite, while the majority seem to conduct only periodic inspections.[33]

In general, state laws do not require the licensing of correctional facilities, so that some 'spec' prisons have no relationship with their host states, except in the payment of corporate income taxes. There have been some reversals in the spot market in recent years, with several states – most notably Arizona and Washington – withdrawing their prisoners from certain establishments following rioting and other difficulties. But other states have no alternative, and companies have continued to sign new contracts.

Understandably, this injects a level of commercial risk into the US prisons market that is unmatched in other parts of the world. CCA, for example, started building a new 1,500-bed facility in Georgia in 1999, but suspended construction six months later due to a downturn in expected demand. Construction recommenced in 2003, although in late 2005, the company still did not have a contract for the prison.

Speculatively-built prisons tend to operate at much lower occupancy rates than contracted prisons – the average for all of CCA's owned and managed facilities (which includes some that are under contract terms longer than two years) is 90 per cent, compared with 100 per cent or more for managed facilities. Operating income for these facilities fluctuates depending on what contracts the companies have been able to negotiate with local and interstate authorities. A disturbance at one of CCA's facilities in Colorado in mid-2004, required it to transfer all of its out-of-state prisoners to other prisons, including facilities owned by the Colorado state government.[34]

There has been little analysis of the prisons operating in this national spot market, although unit costs appear to be significantly higher than for management-only prisons. One explanation for this is the cost of capital depreciation, however, there appear to be other factors: in 1997, two-thirds of these contracts were not competed; the prisons were much smaller than average; and the vast majority of jurisdictions reported that they used the private sector to manage overcrowding problems rather than reduce costs.[35]

The quality of custodial care in these out-of-state contracts has been lower than in-state arrangements: monitors and administrators have reported a lower quality of service in 38 per cent of out-of-state contracts, compared with only seven per cent of in-state arrangements. In part, this was because of less detailed service specifications and much lower levels of monitoring.[36]

One way of contrasting these different markets is by analysing risk transfer. Where there is a small number of contracts and a single buyer, contractors are unlikely to underwrite the risk of sentencing policy. But in a market as large as the United States, where there are significant numbers of buyers and sellers, where state governments are prepared to relocate prisoners thousands of miles away from home, and where demand continues to outstrip supply, it appears that the private sector is willing to accept demand risk.

Contract length is another distinguishing feature. Spot markets are characterised by contracts of one to two years in duration; management-only contracts range from five to 10 years, while PFI/PPP contracts tend to be 25 to 30 years in length because of the need to recoup investment costs. Academic economists have argued that with long-term contracts for complex services, the future is more difficult to anticipate, and renegotiation is more costly. This suggests that it would be more efficient to retain complex services such as prisoner management in-house, or to enter into short-term contracts.[37]

In fact, 'contractability' (as this challenge is known), has not been a problem in the UK market thus far, and the US spot market seems to have left buyers with much less control. It seems likely that five to 10 year terms will give buyers much greater control than 25-30 year terms, although the Home Office has been able to renegotiate PFI prison contracts on suitable terms to address changes in government policy. Of course, it is possible that there are other efficiencies associated with PFI/PPP contracts that outweigh this loss of control.

One of the difficulties with a spot market is that in situations of excess demand, governments will have much less influence over price and quality. Long-term planning by a monopoly purchaser, with competitive tenders and exclusive contracts will give them much greater control.

IV. Variations in the Range of Services

Custodial services versus facilities management. In principle, the inclusion of a wider range of services should provide greater opportunities for contractors to capture economies of scope. It has been suggested in the UK that PFI contracts covering the core and ancillary services (such as prisons) may have delivered greater benefits because of the scope for greater productivity gains in managing 'the single most important input in any public service – the workforce'.[38] The most obvious comparison would be the French model, where a much narrower range of services has been involved.

Superficially, the UK model appears to have delivered greater savings: six to 20 per cent, compared with zero to two per cent in France. However, there may be other factors explaining these differences. It is possible that the French prison system was relatively more efficient than the UK prior to 1990. Alternatively, the UK might have conducted more effective competitions. But if, as has sometimes been claimed, there are significant inefficiencies in the management of custodial services, then it seems probable that competition has delivered greater benefits across a wider range of services.

The evidence indicates that these savings have not come from reductions in service quality, so how have they been obtained? Since these are contracts for services, it is unsurprising that labour costs account for the overwhelming majority. Research undertaken by HM Prison Service in 1999 found that around half of the savings in the public-built and privately-operated prisons in England had come from productivity improvements (manifest as lower staff-prisoner ratios), with the rest from lower staff unit costs (manifest as less generous terms and conditions).[39]

After ten years or more of operation, the service standards in contracted prisons in the UK are still comparable (and in some ways superior) to public prisons, so it would appear that lower staff-prisoner ratios are indicative of real productivity savings. Of course, there is no reason why savings of this kind should be confined to the private sector: North American research indicates that public sector prisons with lower staff-prisoner ratios have also been able to deliver significant levels of savings.[40] What accounts for this increased productivity? Some of the explanation lies in improved physical layout (such as radial design) and more advanced technology (such as CCTV cameras and electronic keys), but also greater flexibility in deployment, less adversarial relationships between staff and prisoners and more effective prisoner management regimes. Public sector prisons also tend to have higher overheads than their private sector counterparts.[41] (Interestingly, not all privately-managed prisons have lower staff-prisoner ratios: a recent study of a federal prison in California found higher staffing ratios.[42])

But less costly terms of employment are also a significant factor, in North America as well as in the United Kingdom and Australia. It should be stressed that since private prison operators have generally recruited their staff in the wider labour market, serving prison officers have not suffered any reduction in their conditions of employment. In the US and the UK, basic pay rates in the two sectors are often comparable (and in some US states, comparability is prescribed by law). Where the private sector has been able to secure an advantage is in providing less generous fringe benefits (such as holiday pay and pensions), in tighter management of overtime and sick leave, and in employing a younger workforce and maintaining a higher turnover rate.[43]

Professional services. In addition to facilities management, some jurisdictions also contract professional non-custodial services such as education and training (France, Germany and Japan), medical and psychological counselling (Germany) and rehabilitation (Germany). Neither the German nor the Japanese prisons were operational at the time of writing, and the information that is publicly available on the French model does not provide us with insight into vocational training. There are individual studies of prisoner health care by private contractors in some US states, but not on a comparative basis. A recent study of health services at the one privately-managed prison in New South Wales, Australia found that the costs were less than half of those in the public prisons as a whole. Even taking into account the extraordinary costs of the state's prison hospital, the NSW Public Accounts Committee concluded that the costs of the private prison were still more competitive.[44] Value for money in professional services is an area deserving of closer analysis.

Design, construction and management. There is consistent evidence from the US, the UK, Australia and South Africa that the private sector is able to build prisons more quickly and more cheaply under PPP-style arrangements. In the UK, construction times fell by 45 per cent with the introduction of PPP, and there is evidence of even faster delivery times by the private sector in the US.[45]

British research also suggests that construction costs were reduced by 20 per cent or more following the introduction of the Private Finance Initiative, although this is based on an artificial 'public sector comparator' (since the Prison Service has not been permitted to bid for these prisons). While there is much less evidence available on construction costs in the US, one study of a privately-constructed prison in Florida found that costs were 24 per cent below those of the most comparable public facility.[46]

How were these benefits delivered? The evidence from the UK indicates that construction firms experimented with building design, producing more compact prisons and relying more heavily on prefabrication. They also pursued fast-track strategies that overlapped design and construction and opened the facility without a commissioning period. What little evidence is available from the US suggests similar factors in that country.[47]

One of the undisputed contributions of PFI/PPP contracts in the UK has been the delivery of projects on-time and on-budget. The National Audit Office (NAO) reported in 2003 that all seven PFI prisons to that time had been delivered on time and on budget. A comparable report by the NAO some years earlier on seven publicly-designed and traditionally-built prisons, found that not one had been completed on-time, with actual completion 13 per cent late and 18 per cent over budget, on average.[48]

PFI/PPP contracts might also be expected to deliver operational efficiencies through the integration of design and management. The innovation that has been most frequently commented upon is the introduction of radial design, which relies on clear lines of sight and control rooms located at the centre of radiating wings. The private sector has also relied more heavily on new technologies, such as CCTV cameras and electronic keys. One of the reasons why Japan's first PFI prison will be significantly less costly lies in the use of electronic tagging within the prison (and thus a reduction in the level of perimeter security). There is also some anecdotal information from the UK of prison contractors investing in better quality facilities (such as sporting equipment) as a way of ensuring better management outcomes.[49]

Private ownership and financing. It is generally recognised that the transfer of ownership (and the associated risks of ownership) to the private sector under PPP have contributed much of the financial rigour that has been associated with this particular model of contracting. This applies not only during the construction phase. There is also anecdotal evidence that financiers have taken a close interest in the operational performance of some PFI prisons in the UK.

But a disciplined analysis of PFI and PPP would seek to disaggregate those benefits that have been delivered through the integration of design, construction and management, from those that have been derived from private ownership and financing. Might not some of this financial rigour have been secured through other forms of contracting? Unfortunately, very little work has been done to unpack the various elements of the PPP model.

Consideration has been given in the UK to a model involving the separation of management from design, construction and financing, either through an initial DCFM contract (design, construction, financing and management), with re-competition of the management element after a period of time, or through letting a DCF contract (design, construction and financing) separate from the management contact. To date, neither of these models has been adopted.[50]

One of the few jurisdictions where the ownership and financing of the facility has been disaggregated in this way is New South Wales, Australia, where the prison was procured on a DCM basis (design, construction and management). While there has not been a comprehensive analysis, this prison appears to have delivered most of the benefits of a full PPP facility. Of course, one of the advantages of the DCM model is that the government can market-test the management of the facility every five to 10 years.

Economies of scale. The French have sought to capture economies of scale through awarding clusters of five or six contracts to a single firm, rather than seeking economies of scope through contracting for a wide range of services. The absence of significant operational savings in the French model would seem to suggest that there is a limit to scale economies in prisons. This is confirmed by an independent report undertaken for HM Prison Service in England and Wales in 2001, which found significant economies up to a capacity of around 1,500 prisoners.[51] However, there are likely to be economies of scale associated with design and construction, and with the costs of conducting procurements.

Following a 2003 report, the UK government has been looking at contracting out the management of existing prisons in clusters (based around either geography or function). This would include the full range of custodial services, and the government is clearly hoping that the management of a group of existing prisons will provide private firms with greater flexibility to undertake reform.[52]

V. Differences in the Quality of Contracting

It would be unsurprising if the quality of the competitive process, the effectiveness of negotiations and the standard of subsequent contract management did not have a major impact in delivering lower prices and better services. Unfortunately, very few of the inter-jurisdictional studies undertaken thus far have probed these aspects in significant detail.

A study of the US market published in 2003, which compared the national spot market with long-term in-state contracting, found significantly lower levels of competition, lower levels of monitoring, higher prices and a greater proportion of contracts with quality issues. While it is difficult to draw direct causal links between high prices and a lack of competition and between low quality and a paucity of monitoring, these outcomes are hardly surprising.[53]

In the UK, the IPPR suggested that one of the reasons why the PFI might have delivered better results in prisons and road maintenance (compared with hospitals and schools) was the centralised nature of procurement and contract management in the former cases. A review of the available information on anticipated cost savings from PFI contracts in the UK confirms this analysis: the greatest savings have come from the Home Office, the Highways Agency and the Ministry of Defence, where procurement was centralised, with much lower savings from hospitals and schools where, in the early stages of market development, responsibility was heavily devolved.[54]

Conclusions

This chapter has involved a tentative exploration of the strengths and the weaknesses of the various models of prison contracting. There has been little enough comparative analysis done within jurisdictions, and none that has sought to compare the different models that have been pursued in different countries. We are reluctant to draw firm conclusions, but on the basis of what information is publicly available, we would put forward the following propositions which, in the interests of sound public policy, deserve to be tested further:

1. *Risk transfer*. In deep markets, with large numbers of buyers and sellers, a willingness to transfer prisoners outside jurisdictional boundaries and excess demand, the private sector is capable of managing the risk of sentencing policy. At present, these conditions prevail only in the United States.
2. *Contract length*. After 13 years, 'contractability' (the ability to write a complete contract for complex services over the long-term) has not been a problem in the UK market. Very short-term contracts (1-2 years) do not always give buyers greater control over suppliers. Flexibility is a challenge, although not an insurmountable one, in very long-term contracts (25-30 years) associated with PFI and PPP prisons.
3. *Exclusive buyers*. In spot markets marked by excess demand, governments have much less control over private and quality. Long-term planning by a monopoly purchaser, with competitive tenders and exclusive contracts gives them much greater control.
4. *Economies of scope*. Based on a superficial comparison of the UK and French models, contracts covering the full range of custodial services may deliver greater savings than those covering only ancillary services.
5. *Economies of scale*. There is no evidence of significant scale economies in prison management beyond a prison capacity of 1,500, particularly in so far as ancillary services are concerned. However, it is likely that there will be economies from the design and construction of clusters of prisons, and a reduction in procurement costs. Contracting for the management of clusters of existing prisons might provide private operators with greater freedom to undertake reform.
6. *Design and construction*. There is consistent evidence across a number of jurisdictions indicating that the private sector is able to build prisons more quickly and more cheaply under a PFI/PPP model than the public sector is able to do under traditional procurement.
7. *Design and management*. Some anecdotal evidence exists to suggest that prison operators are able to make savings through innovation in design.
8. *Ownership and financing*. In those jurisdictions that have used PFI/PPP, there is a strong perception that private ownership and financing have been important drivers of better procurement and delivery. However, the evidence has not been disaggregated in a way that would permit strong conclusions to be drawn.
9. *Quality of contracting*. It seems likely that differences in the quality of competition and contracting processes are a major contributor to differences in price and service outcomes.

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9 Conversation by the author with an official from the Japanese Ministry of Justice, 22 December 2005.

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11 The Auditor General in Arizona reported a departmental study of performance in 1998 and 1999, and the second study was by the Texas Criminal Justice Policy Council which produces bi-annual reports on public and private prison costs, although the samples were not directly comparable – Office of the Auditor General, 'Performance Audit: Arizona Department of Corrections. Private Prisons', Report No.01-13, State of Arizona, July 2001, p.ii; Texas Criminal Justice Policy Council, 'Mangos to Mangos: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas', Austin, Texas, 2003, pp.12, 14. The third was a study of a federal prison in California commissioned by the US Department of Justice – Douglas C. McDonald and Kenneth Carlson, 'Contracting for Imprisonment in the Federal Prison System: Cost and Performance of the Privately Operated Taft Correctional Institution', Cambridge, MA: Abt Associates Inc, October 2005, p.xi.

12 Douglas McDonald and Carl Patten, Jr., 'Government's Management of Private Prisons', Report prepared for the National Institute of Justice, Cambridge, Mass: Abt Associates Inc, 15 September 2003, p.4.

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Placing Good Employment at the Heart of Public Sector Tendering: Practice and Policy

STELIO H. STEFANOU

It is not enough for progressive policy makers to rip up the old and replace with the new: they usually need to explicitly heal the scars and shatter the myths created by previous policy flaws. Their grasp of what this takes – in crafting a new narrative and specific measures – will play a large role in determining the success of the new policy.

The handling of employment issues and other social considerations in public-private partnerships (and in government tendering more generally) is a case in point. For years, outsourcing by local and central government in the UK was typically adversarial and, at its worst, represented 'bargain basement tendering' at the expense of workers' terms and conditions.

By 1997, many in the public sector and trade union movement believed that it would be impossible for employees to benefit from their jobs transferring to the private sector. In particular, the scars of 'Compulsory Competitive Tendering' (the contracting regime for local government from the mid-1980s to the mid-1990s) ran deep.

Similarly, there was a perception that procurement rules[1] prohibited public sector clients from taking social considerations into account. This arose partly from the rules but mostly from how they were being interpreted. Another damaging aspect of the mythology was the assumption that integrating employment and social considerations into procurement would reduce value for money whereas, in reality, doing this properly would actually improve it.

Business, led by the Confederation of British Industry (CBI), had been calling on the public sector to handle the workforce issues more sensitively and shift away from a lowest price approach when tendering. However, the profile of this progressive lobbying was not as high as it ought to have been.

Many examples of good practice existed, in which public sector clients, private sector partners, trade unions and employees worked in partnership to achieve better quality public services and good quality employment. Yet the profile of these success stories was also low.

The Private Finance Initiative (PFI) – a particular model of Public Private Partnership (PPP) – was beginning to prove its worth in delivering infrastructure projects on time and on budget. And it was raising the profile of procurement as a strategic policy tool. Yet those with bad experience of earlier forms of contracting were reluctant to believe that PPPs for the delivery of public services could improve service quality or maintain employment standards.

This chapter examines the UK's progress in addressing this situation. It is in two parts. The first sets out the experience of Accord plc, mostly in the form of a case study on the partnership between the London Borough of Barking and Dagenham and Accord for the maintenance of 22,500 Council homes. This shows what can be achieved when partners put good employment and progressive social outcomes at the core of a PPP. It is an example of myth-shattering and scar-healing in action. The second part of the paper charts the main policy developments since 1997, in particular drawing lessons from how well Government, business and trade unions have worked together to shape the various reforms.

I. Practice

Accord plc was built on the principle that good employment must be at the heart of local government tendering. Its establishment in 1999, through a demerger of the John Doyle Group was a practical offering to the market, which complemented the major policy improvements set out in the second part of this chapter (for which John Doyle and then Accord were the leading business proponents).

Accord remains at the cutting edge of PPPs for the delivery of local government services in the UK, advocating that the private sector's role in this market is best defined as a strategic partner in promoting

sustainable communities. Accord has a turnover of approximately £300 million and nearly 4,000 employees, most of whom transferred from the public sector when Accord won the relevant contract. Its operations include: highways maintenance and management; housing repair and improvement; environmental services such as street cleansing and recycling; education services; and business services, including facilities management and consultancy.

Local authorities increasingly see their core role as community leaders, responsible for improving people's quality of life and for helping to make places cleaner, greener and safer. Equally, they are setting ambitious goals for modernising public services: alongside efficiency and productivity targets, they aim to transform customer care, while giving the public more choice and voice over the services they receive.

Promoting good employment, both within their own organisations and across the locality, fits well within the statutory remit of councils to improve the economic, social and environmental well-being of their communities.

Accord has been encouraging public authorities to integrate these sorts of strategic goals into their procurements. By specifying their requirements in outcome and performance terms, public authorities can be confident that social, environmental and economic objectives are a legitimate part of the value for money equation. The London Borough of Barking and Dagenham took this approach in appointing a private sector partner to deliver its housing maintenance function: the following case study highlights the benefits.

The Council nominated its partnership with Accord for a 'local government PPP of the year' award in 2004, and received a commendation from the judges. It was also featured extensively in a report by the New Local Government Network, 'New Ways to Modernise',[2] which examined how local authorities were using partnerships to fulfill their most ambitious goals as community leaders. The report says of the case study, 'There's a strong message here – that efficiency goals, quality goals and social/economic goals can be mutually reinforcing, not contradictory'.

A Shared Strategic Vision

In May 2003, the London Borough of Barking and Dagenham and Accord began their 10 year partnership for the provision of housing repairs and maintenance services for 22,500 council homes. Services include: responsive repairs and maintenance; bringing properties up to Decent Homes standards; major repairs to return void properties to occupancy; adaptations for tenants with disabilities; elderly persons' decorations; planned maintenance programmes; and the removal of asbestos. The contract also includes work to design out crime from council estates, for example by introducing security, concierge systems and anti-vandalism measures.

The ambition within the partnership is much broader. The Council's priorities in letting the contract revolved around regeneration of the local economy, promoting equal opportunities and celebrating diversity, raising pride in the borough and making Barking and Dagenham a cleaner, safer and greener place.

The successful contractor also had to offer good employment prospects, given that 330 Council staff would transfer to the successful contractor under TUPE. Moreover, a top priority was long term job security for the local workforce. Right-to-buy rules meant that the council housing stock was reducing and the council feared for the long term viability of the direct service organisation. The level of concern makes sense against the context of high unemployment levels and low academic attainment in the local economy.

Accord won the competition above all because of its response on these broader outcomes. Its bid promised, 'Accord's vision is a simple one: a thriving, efficient service, employing local people and bringing money and other benefits into the borough whilst delivering an excellent level of service and customer care to the tenants and leaseholders of Barking and Dagenham.'

Terms, Conditions and Job Security

Protecting the transferring employees was a top priority for both Accord and the Council. Accord not only committed to honouring the TUPE legislation, whereby staff would transfer with their existing terms and conditions: careful and sensitive efforts were made during

the procurement and mobilisation stages to reassure employees of the cast-iron nature of these commitments. Transferring employees were also promised that they would preserve their existing employment contract upon promotion, even if their wages increased.

In a local agreement struck in advance of any national policy on this issue, Accord also gave a commitment that, wherever possible, new starters would be given similar contracts to transferred employees, thus avoiding a "two-tier workforce" scenario.

This confidence building was instrumental to winning the good-will of employees and achieving successes early in the contract. Accord has also grown the business by bringing in third party work, thus safeguarding local jobs.

Training and Development

The workforce transferred into Thames Accord, a locally branded business unit of Accord plc, which has become well established as an important part of the local economy. Thames Accord earned the 'Employer of the Year' award from Barking and Dagenham College for its Modern Apprenticeship scheme, which covers about 40 trades people. The Managing Director of Thames Accord joined the Board of Barking and Dagenham College, which had previously failed to attract local business people to take on this role.

Trades employees testify that their training and development opportunities have improved since joining Thames Accord. While working for the council, staff had filled temporary managerial posts for extended periods without being promoted. On taking over the contract, Accord undertook a review of employee roles and skills. Many trades people were promoted into managerial positions and this trend of career development has continued. For instance, one employee who sought a managerial position was trained to set up and supervise a specialist asbestos unit, whose technical innovations are now being followed by the broader asbestos removal industry.

Environment, Health and Safety

In November 2005, Thames Accord was one of five Accord business units to be awarded the British Safety Council Sword of Honour. Only 40 swords are awarded annually to businesses world-wide, so Accord's achievement demonstrates a genuinely world-class performance. From its establishment, Accord has set out to be a world leader, in line with Accord's own core values and the priority which public sector clients attach to their partners' health and safety record.

Allowing Employees to 'Make a Difference'

The most striking observation by employees is that they now have more flexibility and their ideas are taken on board to a greater extent. This is probably the biggest explanation of why, when asked, the employees are so positive about working for Accord.

Giving operatives increased autonomy within clear boundaries has motivated the employees and made sound business sense. For instance, trades people are empowered to carry out minor repairs that they identify on-site in addition to the specific repair job they were instructed to do. This approach makes sense to the tenants and improves productivity.

Call centre operatives are now trained to make sure that, when tenants call, they provide full information on the nature of their repairs problem. This has enabled a 'right first time' response, whereby the appropriate member of the repairs team, with suitable equipment, takes on the job. Employees are pleased to have cut out wasted time; eliminating wasted journeys also benefits the environment; and, of course, tenants are impressed with the quality of service.

Diversity, Equality and Community Engagement

Technology for scheduling repair jobs allows for scenarios such as 'only send a particular operative' where a tenant has built up trust with that person or where for, say, cultural reasons, female operatives should attend. Accord has also built up a strong relationship with various local community groups, particularly the Turkish Women's Group, which has had a major input into the design of services. More generally, the service is organised through six Community Housing Partnerships: local

devolution to smaller areas allows Accord operatives to take pride in their area and build up good relationships with local tenants and their representatives.

Accord has also formed a series of partnerships with local voluntary sector bodies, ranging from the provision of sheltered employment and work experience for disabled people to practical help for frail and elderly residents who own their own home and are therefore not covered by the council repairs contract.

The business benefits of such community involvement are again significant. For instance, the employees know beyond doubt that Accord is committed to the place they call home: hence they are more motivated to make changes to their working practices in order to make the partnership more successful.

Assessing the Impact

Not everything has been perfect but Accord and the London Borough of Barking and Dagenham have learned from their mistakes. Crucially, they agree that partnership working can help the Council to achieve its modernisation goals and recognise the importance of high quality employment in doing so.

As will be clear from the above examples, many of the most effective steps have been conceptually simple at least, though sometimes challenging to implement. And they have improved value for money alongside contributing to broader objectives. The "can do" attitude of both partners is in striking contrast to the limited ambition that has prevailed in past policy debates. And this attitude goes a long way to explaining why the following comments on the partnership are typical.

> 'The most significant impact on services has been … the partnering arrangement with Thames Accord' – *Audit Commission, December 2004*

> 'This partnership has changed our view on service delivery' – *David Woods, Director of Housing, London Borough of Barking and Dagenham*

> ‘Accord have such a good reputation locally for their community works, not just their day job’ – *local voluntary sector leader*

> ‘Accord believe in a genuine partnership approach and work hard to have the staff on board…they run everything past us’ – *Derek Butcher, Trade Union Convenor*

II. The Policy Framework

1997–2001: New Foundations and a New Consensus

The pace of policy development in Labour’s first term was impressive, galvanised by a ‘big tent’ environment in which all parties stepped up to the mark. On day two of Government, HM Treasury announced a review[3] of the PFI to improve its operation: subsequent improvements including better handling of employment issues[4] and a rebranding away from PFI (which had emphasised private finance) into the more appropriate terminology of PPP (to focus on partnership as the fundamental feature).

Labour’s Manifesto had promised to replace Compulsory Competitive Tendering with a ‘Best Value’ regime with more freedom for local councils over where and when to outsource. In unprecedented social partnership, the CBI, Local Government Association (LGA) and Trade Union Congress (TUC) together pressed the Government to bring forward this legislation as an immediate priority. Their joint letter to the *Financial Times* and cohesive evidence to Parliament surprised many.

The social partnership deepened when the grouping asked for good employment to be placed at the heart of tendering under Best Value – and together identified how to achieve this. Instead of lobbying individually on their own agendas, they made a serious effort to understand and address each other’s concerns. Their comprehensive recommendations[5] were largely adopted by Government.

Hence, the Best Value[6] regime took effect, containing regulations[7] and statutory guidance[8] on handling workforce matters. Its narrative promotes a common ‘mindset’ around why workforce issues should be

taken into account when awarding government contracts. For instance, it states that, ‘Good quality services depend on appropriately skilled and motivated workforces. Neglecting relevant workforce matters in order to drive down costs can have adverse effects on the desired quality and value for money of the service’.

The guidance explains how matters such as terms and conditions, equality, training and development and health and safety can be taken into account at various stages of the tendering process while complying with European public procurement legislation and domestic policy on achieving value for money. It highlights the role of the service specification: writing the appropriate level of quality into the service requirements should attract bids which incorporate suitable staff management practices. It adds that, ‘as far as possible, requirements should be specified in terms of output and performance, rather than how the contractor is to go about providing the service. This will provide scope for innovation in service delivery’.

The Local Government Social Partners were central to another significant breakthrough to overcome ambiguity over the application of the European Acquired Rights Directive and the TUPE regulations[9] which implemented the Directive in the UK. The result was new guidance[10], issued in 2000, requiring that staff should transfer consistently, preserving their terms and conditions, whenever a public sector body outsources a service, when contracts are re-let, change hands or come back in-house. This guidance was subsequently given statutory force in local government.[11] The guidance also requires that, when employees transfer, they should do so with broadly comparable pension provisions.[12] In local government, there is also the option of staff remaining in the local government pension scheme.[13]

This policy benefits all parties. Employees have greater security and less fear on initially transferring out of the public sector. For the private sector, it removes the expensive risk of ‘being left holding the baby’, i.e. of the redundancy cost risk crystallising, upon losing a contract. And for the public sector client, the end result is better value for money.

So the policy strides in Labour’s first term were impressive and the social partnership to design policy in this field was unprecedented. Yet the parties made one mistake which has proved damaging: they did not go out together and 'sell' their achievements, the new measures or their shared vision of good employment at the heart of public procurement. This failure meant that the new 'policy mindset' was not sufficiently spread across the local government, business, trade union and workforce communities: equally, the social partnership approach to policy development did not become sufficiently embedded so as to stand the test of more challenging times.

2001–5: Complexities and Challenges

Private sector involvement is just one strand of public service reform in the UK. In September 2002, the Audit Commission published a report[14] warning of an impending recruitment and retention crisis within the public sector and found six key factors in people's decisions to leave:

- Being overwhelmed by bureaucracy and paperwork
- Insufficient resources, leading to unmanageable workloads
- A lack of autonomy
- Feeling undervalued by managers, government and the public.
- Pay that is not 'felt to be fair' compared to that of people doing similar work
- A change agenda that can feel imposed and irrelevant.

There were no simple solutions – no single action and no single stakeholder could resolve all issues. The report suggested four priorities:

- Work experience must match people's expectations
- The working environment must engage, enable and support staff
- People delivering public services should feel valued, respected and rewarded
- The impact on staff of the shift to a mixed economy needs to be actively managed.

The report was not all doom: it gave examples of good practice and stressed that much could be done locally. But it also highlighted that neither pay nor working conditions within the public sector were perfect. Hence, the report contained lessons for managing the shift towards a mixed economy.

Firstly, it revealed workers' priorities, which were mostly about being given the freedom to 'make a difference'. Secondly, it supported the case for public sector clients seeking new approaches to employment from their partners. Contract specifications and the scrutiny of bidders should avoid requiring the private sector to be a carbon copy of the public sector. Yet, where public authorities have been unsure how to evaluate a contractor's own approach, or even whether the procurement rules allowed this, they have tended to fall back on requiring the contractor to follow public sector practices. (Arguably, the promotion of secondment arrangements as an alternative to TUPE in some instances reflects a similar hesitation about moving away from public sector working practices.)

Thirdly, the report shed light on the trade union campaigns of the time against public service reform (which in turn diminished the collective appetite of all parties for working as social partners). Whilst targeting tangible aspects of the reform agenda, notably public private partnerships, the root cause of their deeper anger was a less tangible frustration with how the entire reform agenda was being managed.

Dave Prentis, General Secretary of UNISON, acknowledged this point when speaking alongside Alan Milburn at the launch of the CBI Statement of Intent on Improving Public Services through PPP.[15] The statement was significant in myth-shattering and scar-healing terms, with business explicitly rejecting the negative arguments sometimes put forward for PPP, such as 'private good, public bad'.

Rather the Statement set out what business saw as the positive reasons why public private partnerships can add value, by increasing diversity and securing the benefits of competition. The Statement also advocated progressive principles to underpin the development of PPPs, including the importance of good employment.

The Statement has been followed up by a series of publications, including a report[16] analysing the impact of competition on the delivery of local government services and a briefing note[17] written jointly by the CBI and the Commission for Racial Equality on including race equality considerations within public procurement.

The most complex policy debate in the second term related to the treatment of new employees, recruited directly by the private sector partner to work alongside TUPE transferees. Undoubtedly, the worst kinds of lowest price tendering, particularly under CCT, had cut prices at the expense of service quality and workers' terms and conditions, with the new employees suffering most.

But the reality of the current situation was more complex than those calling for a simplistic 'end to the two-tier workforce' sometimes acknowledged. For example, myriad terms and conditions exist within the public sector, such that a contractor would typically inherit a 'multi-tier' workforce, simply as a consequence of a TUPE transfer. Companies were also worried that any policy solution to the two-tier workforce would force them simply to replicate a public sector working environment. On the other hand, in raising such technicalities, business was sometimes perceived as complacent that instances of genuine unfairness should be allowed to continue.

All parties would probably accept that the process to find a solution was less than ideal: the quality of social partnership was not on a par with the earlier work to introduce Best Value and achieve TUPE certainty. The solution was the Local Government Code of Practice[18], requiring contractors to recruit their new starters on: 'overall no less favourable terms' than their TUPE transferees. The Code made it clear that 'overall no less favourable' does not mean 'the same' and that there remained scope for private sector innovation to improve productivity.

Within the subsequent Warwick Agreement,[19] negotiated between the Government and trade unions, a commitment was made to extend the principles within the Code across the public sector and to improve further the handling of workforce issues in public procurement. These commitments were reflected in Labour's Manifesto for the Third Term.

Finally, in 2004 a new Public Procurement Directive[20] updated the

rules, for example, by creating a Competitive Dialogue procedure and clarifying that relevant social issues can be taken into account in awarding public contracts. These improvements should make it easier to form progressive partnerships that aim for social outcomes and good employment.

2005 Onwards: Unfinished Business

2005 saw a return to structured social partnership in order to address the implications of the Agenda for Change (a new National Health Service pay and reward system) for employees of outsourced NHS facilities management services. The unions had been calling for these employees to be paid comparable wages to those on the new Agenda for Change (AfC) terms within the NHS. But the Government's budget for funding AfC did not cover the cost of doing this and the facilities management companies did not want to have a rigid model of public sector employment imposed upon them.

The solution[21] involves a staged process whereby private sector employees in specific facilities management jobs move on to terms 'overall no less favourable' than AfC NHS terms and conditions. The Government will meet the cost, affirming the principle that government is responsible for funding policy changes which fundamentally alter the environment in which contracts are let.

Emerging challenges across the economy, notably on pensions, create particular repercussions for public sector contracting which have yet to be addressed. The Labour Manifesto anticipated further work on the broader employment agenda within public private partnerships. And business would argue in any case that basic procurement practice still needs to improve, so that bidders are challenged harder to demonstrate exemplary employment practices while given freedom to innovate.

This model is challenging because it requires gaining the confidence of all stakeholders that flexibility will in practice mean allowing bidders to offer different approaches to employment, but always demanding high standards and seeking genuine value for money. It requires firms to prove that they can provide good employment –

including fair terms, training and development plus a working environment where they are free to 'make a difference'. It requires employees and trade unions to recognise the need for changes to working practices in order to improve service quality and productivity. The early progress of the social partners was instructive: regaining shared commitment and improving teamwork would certainly accelerate progress towards a progressive consensus around the use of public private partnerships to improve public services and promote social justice.

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1 *European public procurement directives*, implemented in the UK by the *Public Works Contracts Regulations 1991, Public Services Contracts Regulations 1993* and *Public Supply Contracts Regulations 1995*; also *Section 17, Local Government Act 1988*, prohibiting local authorities from taking into account non-commercial considerations in their tendering decisions.
2 *New Ways to Modernise*, Natalie Tarry, New Local Government Network, March 2005.
3 *Bates Review* – the first of two reviews of PFI conducted by Sir Malcolm Bates on behalf of the Government.
4 *Policy Statement No. 4 – Treasury Taskforce: Private Finance*, HM Treasury, 1998.
5 *Local Government Social Partners Joint Memoranda*, various, submitted to Government 1999 – 2001.
6 *Local Government Act 1999* placed a duty on local authorities to achieve Best Value; *DETR Circular* 10/99, issued 14 December 1999, contained guidance to Best Value Authorities on how to meet this requirement, which has since been updated by *Local Government Act 1999: Part I Best Value and Performance Improvement ODPM Circular 03/2003*, issued 13 March 2003, *and* its *addendum ODPM Circular 04/2004*, issued 1 March 2004.
7 *Section 19, Local Government Act 1999* and *Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 revised Section 17, Local Government Act 1988* to clarify that local authorities were permitted to take into account workforce matters that were relevant to securing Best Value or to handling staff transfers when tendering.

8 *Handling of Workforce Matters in Contracting* – the original guidance (DETR Circular 02/2001, issued 15 March 2001) has been updated and the current text forms *Annex C of the Local Government Act 1999: Part I Best Value and Performance Improvement ODPM Circular 03/2003* (plus *addendum* issued 3 December 2003).
9 *Transfer of Undertakings (Protection of Employment) Regulations 1981.*
10 *Statement of Practice on Staff Transfers in the Public Sector*, Cabinet Office, January 2000.
11 *Local Government Act 2003, sections 101-102; ODPM Circular 03/2003, Annexes C and D.*
12 *Staff Transfers from Central Government: A Fair Deal for Staff Pensions*, HM Treasury and Government Actuary's Department, 1999, subsequently attached as an annex to the Cabinet Office Statement of Practice on Staff Transfers, January 2000.
13 *Local Government Pension Scheme (Amendment etc) Regulations 1999*, effective 13 January 2000.
14 *Recruitment and Retention: A Public Service Workforce for the 21st Century*, Audit Commission, September 2002.
15 *CBI Statement of Intent on Improving Public Services through PPP*, launched at CBI National Conference, 26 November 2002.
16 *Delivering for Local Government*, CBI, March 2004.
17 *Public Procurement and Race Equality: Briefing for Suppliers*, CBI and Commission for Race Equality, July 2003.
18 Code of Practice on Workforce Matters in Local Authority Service Contracts: *Annex D of the Local Government Act 1999: Part I Best Value and Performance Improvement ODPM Circular 03/2003, issued 13 March 2003*.
19 *Warwick Agreement*, negotiated between the component parts of the Labour Party, including the Labour government and trade unions, July 2004.
20 *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*.
21 *Agenda for Change and NHS Contractors Staff: a Joint Statement*, Department of Health, NHS Employers, CBI, Business Services Association, AMICUS, GMB, Transport and General Workers Union and UNISON, October 2005.