

# **A guide to social enterprises, mutuals, co-operatives and privatisation**

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## **Stop the sell off of our public services and welfare state**

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## Introduction

This Tory-led Government are forcefully driving an agenda of privatising and cutting back our public services and welfare state; achievements that were won by working people after the Second World War.

This briefing gives Unite activists and members an overview of the language the Government is using as part of this policy agenda, outlines Unite concerns about Government actions, the impacts on service users and staff and suggests some steps that activists and members can take if there is the prospect of the service where they work being transferred out of the public sector.

Unite represents approximately 250,000 members working in health, education, local authorities, MoD and other government departments and the Royal Mail. Unite is committed to defending our public services and welfare state for all from the Government's deep and vicious spending cuts and attempts to dismantle our welfare state.



# The Government's Policy Agenda

*"There are 6 million people who work in the public sector at the moment. It would be very ambitious, but is not inconceivable, that at the end of the Parliament, 2015, you might have as many as 1 million workers who would be co-owners in some form of the public service entity that they're part of"* Francis Maude, Cabinet Office Minister, February 2011

## **The Government have made clear their intention to 'shrink the state'. But what exactly does this mean?**

A clear statement of intent about the future of our public services from the current Tory-led Government came from David Cameron in a Daily Telegraph comment piece, staking out his vision. The Government will "create a new presumption....that public services should be open to a range of providers competing to offer a better service" . This has been followed in July 2011 by the Government publishing their White Paper 'Open Public Services' which details how they intend to take their agenda forward. The approach of contracting others to provide our welfare and public services, rather than public bodies directly providing such services, is said to be "an urgent moral purpose" with only the military, core policing, intelligence services and the judges specifically excluded (although support and specialist services in these areas are thought to be ripe for contracting). This approach turns our public services and the administration of our welfare state into a series of competing businesses (which is outlined further in the next section). The goal is that public sector provision would be the exception, and private sector provision would be the norm.

At the moment one of the main methods the Government is currently using to push this agenda is to promote employee owned mutuals, co-operatives and social enterprise businesses in the future delivery of public services using the language of staff empowerment.

## De-Mystifying the language

Untangled below is what social enterprises, mutual's and co-operatives are, some of the jargon that this Government are fond of and how they are presenting their public service agenda.

### **Commissioning, competition and the 'diversity of providers'**

The Government believes that public services should all be run on market lines – so all aspects of services should be bought and sold. A central part of this is that rather than a public body, like a Council, hospital, school or the Government itself, directly providing a service to the public they look at all of

1 Public Finance, Minister calls for one million public sector co-owners, 24th February 2011

2 David Cameron, The Daily Telegraph, How we will release the grip of state control, February 20th 2011

their services and as much as possible they separate them up into individual pieces of particular services (or whole services) and contract (or 'commission') others to provide those pieces instead.

When a public body puts all these pieces out to contract it is then up to different organisations – staff organisations, voluntary and community organisations and private companies to compete against each other to win these contracts. In some cases for a particular service, such as healthcare, a number of organisations will be chosen to be on a registered list and individual members of the public will be given an amount of money they can choose to spend with one or more of these organisations. The idea is that the quality of services is driven up as these organisations compete against each other to win contracts and individual 'customers'; if you don't win contracts and customers then you don't generate any income for your business and it goes bust. The engineering of this competitive business environment between different organisations is what is meant by nurturing a 'diversity of providers'.

### Social Enterprise

'Social Enterprise' as a label has been attached to many organisational forms, and there is no rigid or fixed description – the term is being used and applied very loosely. Broadly though, we can say that they are businesses that trade for a stated 'social aim', with financial surpluses principally (but not necessarily exclusively) reinvested in that business.

### Mutual organisations

The TUC says that "Mutual organisations are either owned by and run in the interests of existing members, such as building societies, co-operatives and friendly societies, or owned on behalf of the wider community and run in the interests of the wider community". So a mutual will exist to serve a particular need or interest, and NHS Foundation Trusts are an example of a form of mutual ownership.

### Co-operatives

A co-operative is a type of business model which is owned by its members, and they also have a degree of democracy within their structures. The members may be customers, employees, residents, businesses, people who are part of the local community or a combination of these, depending on the legal model chosen.

### Privatisation

While there is not a precise definition of privatisation, academic definitions encompass state monopolies being de-regulated, the outsourcing of state responsibilities and the ending of services that were once offered by the state. In short, it is the transferring of services and assets out of the public sector.

In 'Open Public Services' the Government also introduced three different categories of how services can be privatised and the competitive business model of delivering services fully unleashed. Firstly, **individual services**, such as education, skills training, social care and housing support which individual

people could be given budgets for. Individual people will then choose what provider they buy their services from. Secondly, **neighbourhood services**, such as local environment maintenance, leisure facilities and other (traditionally council provided) local collective services which would be contracted out (presumably by the Council). This has been a feature, to varying degrees, of local government for the past few decades but what is perhaps new is the sheer scale and scope of what is now considered to be up for grabs. Thirdly, there are **commissioned services**, which are national services that cannot be devolved locally, such as prisons, tax collection, and welfare to work which the Government nationally would contract out. These three categories capture every type of public activity and service, and leave them all as potential targets for privatisation.

## How are the Government carrying out their agenda?

The first thing to note is that the exact details of how they are implementing their desire to create competition between a 'diversity of providers' in each area of our public services and welfare state vary from sector to sector. But the basic fundamentals remain the same, a wish to cut back and contract out as much as possible. In many areas this has also been accompanied by opening the doors to introducing, or charging greater, fees to access services.

There are, though, a couple of points we can pick out from across the public services. Previously only in the NHS, the 'Right to Provide' has been extended across the public sector. This gives employees – or groups of employees – the 'right' to create a social enterprise, mutual or co-operative that could compete against other organisations to win the contract to deliver the service in future.

The Government is also introducing several specific pieces of legislation covering different public services to enable a 'diversity of providers' and turn those public services into competitive business markets. For example, the Health and Social Care Bill will privatise the NHS and the Localism Bill allows members of the local community to 'challenge' the local authority that a service should go out to tender. The Academies Act vastly expanded the number of school academies – schools outside of the Local Education Authority – and introduced 'free schools', schools run by groups of people also outside of LEA control.

## Threats and Opportunities?

By invoking the language of empowerment – both of staff and local communities – the Government has sought to distance itself from accusations that it is creating opportunities for their business friends. The outsourcing business market in the UK is worth approximately £80 billion and in the Unite report, 'The Shrinking State', just a few of the examples of lobbying by the private sector to increase the use of outsourcing are given.

### **Support for Community, Voluntary and Not-for-Profit organisations?**

While they cite community social enterprises and employee owned organisations as the way forward, Government actions signal something very different. The language of local, community and empowering organisations is being used as a political tactic to disguise the real agenda – the privatisation and breaking up of our public services, and the winning of contracts by private companies. Despite the warm words of the Government, there are no exceptions for small, local, specialist organisations – a competitive business market is being created in which such organisations have the ‘right’ to compete head to head with large and multi-national private companies such as Serco, Capita, Veolia and many others.

It is worth briefly looking at the Work Programme from the Department of Work and Pensions, frequently mentioned as an early and positive example of the ‘Big Society’. But as the TUC have noted, “Of the 18 preferred bidders for 40 prime contracts, the voluntary sector was awarded two. The public sector got one. Fifteen went to the private sector, including SERCO, A4E and G4S. Worth also noting that the two voluntary sector consortia that won bids were effectively voluntary/private partnerships, with Careers Development Group bidding with multi-national employment and training provider MAXIMUS and Rehab partnering up with Interserve, described as “one of the world’s foremost support services and construction companies””.

When contracts are being decided on cost, and at a time of the most savage public spending cuts since the inception of the welfare state they will be, large private sector companies have the capacity to tender at a very low price because of economies of scale and on a ‘loss-leader’ basis in order to get their foot in the door. In this game the winners are likely to be the large multi-national companies.

It is important to point out that Unite is not opposed to social enterprises, mutuals and co-operatives per se, and indeed the trade union movement has a history of supporting mutuals and co-operatives and Unite itself has a large membership in the Community, Voluntary and Not-for-Profit sectors. Unite has always been clear; community, voluntary and not-for-profit organisations have an important role to play in supporting the delivery of high quality public services, but as an additional resource not a replacement for high quality public services. And we do not support the invoking of such organisations to be used as a fig leaf for the real agenda of outsourcing to create larger profits for private companies.

The competitive market model of contract and funding awards has seen a race to the bottom in pay, terms and conditions for those working in the community, voluntary and not-for-profit sector. Experiences in the Community, Youth Workers and Not-for-Profit sector have raised significant concerns about the ‘contract culture’; where an organisation’s income becomes dependent on winning and delivering government and public sector contracts it can imperil the independent advocacy role of the organisation.

Unite understands that many staff may be attracted to the idea of setting up their own social enterprise, mutual or co-operative to take over the running of certain public services. But a word of warning is needed – even where these organisations are initially established with the best of intentions by public sector staff, staff are simply being given the ‘right’ to compete against others to win contracts to deliver services now and in the future. Even where the initial contract is won, this tendering process is one that will regularly have to be endured and it carries no guarantees of success. Organisations will be up against large multi-nationals and, as mentioned above, government actions so far indicate that the endgame is that contracts will be decided on cost, squeezing specialist organisations.

### **Staff empowerment?**

The ambiguity and different organisational forms that mutuals, social enterprises and so on can take also allows the Government to define some organisations as mutuals even when they are 50% owned by private investors. For example, Circle Healthcare is held up by the Government as a good model of employee-ownership. But it is 50% owned by private finance companies, including Blackrock which has the highest paid CEO on Wall Street.

The creation of this competitive, contracting market to deliver public services has been initially tried in the NHS, so Unite has experience of what employee involvement has actually meant, despite the Government rhetoric of seeking to ‘empower’ staff. What has happened over the past couple of years, and acts as a stark warning to others is that Unite members have reported that a great deal of time and money was spent telling NHS staff that they had the ‘right’ to set up a social enterprise and greatly encouraging them to use it, while downplaying the many positive aspects of remaining in the NHS. The desire of a senior manager, or a small handful of people, who wish to set up a social enterprise may be at odds with the majority of staff who do not wish to be pulled into a private social enterprise company and out of the NHS. Unite therefore believes there should be a requirement to have a staff ballot to gauge the actual level of staff desire to establish a social enterprise or mutual organisation.

In the NHS, Unite campaigned in each workplace where a social enterprise business was proposed for a staff ballot to take place. In some cases PCTs shamefully refused. In many instances where staff ballots did take place the views of staff were clear – in Luton a ballot of all staff affected found that 97% were opposed to transferring out of the NHS, but management tried to continue pushing staff to transfer. Transferring staff to a social enterprise business without conducting a ballot, or flagrantly disregarding a clear ‘no’ vote goes against the purported ethos inherent in social enterprises of staff participation, engagement and empowerment. If there is not even a commitment to ask and respect the views of staff about something as important as transferring their employment, what is the likelihood of staff being able to participate in meaningful decision making further down the road?

# The Problems with Privatisation

**As mentioned above, most academic definitions agree on the basic fundamentals; privatisation is the act of transferring a responsibility outside of the public sector. As also outlined above, in its implementation of this agenda the Government is determined to create the 'Big Society' market – where any organisation can compete to win a service contract or the most number of 'consumers'. So what does all this mean for us as a society – all of us rely on public services in many areas of our lives – and for the staff that work in these services?**

*Below we have outlined the many reasons why the privatisation of our public services and welfare state is deeply worrying.*

**Cost:** privatised public services, conversely, tend to cost more for the taxpayer. This is because there is an associated bureaucracy with privatisation. For example, contracts have to be drawn up and monitored, contract disputes sorted out, lawyers fees paid. Also, even though a Council service, health, social care or other services have been outsourced, it doesn't mean the risk associated with delivering that service has been outsourced.

For example, a Council couldn't let a waste disposal firm go bankrupt and local waste collection to stop. The Council would have to step in – and the private companies know this. So while the cost of running a particular service may be forced down by a company wanting to increase its profits, the overall burden for the public may increase.

That the risk still resides with the contracting organisation, not the provider, can be seen with the recent examples of Southern Cross social care, and social housing maintenance firms Connaught and Kinetics who have all gone bust.

**Fragmentation and profiteering threatens the quality and quantity of services:** One of the most important consequences of privatisation is that it fragments, rather than integrates, different bits of our public services and welfare state. The whole system is built on a foundation of separate, competing business units that do not work together, lest they give someone else a competitive advantage and lose future income as a result.

The incentive to run costs as low as possible so that an organisation is more likely to win contracts and customers builds certain incentives that are not desirable in delivering public services for the public (and individual) good; cost-cutting leads to cutting corners, such as in the quality of resources, number of staff and increasing the volume of 'customers' seen to the detriment of the quality of those contacts.

For services such as healthcare, social care and even education and supportive services, it can mean 'cherry-picking' the easy people to deal with, with less complex needs and therefore cheaper to support, treat, educate and help.

**Threatens the continuity of services:** this takes on two aspects.

Firstly, as Unite's report on the outsourcing of public services found, "provision of services in the private sector is associated with a greater incidence of short-term job tenure, and of long-hours working practices, than either the public sector or the voluntary sector". This high churn of staff represents a lack of continuity and a loss of knowledge build up to an organisation that will affect the quality of services that the public receive.

Secondly, in a competitive market system providers can go bust. As if to illustrate the dangers of the competitive market system for our public services they were advocating, the Government released their White Paper 'Open Public Services' on the same day that it was finally announced that the large social care provider Southern Cross had gone bust and that landlords – often councils – were taking back the residential buildings, many of which were in a state of disrepair, in order to stop social care residents being made homeless.

**Accountability:** when services are run by public bodies they can be held accountable by local people through their elected representatives. But when services are contracted out there are lots of areas, such as how much a private company is paid for different functions and some of their responsibilities, which can start to fall under 'commercial confidentiality'. This means the company – and the local authority – doesn't have to release this information under Freedom of Information requests.

**Flexibility:** if we take council services as an example, when council services are 'in-house' and provided directly by the council, the council can adjust services with more flexibility to meet local needs without having to undergo costly contract renegotiations with third parties. For example, services can be designed to support other over arching council priorities, such as being environmentally friendly, increasing local employment and providing apprenticeships. But these arguments would apply to any public body that is outsourcing its services.

**For more details on these arguments, you can refer to:**

*'The Association for Public Service Excellence: A guide to in sourcing'* and the Unite report *'The Shrinking State'* by Howard Reed at

**[www.dontbreakbritain.org](http://www.dontbreakbritain.org)**

You can find out information on what is happening to public services across the country at the TUC's Touchstone blog at **[www.touchstoneblog.org.uk/category/public\\_services](http://www.touchstoneblog.org.uk/category/public_services)**. and their *'Cuts Watch'*



# Implications for Staff

No matter what name is attached to the outsourcing – whether it is a ‘social enterprise’ business or another private company taking over services, there are employment implications for staff who are changing employer. We have outlined the possible detrimental impact on local public services from privatisation above, but we know there is also likely to be a profound impact on terms and conditions, possibly pensions and even trade union recognition. Ultimately, the quality of a service depends upon the experience and motivation of staff, and staff enjoying their work.

- Staff that are transferred from public sector employment should be ‘TUPE transferred’: they would retain their current terms and conditions at the time of transfer. These staff would no longer be automatically covered by national negotiating arrangements in their sector, meaning they would not be entitled to any future pay uplifts or agreed changes to the core, national conditions. Continued coverage under national agreements of all staff could be inserted as a clause in the tendering proposal put out by the contracting organisation, and would need to be included in the evaluation criteria applied to the bids that companies submit to try and win the contract. Finally, it would need to be inserted into the contract signed by the contracting organisation.

For more information on ‘TUPE’ visit the ‘Resources’ section of the Unite website and download our legal guide *‘TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006’*.

- New staff are not automatically entitled to be employed on the same pay, terms and conditions as staff that transferred from the public sector. This raises the prospect of the creation of an unfair, two-tier workforce where employees carrying out similar roles receive different pay, terms and conditions. This can also be used to erode the terms and conditions of staff who transferred from the local authority over time. As above, clauses to avoid this situation would have to be included when the contract for the public service was tendered, evaluated and awarded. Though it has been revoked as a piece of statutory guidance, the text of the ‘Two-Tier Code’ could be used for this purpose. See the ‘Valuing Public Services’ Unite webpages for this.
- To negotiate pay, terms and conditions on behalf of staff, trade unions need to be recognised by employers. In many sections of the public sector there are currently national negotiations between the trade unions, and employers. This national strength places the trade unions in the best possible position to argue for improvements in pay, terms and conditions for staff and for action on issues such as workload, violence at work, equality and tackling discrimination.
- There is nothing to compel the myriad of different providers that could be contracted to deliver services to recognise trade unions. Recognition needs

to be sought separately with each employer which can often be a lengthy process. While some outsourced employees may be able to secure higher wages Unite believes the continued drive to splinter and erode trade union strength will leave many worse off. Continued recognition should be included as a clause in the tendering proposal put out by the contracting organisation, included in the evaluation criteria applied to the bids that companies submit to try and win the contract and inserted into the contract signed by the contracting organisation.

- Evidence from Unite and Unison shows that employment standards are driven down in the race to reduce costs and make the contract to deliver services as cheap as possible. Even in the relative 'boom years' for the not-for-profit sector in 2005-07, price competition was driving down funding and staff pay and conditions. This has intensified recently as spending cuts begin to bite and contracts are renegotiated.

## Actions for Shop Stewards and Members

**Our campaign at a national level to keep our public services public will be hollow unless it includes grassroots, local campaigning to defend services. In many cases, local campaigns against spending cuts and to defend public services are springing up as the actions of this Government start to hit people hard.**

Throughout the campaign your Regional Office can support and advise you, so work closely with them.

Reps should link up with local community campaigns and organisations to build a broad, mass campaign against privatisation and cutting of local services by involving the local community. The weight of this campaign can then be used to effectively intervene in key parts of the process your organisation will have to go through when it tries to privatise services.

Even if you initially feel despondent about your chances of success it is still important to campaign and involve the public. Having this on your side will put you in a much stronger bargaining position to protect your members' terms and conditions if the outsourcing goes ahead. But you may also surprise yourself with what is possible. Actions for Unite reps should take place as far as possible in alliance with other trade unions to ensure that staff build a united front.

You can also use the interactive website <http://falseeconomy.org.uk> to find out about local campaigns in your area, and to tell others about your campaign.

# Campaigning

- Unite workplace representatives and members can use the Unite Reps Campaign Toolkit to help them put together a winning campaign; <http://www.dontbreakbritain.org/pdf/Job%203185%20DBB%20campaign%20guide.pdf>
- The more members you are talking on behalf of, the more seriously you will be taken. There will be staff in your organisation who are not in a trade union – encourage them to join! <http://www.unitetheunion.org/join>
- If your service is a local council service, or has a link with the council, think about accessing the Association for Public Service Excellence 'Best Value' consultancy. This APSE consultancy service involves them coming into a council and working with staff trade unions, management and councillors to discuss and brainstorm how services can be improved and made more cost effective. Look at the APSE website (<http://www.apse.org.uk>) or contact the Unite national office for more information.
- Draw up a campaign strategy with the help of your Regional Officer to build activity in the run-up to, and during, the decision making process against the outsourcing of services, or against certain contract winners who you feel will be detrimental to local services and the future of the staff. You should develop an understanding of what is driving your organisation's decision making process so you can decide on what the most effective way of pitching your campaign message is.
- Arrange for members to discuss and then draw up a plan about how services can be improved without privatisation. This may cover issues such as improved training for staff and the need for increased resources in targeted areas and better ways of working that are beneficial for staff and service users and the organisation as a whole.

Any campaign strategy has to involve building a broad alliance of local people, elected representatives and local organisations as suggested above. Some activities you should consider are below - the list is not exhaustive and is just to get you started;

- Develop campaign materials, for example, posters, leaflets and a simple factsheet about what is happening to local services.
- Draft a model letter to circulate around your supporters and encourage them to send letters to the local MPs, local Councillors and the Chief Executive of your organisation.
- Take a group of staff to meet local MPs and explain your concerns.

- Involve the local media– contact press, radio and any local blogs, see if they are interested in covering your campaign. If you have a public meeting coming up they may let you have a comment piece before the event, or be interested in covering the event itself.

Explanations of how your organisation is considering options over how services will be delivered in the future – this includes the possibility of private sector companies taking over services – need to be brief and simple. You should simply explain what you and the staff feel the dangers of pursuing these options would be and the impact on the local community. It is helpful if local service users, local Councillors, MPs and others could give quotes to the media about why they are opposed to privatisation. Let members and supporters know when articles are appearing in local media; encourage people to write letters to the press and leave comments underneath articles and blogs online.

**Remember you can get and adapt posters, leaflets and stickers for your campaign from your Regional Office.**

## The outsourcing process

Firstly, while your Regional Office and Unite nationally can support you, don't forget your fellow reps in nearby organisations – talk to people at your RISCs, regional workshops, over email, Facebook and on the telephone. Many Unite members have been through this process – they all have good and bad experiences to share and that you can learn from.

The points below are intended as basic starting steps in dealing with an outsourcing process – it is not an exhaustive list and there will be differences from organisation to organisation. But hopefully it will get you started in the right direction.

- Make sure you have a copy of any of the service review documents, e.g. any associated 'efficiency reviews' and Equality Impact Assessments. If your organisation has still not conducted an Equality Impact Assessment ensure they do, and that it is regularly reviewed and amended as appropriate. The Equality and Human Rights Commission produce guidance on how organisations should conduct EIAs. Remember that the strengthened public sector duty means that public authorities have a duty to advance equality between groups and that they may also be required to show that they have assessed the impact to equality of any proposed change in a timely manner, i.e. before it is carried out.

### Questions...

- What options for service delivery is your organisation considering, and for which services?

- How is the decision making process of your discussion going to work? Are they going to decide on a favoured option for future service delivery and then invite tenders if they decide to involve private or third sector organisations or are they going to invite broad tenders on all options before they decide which to opt for?
- When the organisation is reviewing the different options for service delivery will they be including analysis of the transactional costs associated with contracting with outside organisations? For example, the monitoring of the contract to ensure services are being properly provided and associated legal costs. Will 'in-house' bids be considered?
- Will the organisation be considering the risks associated with outsourcing as part of their decision making process? For example, what if the services that were contracted for are not being delivered or just not adequate? What would happen to staff and services if the new provider collapsed? What are the complaint and contract enforcement procedures that service users, staff and others could trigger?
- How is any contract going to be effectively monitored?
- What impact will this transfer have on the place of work or pattern of work for affected staff?
- Will the new provider commit to any national agreements that cover the concerned staff? And will the new provider honour future improvements to pay and conditions of employment and other collective agreements for staff?
- How will the provider access HR expertise?
- Does the provider have a strategy for maintaining a safe working environment that encompasses health and safety structures and risk assessments?

As during any re-organisation process you will need to ask key questions and establish principles about how that re-organisation and contracting is going to take place ahead of the final decision.

- How are staff and their trade unions going to be involved in the decision making process? Will there be proper facilities time for trade union representatives during the decision making process and the re-organisation of services?

It is crucial that certain things are included in your organisation's criteria for evaluating bids. They should evaluate prospective providers to ensure their bids at least include;

- A clear and unambiguous commitment to working with the recognised trade unions.
- A commitment to underlying principles on good employment practice when contracting with the private sector and against the development of a two tier workforce.
- Honouring future improvements to pay and conditions of employment and the continued coverage of national and other collective agreements for staff.
- Details of how education and training will be delivered and funded.
- Concrete plans to address staff shortages and a commitment to achieve and maintain manageable workloads.
- Policies and actions to tackle institutionalised discrimination to ensure a diverse workforce at all levels of the organisation and carry out public sector equality duties.
- A commitment to 'best practice performance' standards. In many areas there may be sector specific plans or professional bodies that give guidance on these.
- Public assets – such as buildings – should be 'locked' to the public body, so that the company who wins the contract doesn't get the assets as well.





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