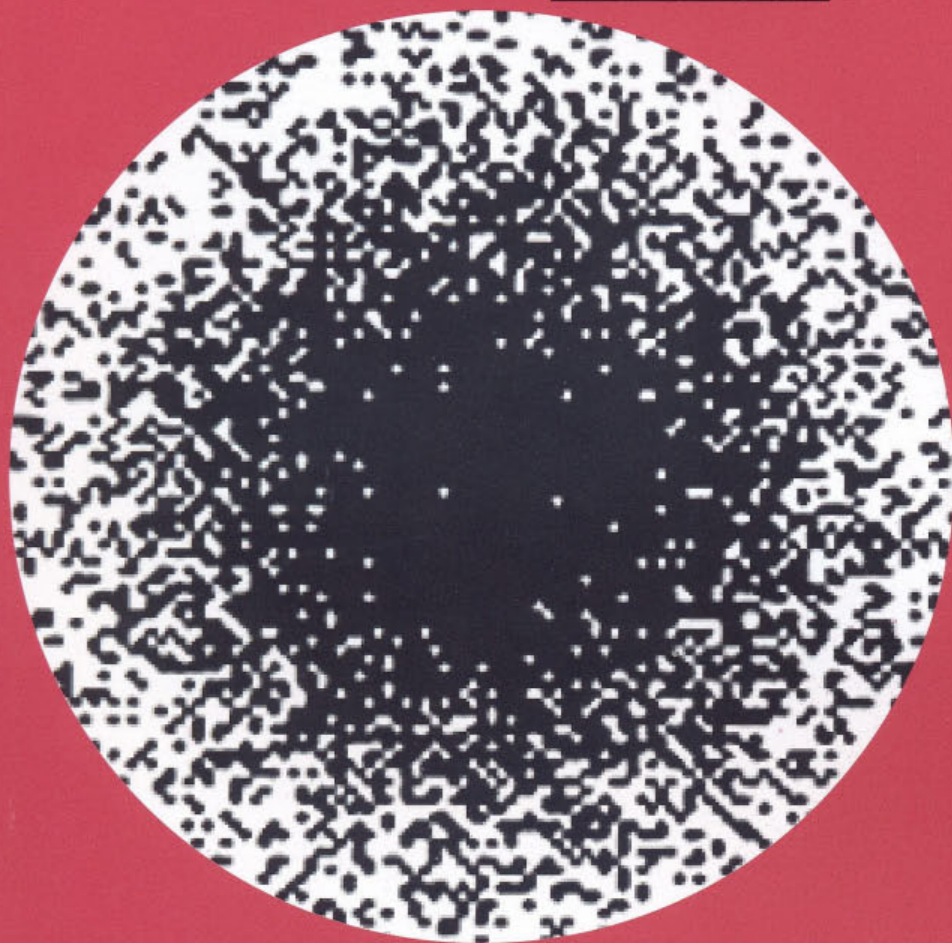


Trade Union Strategies for Opposing Externalisation



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UNISON

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The Centre for Public Services is an independent, non-profit organisation. It is committed to the provision of good quality public services by democratically accountable public bodies implementing best practice employment and equal opportunities policies.

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This report is designed to provide branches and trade union officers with the key arguments against externalisation, either by the transfer of white collar services or the trade sale of direct service organisations (DSOs), to the private sector.

Part 1 sets out the disadvantages of externalisation and its potential impact on the local authority, staff and users. It summarises the advantages of in-house services which should be a central feature of a campaign to stop externalisation.

Part 2 describes trade union strategies at different stages of the externalisation process drawing on the experience of branches who have had first hand involvement at a local level.

The final part is a list of questions, covering the Transfer of Undertakings Regulations (TUPE), conditions of service, pensions and other key issues, which can be used to demand answers from local authorities and potential host contractors.

This briefing paper should be read in conjunction with the accompanying 'Policy Report on Externalisation' which examines the motives and interests driving externalisation, the impact on local authorities, services, staff and trade unions.

What is externalisation ?

'Externalisation' is a new word in local government. It is a form of privatisation. Externalisation differs from contracting out in that it involves the transfer of work and assets, the award of a long term contract but with no in-house bid. The 'host' company represents the private company to which the council is seeking to sell the service. 'Hosting' is another word for externalisation.

Externalisation means that a council effectively sells part of its operations to a private firm. Externalisation represents a deliberate decision by the council to end direct service provision and reduce its influence, including democratic accountability, over an area of work.

Externalisation is a long term commitment by a local authority to rely on private contractors and consultants to deliver services instead of employing its own staff. This pushes the authority into an enabling role (the council purchases services from private and voluntary organisations and takes a neutral view about in-house provision). Service delivery and quality is reliant on the ability of the authority to design, specify and enforce contracts.

Definition of terms

The following words may also be used in relation to externalisation:

Externalisation: the sale of a department or section to a private company. It avoids compulsory competitive tendering (CCT) because there is no in-house bid and tendering does not have to comply with CCT regulations.

Trade sale: Outright sale of a direct service organisation (DSO) or service to a private contractor.

Host: A company which is seeking to acquire a council department or service.

Harmonisation: A term used by private companies to describe the process of dealing with differences in terms and conditions between those transferred under TUPE and the firm's existing terms and conditions.

Joint venture: Sale of council service to a private company which would establish a new company in which the council would have a percentage share stake.

Managed transfer: Another way of describing externalisation.

Contracting out: Contract for provision of a service is awarded to a private contractor.

Outsourcing: Another word used for contracting out.

Key points

- ◆ Act early, don't wait for the issue to gather momentum.
- ◆ Most externalisation proposals originate from officers so make sure councillors know about any proposals and are provided with the concise case against externalisation.
- ◆ Be prepared to gather the evidence to challenge the arguments that externalisation is 'inevitable', the 'only alternative' or the 'only way to protect jobs'.
- ◆ Externalisation is privatisation; services sold off now are unlikely to return to the public sector.
- ◆ Members may sometimes be divided and confused about what they believe is in their long term interest. A regular flow of information, analysis of the issues and full explanation of the implications of alternative policies is essential.
- ◆ It is vitally important to separate the public interest in the future of the service from the different interests of individual managers, staff, consultants and contractors.

Part 1

Arguments against externalisation

This part of the report will help branches to set out the arguments against externalisation whilst at the same time presenting the case for in-house services. It covers:

- ◆ The disadvantages of externalisation
- ◆ The advantages of in-house services
- ◆ Developing public services

The following arguments can be used by trade union branches and related to the particular local circumstances members may be facing in cases of externalisation of white-collar services and trade sales of DSOs.

The disadvantages of externalisation

A substantial case can be made against a policy of externalisation because:

- ◆ The authority will permanently lose direct control over services and the benefits of flexibility across in-house services.
- ◆ The authority will lose the experience and knowledge of key groups of staff. This is only available to the local authority after transfer for as long as staff stay with the company, they remain engaged on the council's contract work and the company retain the contract. There may also be training and staff development implications.
- ◆ It closes all other options including the possibility of the in-house service winning contracts under CCT.
- ◆ The money received in the sale is unlikely to have any significant impact on the council's overall financial situation. The price obtained is likely to be below the real value of the service, equipment and facilities being sold.
- ◆ The authority may lose the security of supply of the service, particularly if firms turn to more profitable work elsewhere.
- ◆ The company operating the privatised service is likely to want to diversify the range of activities and services. It will be looking for new markets and is likely to start competing for work in other council departments. Externalisation will not be confined to one specific service. Once one service is privatised it is likely to set in motion further externalisation.
- ◆ Unless specified in the contract, the local authority will have no control over staffing levels, pay and conditions of service and working conditions, [beyond ensuring a TUPE transfer], for those providing the service.
- ◆ The company could eventually transfer work to offices elsewhere. It may have other offices in the region and changes in workloads may force it to rationalise its operations involving the often unacceptable relocation of staff.
- ◆ The authority will lose access to potential profits (trading surpluses) generated by the service. Once privatised, surpluses (or losses) are the property of the private company.
- ◆ The authority will lose its ability to compare in-house costs against the public and private sector: without an in-house service it must rely solely on market prices determined by private contractors or consultants.
- ◆ The authority cannot directly implement corporate policies including equal opportunities. The local authority must rely on getting all its policies clearly written into the contract and allocate sufficient resources to monitor and evaluate their effective implementation.
- ◆ Unit costs may rise in remaining council departments because of reduced economies of scale or because of a private contractor's charges for 'client' functions.
- ◆ The loyalty of staff inevitably moves to the host company. Once staff are employed by a private company their allegiances and personal interests inevitably become bound up with the private company.
- ◆ The authority may be liable for contract penalties if there is a greater reduction in the workload than estimated at the time the contract is negotiated.
- ◆ Trade union organisation and representation may be weaker and more fragmented.

The advantages of in-house services

In arguing the case for in-house services it is important that this is done honestly. Any existing problems should not be swept under the carpet but confronted; the case should be made that issues and problems should be debated within the local authority prior to deciding on the options for the service.

- **Direct democratic control and accountability of service delivery**
Direct services can be responsive to users in a way that is difficult once services are privatised. In addition, elected members can use the council structures to ensure accountability in a way that is not possible with private companies.
- **Maintaining quality of service**
The contracting system is not the most effective way of controlling the quality of services. Local authorities have achieved better levels of performance under CCT than the private sector, with fewer failures and terminations of contract.
- **Good quality management**
Direct service management in local government has become increasingly efficient over recent years and developed new ways of working. In-house managers can work to maintain an integrated service for all council departments and are able to implement corporate policies at service level, whilst maintaining a strategic overview of services across the authority.
- **Equal opportunities and quality of employment**
Local authorities provide better employment practices than the private sector. Local government has been a leading advocate of equal opportunities policies and practices, something which the private sector has not generally promoted.
- **Maintain close client-contractor-user relationships.**
The damage caused in the split created by contracting out services is minimised where services are retained in-house and there is close working between the direct service organisation and client officers.
- **Obtaining lower prices than would otherwise be the case.**
In-house services serve to regulate market prices by comparing local authority costs with those of other public bodies and the private sector.
- **The retention of experienced staff, including professional and technical expertise, within the authority.**
It is vital that the local authority retains the ability to obtain this expertise with a public service perspective rather than relying on advice solely from private sector interests.
- **Organisation of in-house services driven by service needs, not profit objectives.**
In-house services are organised and operated within the local authority's corporate policies of meeting social needs and fulfilling its statutory duties. Private companies' first obligation is the maximisation of profit and satisfying shareholder interests.

Taking a longer term perspective

The Labour government is intending to replace CCT with a new Best Value regime. This will require a balance between efficiency, quality, effectiveness and economy in service provision. Local authorities will be required to demonstrate a continuous improvement in all services, not just those covered by CCT. Competition features strongly in the best value framework. Local authorities will need to have strong proof that they can meet the best value requirements if they do not put services out to tender. Benchmarking, comparisons with similar local authorities and improved management techniques may not be enough. Externalisation may not comply with the Best Value requirements unless UNISON branches and officers make it do so.

Strategy to retain services in-house

Many local authorities have developed corporate strategies for competitive tendering. The key ingredients of a strategy include:

- ◆ Political control of the CCT strategy
- ◆ Corporate strategy needed which covers all services
- ◆ Joint working with the trade union over key areas of strategy
- ◆ Rigorous procedures and full use of European Directives and CCT regulations
- ◆ Detailed assessment of the market and future trends for the service
- ◆ Support for direct services and retaining labour in-house.

Services can be won in-house if the authority adopts this strategic approach. A defeatist attitude to CCT is often used to 'justify' externalisation.

European legislation

Although externalisation is not subject to the CCT rules, it is affected by the Public Services Contract Regulations 1993 which came into operation in the UK in January 1993. The directives apply to all contracts worth over £158,000 and mean that all contracts have to be advertised in the Official Journal of the EC. Tender criteria need to be clearly set out, with minimum and maximum timescales. Under the law, contracts should be awarded to either the lowest tenderer or

the most economically advantageous (most local authorities use the latter). The directive also sets out ways of vetting contractors to make sure they are fit to be awarded the contract.

Developing public services

Externalisation often raises questions about the need to restructure or reorganise the service, make better use of information technology and develop public service or business planning. If there are shortcomings in the way the service is currently organised and operated then these must be put on the agenda. Not to do so will only add substance to the arguments in favour of externalisation. Branches can play a key role in highlighting problems and solutions within the public sector.

The following public service principles could help to achieve more effective and democratic services:

- ◆ Quality targets for all services, rather than constant organisational change.
- ◆ Regular service reviews looking at quality of employment, financial performance, implementation of corporate and service-related policies.
- ◆ Development of a best practice approach which is based on quality specifications, stringent contract conditions and effective contract compliance.
- ◆ Social and economic audits examining the public costs of policies and their social and environmental impacts.
- ◆ Replace commercial values and terminology with public service ethos.
- ◆ Services which are provided by staff who are fully trained, properly paid, properly valued and supported, and who can use their skills and experience in improving and developing services.
- ◆ Commitment to effective involvement and consultation with trade unions and the workforce in the management of change.

It is important that the case against externalisation is not based simply on comparing the existing service with what is 'offered' by externalisation. It should include proposals on how the service can be improved within the public sector.

Part 2

Trade Union Strategies

Externalisation of white collar services and the trade sale of DSOs can and must be stopped. The continued erosion of the welfare state in the form of privatised local authority services is an issue for all council staff and service users, not simply those affected by externalisation proposals.

The following advice is drawn from a wide range of local authorities which have considered and then rejected externalisation, or have proceeded to privatise services. It is divided into five sections:

- ◆ Developing a branch strategy
- ◆ Campaigning to stop externalisation
- ◆ Taking action in the tendering process
- ◆ Negotiating externalisation transfers
- ◆ The post- externalisation period

Developing a branch strategy

The views of members

Branches have taken one of two positions. One has been outright opposition to externalisation where branch officers have sought to lead a campaign to stop it. In some other cases, the branch position has been determined by the views of the staff involved in a potential externalisation or trade sale.

Branches need to consider:

- ◆ the accuracy of information supplied to staff about the overall financial and competitive position of the service.
- ◆ the interests and views of members in other council departments who may be affected by the knock-on effects of externalisation.
- ◆ the interests of managers and staff in the particular service relative to those of the local authority generally.

Deciding on the objectives

The branch will also need to decide the main objectives based on an assessment of the situation. These could include:

- Stopping proposals for externalisation or a trade sale and ensuring that the authority makes a (re)commitment to in-house services.
- Ensuring that the 'avoidance' of CCT is not used to justify externalisation or to weaken the corporate CCT strategy.
- Highlight alternatives to externalisation or a trade sale such as retention in-house, a consortia of neighbouring local authorities, a joint or agreed bid from a neighbouring local authority.
- Educate and inform trade union membership on the key issues.
- Ensure TUPE is not used to 'politically legitimate' externalisation and allow councillors to avoid their employment responsibilities.

The branch may decide, following a detailed assessment, not to oppose externalisation and that the best course of action is to try to negotiate a comprehensive range of contract clauses, assurances and benefits for members.

The branch must develop a strategy. It cannot effectively represent the interests of members or implement branch policies without assessing the situation, determining the views of members and identifying strengths and weaknesses. It can then draw up a strategy and action plan.

Campaigning to stop externalisation

Start immediately

It is very important to start as soon as externalisation is, or is likely to be, on the agenda. The longer you wait, the more that officers and/or Councillors may get committed to the policy and consultants and advisers hired to prepare for privatisation. Don't accept statements that 'we are just testing the market' or 'assessing whether the private sector are interested'.

Externalisation has been stopped after it has been advertised and private firms have been shortlisted but the general rule is that the later you start, the harder it will be to stop it.

Recruit and strengthen union organisation and representation in the sections concerned

In one authority, the externalisation of financial services revealed that only 20% of the staff were UNISON members. Management had created a climate of fear so that non-members were afraid to even be seen talking to union reps.

Organise regular meetings of shop stewards

These will be important to pool information, counter rumours, plan regular workplace meetings to keep the membership informed, and to develop a strategy and timetable.

Contact councillors

Branches must ensure that councillors have an understanding of the issues—contact them immediately there are moves towards externalisation. Remember they will be briefed and receive information from senior managers—often the very ones with a vested interest in externalisation or a trade sale. Offer to hold a seminar for councillors to discuss the issues. Try to identify those for and against externalisation at an early stage so that you can target resources.

Maintain a regular flow of information to members

Regular information is essential to prevent rumour and propaganda from management and private firms from creating a snow-balling effect leading to assumptions about the 'inevitability' of externalisation. This can lower morale and leave those opposing externalisation isolated and confused. Branches and shop stewards should be prepared to counter management rumours quickly and to explain alternatives coherently. Remember, some members may stand to gain from externalisation whilst others will lose, so getting the facts out directly to members is crucial.

Trade union consultation prior to externalisation

In several cases trade unions have been given full access to council meetings and papers concerning externalisation. Companies have also verbally made large promises in terms of staffing and services. 'The company gave all the right answers at the right time' (Trade union organiser). Trade union influence is weakened by externalisation. However, it is clear that terms and conditions have been reduced sooner in cases where trade unions were not consulted or involved in the sale and the aftermath.

Ensure the group of staff affected have adequate trade union representation and branch or full-time officer involvement at all stages.

Demand union presentation to staff and councillors

Demand that the branch is given the opportunity to make a presentation to staff and councillors at the same time as consultants make their presentations. This gives an opportunity to put the union case and to counter immediately the usually optimistic picture presented by private companies.

Joint trade union strategy

A joint trade union approach is very important to prevent fragmentation of the union position. Unfortunately, there have been examples of disunity where some unions have been against externalisation whilst others have supported it. There have also been examples of unions calling for the contract to be awarded to different contractors.

Use the existing joint consultation arrangements or, if necessary, establish a new liaison committee specifically to coordinate the union response to externalisation. If unions adopt different positions then the workforce is very likely to be divided and uncertain about the key issues.

In one authority the trade unions worked closely in the preparation for the trade sale and this was considered to be a strength in terms of the post-externalisation period and negotiation with the company. It was also clear that the company realised that there was a need to inform and work with the trade unions to ensure the successful operation of the contract. It is in the context of strong joint union work that trade union membership has been maintained and all the trade unions are recognised. In addition, time off is given for trade union duties, although mass meetings have to be held outside works time.

Developing a plan of action

There are various components to be considered:

Political lobbying: Informing and lobbying councillors is very important but it is usually not enough on its own.

Legal action: In some circumstances, recourse to legal action to try to stop externalisation may be a possibility. However, this is usually a long and costly process and rarely results in fulfilling the original intentions. The threat of legal action is usually more valuable tactically and in terms of gaining publicity.

Preparation of technical case: Drawing together all the political, technical, financial and public interest arguments against externalisation is very important. A briefing may be prepared as part of the case drawing on other experience.

Building alliances: Externalisation will impact on service users and community organisations. Their support could be very influential with councillors. Service users based in local communities should be informed of the externalisation plans. Groups of users may include internal users within the council and local community organisations. Working with user organisations will strengthen political support for trade union demands and proposals. Issues of particular relevance to users may include the future level and quality of service, access to the service and costs to various local groups. It may be appropriate to work with local organisations, hold public meetings, prepare publicity materials focussing on the interests of users, the implications for service provision, the ability to influence policy and control of the service.

Strengthening alliances within the union: Externalisation can cause divisions within the workforce especially between white-collar and manual and craft members. The other potential division is between the client and contractor side. It is vitally important that union members ensure that membership is fully informed of any proposals and that the impact on various groups of staff is discussed in forums which include all members. It should be remembered that the impact of externalisation will not be confined to a single group of staff since there will be implications for the whole organisation and an inevitable weakening of trade union organisation if a group of staff is sold off to the private sector.

Industrial action: Various forms of industrial action could be considered in order to apply

pressure on the authority, gain publicity and strengthen trade union organisation. In planning the action, consider how it will contribute to the campaign against externalisation.

Analysis of the case for externalisation

One of the first tasks is to obtain copies of all relevant committee reports leading up to and including the decision to proceed with or to consider externalisation. Examine the line of argument and the 'evidence' supporting it as this will help determine a trade union response and strategy.

Financial evidence

If the authority claims that externalisation is the only financial option or that the DSO or in-house service is suffering losses, then demand an audit of the accounts or current position. If necessary, obtain an alternative view of the figures. You should also closely investigate claims that the service requires large sums of capital investment which can only be obtained through privatisation.

Market myths and realities

There are two main aspects to this. Firstly, the DSO or in-house service may claim that externalisation is the only option which will open up access to new markets and enable the organisation to bid for other work in the public and private sectors. The branch should identify the full range of public sector work which the DSO or in-house service could bid for in other public sector organisations as this may be too narrowly defined in a deliberate attempt to bolster the case for externalisation. In some circumstances consortia or joint bids in conjunction with neighbouring local authorities may be an advantage. Remember, the DoE has been forced to take a more conciliatory position on cross boundary tendering*.

Secondly, potential host companies and consultants traditionally exaggerate the scope for expansion in the region. They will normally identify a long list of potential additional work in the public and private sectors but there is a world of difference between doing this and actually winning contracts, particularly given the high level of competition and fee cutting in certain sectors such as the construction industry. Even some of the large externalisations have failed to win additional contracts. TUPE will apply to other public service contracts. Branches should challenge contractors to prove where the additional work will come from.

*Also see Cross Boundary Tendering, Enforced Tendering Advice No 3, National Coordinating Committee

TUPE protection

A common feature of externalisation is the need to counter the views of councillors and many senior managers that TUPE affords full protection and therefore externalisation poses no threat to jobs or conditions of service. As the accompanying policy report on the analysis of externalisation shows, this is far from reality. Trade unions will need to make a particular effort to ensure that councillors and managers have a clear and up to date understanding of the reality of the TUPE regulations. Use the recent examples of changes in staffing levels and terms and conditions detailed in the policy report, following externalisation to make your point.

Additional protection may be possible as a number of recent legal cases show (the North Yorkshire (Ratcliffe), St. Helens (Wilson), BET Catering (Ball), and Knowsley cases explained in the policy report). However, the legal route is long and arduous, the results of which are uncertain. Nevertheless it is important to use the cases to argue for stronger application of TUPE prior to externalisation taking place and in negotiations once staff have transferred to a private contractor.

Ballots

The branch may want to hold its own ballot of members to determine their views. The timing of ballots is very important because the local authority will usually wish to carry out its own ballot. The wording is very important—what are members and/or staff exactly being asked. Try to get approval of the questions and options being put forward. If the branch is opposed to the wording and/or timing of the ballot then one option is to call for a boycott.

Officer involvement in management buyouts

Make sure the authority has a clear corporate policy to deal with the formation of management buy-outs (MBOs). Whilst negotiating, members of a buy-out team should not be allowed paid time off to organise the MBO or use central support services to assist planning the MBO. The buy-out team should not be involved in specifying contracts and evaluating tenders whilst at the same time being potential bidders for local authority contracts. Assets must be sold at market value which must be valued independently. Contracts should guard against asset stripping by including clauses that if either assets or an entire concern is sold, some or all of the increase in value can be clawed back*.

Countering management consultants reports on externalisation options

Management consultants, financial advisers and lawyers are widely used in the justification of, and preparation for, externalisation. Consultants have been used at a very early stage in most externalisations. For example, Lincolnshire County Council set aside over £300,000 for consultants in the preparation for sale of two DSOs, Lincway and Translinc. It is very important for union branches to try to intervene before consultants are engaged because their work usually only serves to reinforce management's commitment to externalisation. Consultants are rarely given a brief which examines all the options, including retaining the service in-house.

Branches should consider what action to take to:

- ◆ stop the use of consultants
- ◆ change the terms of reference
- ◆ influence the choice of consultants
- ◆ seek a meeting with the consultants
- ◆ seek agreement to obtain a draft of the report

Countering management's analysis and information

Management will usually present the case for externalisation based on one or more of the following claims:

- 'The need to avoid CCT'
- 'The whole DSO may collapse if we don't win certain contracts'
- 'Competition is intense, we probably won't win the contract and jobs can best be safeguarded by externalisation'
- 'Private companies will win additional work to help retain jobs'
- 'TUPE will protect the workforce'
- 'Savings and the capital receipt will help to fund core services'

All these assertions will be used to try to justify externalisation and will need to be challenged and countered with facts and alternative analysis. They are naive and simplistic but are sometimes effective in obscuring the real issues and vested interests of those promoting externalisation. As soon as there are rumours about externalisation being on the agenda, don't wait. Get information out to members and to councillors.

Demand that all the options are examined

There are always alternative options available to a local authority irrespective of the position adopted by a particular service. It is essential that all the potential options are identified and examined using comprehensive criteria.

*See 'Management Buy-outs: public interest or private gain', Audit Commission, 1990

Ensure the authority does not abandon CCT preparation

As long as the CCT legal obligations remain, branches should ensure that corporate and departmental preparation for tendering remains in place and is constantly assessed and improved. Abandonment of this process will only result in more services being considered for externalisation. Using the lack of preparation for competitive tendering as a justification for externalisation is probably the weakest argument of all but may influence councillors who will be concerned about the authority meeting its statutory obligations and avoiding a legal challenge.

Inclusion of non-CCT services in the externalisation package

Many externalisation proposals have included services which are not CCT defined activities or are at the end of the current tendering timetable. Consultants generally argue that since they will eventually face tendering they might as well do so now, or they argue that their inclusion makes for a more 'attractive' package. These are clearly crude arguments but the branch will have to make the case against their inclusion.

Prepare the case against externalisation

Preparing a report which draws together the evidence and arguments against externalisation can be very powerful. Several branches have prepared such reports. In one case, a six page report from UNISON was circulated with committee papers to councillors; in several others a comprehensive report was prepared and circulated to councillors, staff and the media. These reports have typically included chapters covering:

- the local context and background to externalisation
- options for the council
- implications for the local authority
- implications for staff
- the cost of externalisation
- the case for in-house services

A report can be prepared by the branch itself or by drawing on the experience of other organisations.

Portsmouth City UNISON produced a four page newsletter providing information about the shortlisted contractors and a question and answer guide to the sell-off of the DSO.

North Yorkshire UNISON submitted a six page report to the Highways and Transportation Committee in 1995 which had the following sections:

- ◆ Retaining in-house services under CCT
- ◆ CCT may not apply
- ◆ Examination of options
- ◆ Externalisation will lead to more services being

- privatised later
- ◆ Staff will have limited protection under TUPE
- ◆ Effect on administrative and clerical staff
- ◆ Where is the additional work?
- ◆ Limited savings
- ◆ Quality of service
- ◆ Forced separation of client and contractor
- ◆ Change in private firms
- ◆ Public sector potential
- ◆ Loss of work for local firms
- ◆ The advantages of in-house services
- ◆ Authorities which have rejected externalisation

Promoting best practice and model in-house services

Drawing on best practice and examples from other local authorities can be very helpful in establishing the credibility of alternatives. This should include best practice internal reorganisation and restructuring and also evidence of any 'failed' policies.

Developing public service plans

A plan should be an essential part of the in-house strategy. It should be based on the public service plan model (Public Service and Business Plans, Public Service Practice No 5) and not on a traditional business plan approach which will lead to further commercialisation. The branch should ensure full participation in the planning process.

Investigating the contractors and consultants

Make sure that the authority is willing to share information about who responds to advertisements, which contractors have returned questionnaires and which ones have been shortlisted*. Do not assume that client officers have the same information. Use this information to answer the following questions:

- ◆ What is the firm's longer term strategy and which other services is it interested in?
- ◆ Has the firm's other subsidiaries got contracts in neighbouring authorities?
- ◆ Are there other public or private sector contracts on the horizon which may be the real reason for the firm's interest in externalisation?
- ◆ How will externalisation affect the tendering of similar services by neighbouring authorities?

Find out what has happened where externalisation has already taken place—contact UNISON branches in the authorities (listed in the accompanying policy report) for the latest information.

*Profiles of companies can be obtained from the Public Services Privatisation Research Unit, UNISON, 1 Mabledon Place, London WC1H 9AJ (Tel. 0171-388-2366)

Taking action in the tendering process

Demand full involvement and consultation throughout the tendering process, if necessary negotiating an information agreement.

Tender invitation criteria

In addition to the standard criteria which cover financial resources and performance, company organisation and ownership, information should be sought on:

- ◆ Public sector and local government experience.
- ◆ Track record in TUPE transfers.
- ◆ Management experience of the services being tendered.

Trade union information to contractors

It is vitally important that trade union branches make direct contact with contractors and consultants to:

- ◆ Inform them of the branch view concerning any planned externalisation or trade sale
- ◆ State your commitment to in-house service
- ◆ Try to persuade them not to bid
- ◆ Inform them that if they decide to proceed to bid they must understand the commitment to TUPE
- ◆ Inform them that the branch will be seeking additional clauses in the contract to cover employment, equal opportunities and other corporate policies.
- ◆ Emphasise the strength of union representation and organisation in the service.

Visits to tenderer's offices or headquarters could also be considered to relate the above points more directly. The support of tenants and user organisations should also be sought. Some branches have also considered placing adverts in the trade press to warn potential tenderers.

The Sheffield UNISON branch wrote to all shortlisted tenderers following the Council's decision to abandon consideration of externalisation of design and building services informing them of the Council's decision and trade union opposition to externalisation in principle. This was to ensure that the firms received a clear message that externalisation was a dead issue.

Client, legal officers and the firms concerned will usually claim that trade union action in contacting potential tenderers is 'anti-competitive'. However, the CCT regulations will not apply and trade unions are separate and independent bodies from local authorities.

Components of the tender

The specification and contract conditions should include all of the items listed below:

1. Quality plan
2. Method statements
3. Service improvement plan
4. Management policies and practices
5. Health and safety arrangements
6. Equal opportunities plan
7. Corporate policy implementation
8. User/customer care plan
9. Best practice/procedures manual
10. Training and staff development plan
11. Public service or business plan
12. Information plan
13. Client liaison
14. Contract start-up

Contractors should be required to submit detailed written proposals on all these matters. Branches should ensure that the authority does not relax or adopt a different but less stringent tendering process because CCT is not applicable.

Tender evaluation criteria

Externalisation of white collar services or the trade sales of DSOs are covered by European regulations in the form of the Public Services Contracts Regulations 1993. CCT regulations do not apply because there is no in-house bid. Local authorities have a great deal of scope within the regulations to define the criteria by which they will evaluate tenders. However, it is essential that these are identified either at the tender advert stage or at the invitation to tender.

Beware of managers using criteria plucked from private sector outsourcing reports and journals. These are often narrowly defined and relate only to the interests of private firms.

The list below provides examples of the criteria which can be used. They are divided into 5 headings covering service quality, financial issues, employment, local authority corporate policies and impact on the local economy.

Service quality

Technical ability
Quality of service
Quality management systems
Management experience of all services in the contract
Ability to fulfil future technical needs of the authority (five years and beyond)
Access to specialist technical advice
Security of future supply of service
Public service business plan
Risk of service failure
Reliability of service delivery
Service record in facilities management and service contracts
Flexibility to client and user needs
Capacity and ability to innovate
Proposals for developing the service
Quality of research and intelligence
Quality and nature of parent organisation
Quantity/quality of equipment and resources
Dependency on sub-contractors/consultants
Monitoring of performance and quality standards
Environmental policies and sustainability

Financial issues

Capital and revenue—costs and benefits over five or ten years
Realistic valuation of assets
Net capital receipt
Debt write-offs
Level of any contract and other subsidies
Client costs and savings
Cost of contract variations and service improvements
Monitoring costs
Impact on support service costs
Full cost of transfer and longer term costs of service

Employment

Commitment to TUPE
Commitment to maintaining staffing levels, terms and conditions
Comparable pension benefits
Trade unions recognition and negotiation
Training/career development
Workplace conditions
Equal opportunities policies
Health and safety policies and practices
Recruitment practices
Additional company benefits

Local authority corporate policies

Corporate strategy of the local authority
Local authority accountability and control
User needs within the authority
External user needs
Community requirements

Local economy impact

Protection of jobs in the local economy
Impact on local spending power, investment and use of local providers
Effect on local labour market
Social impact
Impact on other local authorities at local and regional level

Preparing a response to the tender evaluation report

Try to obtain a copy of the tender evaluation report, if possible before the committee meeting. It may be an advantage to prepare a written response outlining trade union criticism of the methodology and conclusions. Calling for a decision to be deferred could provide additional time to lobby councillors.

Key issues could include:

- ◆ **Treatment of savings:** The calculation and assumptions behind the 'savings' figures will require careful scrutiny. They are often rolled-up over the contract period and presented to councillors as an attractive lump sum.
- ◆ **Scoring and weighting of criteria:** Check the methods used and the relative importance given to the criteria.
- ◆ **Staff views conflicting with management's evaluation:** If externalisation is to proceed, the staff's preferred contractor may not be the same one being promoted by management. Much will depend on the bids received and on the real or perceived differences between them.

Negotiating externalisation transfers

Comprehensive contract

Demand that the authority includes contract clauses which will strengthen employment rights, terms and conditions after transfer. The authority is not constrained by the CCT regulations and can place greater responsibilities on a contractor which will reinforce TUPE and, because they are built into the contract, will last for its entire length rather than a few months. Branches can demand that all existing terms and conditions are written into the contract together with the authority's corporate policies on matters such as health and safety, equal opportunities, anti-poverty and environmental issues.

It is vital that branches get involved with the contract and transfer terms and apply pressure on the local authority. If the local authority refuses to supply any information or is unwilling to discuss the contract the branch should consider publicising the issues and demanding proof of a comprehensive contract in the public interest. The important issues include:

- ◆ TUPE transfer
- ◆ Redundancy agreement
- ◆ Comprehensive transfer of all employment conditions
- ◆ Trade union recognition, consultation arrangements and facilities
- ◆ Implementation of local authority corporate policies
- ◆ Investment commitments
- ◆ Subcontracting
- ◆ Monitoring performance

Insist on a recognition agreement with the company before transfer

This will serve two purposes. Firstly, it shows the company that the union is strong and that it is committed to continue serving members after transfer. Secondly, it puts pressure on the company to conduct full and proper negotiations from the start. Thirdly, it indicates that any hidden plans to derecognise the union and/or cut jobs or change terms and conditions soon after transfer would be difficult to implement.

Pension assessment

Insist that all companies get a financial assessment of the pension scheme by the Government Actuary.

Employment policies

Seek information from the company on staff turnover and the level of temporary and agency staff.

The post-externalisation period

Trade union organisation

Trade union organisation can be fragmented by externalisation. Follow members into the private sector to ensure that members in the externalised company are properly serviced.

Seek to recruit new staff into the union. Build on the strengths of organisation of TUPE transfers. This can help to establish a union presence immediately after transfer. The Portsmouth City branch distributed special recruitment leaflets soon after transfer. Seek to recruit and retain stewards in the union. This is vitally important to sustain organisation and avoid weakening the position of the union and transferred staff.

Branches need to ensure that private company members are represented on the branch committee.

Recruitment of subcontract staff: Some successful contractors have subcontracted work soon after externalisation. Efforts should be made to recruit these workers too.

Contract compliance: Monitoring developments, performance and costs after transfer will be very important. The Ealing UNISON branch has played a major role in highlighting Brown & Root's problematic performance, its failure to win other contracts, redundancies and changes to terms and conditions. Make sure that any developments are followed up. A DSO transfer often leads to contract losses after externalisation as contracts come up for renewal on a piecemeal basis.

Trade union representation after externalisation: Some contractors will only negotiate with trade union representatives within the company or with full-time regional officials, refusing to recognise local authority branch officials.

Client resources: Externalisation often leads to client services being under-resourced. The branch may want to demand additional staffing in order that the client can fulfil the duties demanded by the contract.

Pay and conditions of employment

Keeping to TUPE obligations: Identifying who has been affected by staffing cuts in the post-transfer period, particularly the impact on administrative and clerical staff, trainees and female staff is very important. Contractors may try to impose cuts in bonus and enhanced rates, changes to shifts and other similar changes.

Recognition agreements: These will transfer under TUPE but it will be important for the branch to apply pressure to maintain and develop trade union recognition and negotiating procedures.

Support for members made redundant: The contractor may be looking for ways to reduce staffing costs. Branches should be prepared take any necessary action on behalf of staff whose employment is threatened.

Part 3

List of questions for local authorities and potential host contractors

The following is a list of questions to be used by branches to question potential 'host' companies, councillors and officers in the authority. The list draws on the experience of Kingston UNISON and other branches who have been through this process. We have strengthened the wording when necessary and added further questions. Local authorities, as transferors, also have a responsibility to satisfy themselves that they fully consult the staff and trade unions under the TUPE regulations. They must also satisfy themselves that the contractor is willing and able to meet their obligations under TUPE.

The questions are not confined solely to jobs, terms and conditions. Externalisation is such a fundamental, and usually irreversible, policy that it is important that answers are sought to a series of basic questions. They should be framed, and answers sought in sufficient detail, to cut through the hype with which such policies are usually presented.

Information should be sought from and questions put to the following:

- the companies concerned
- client officers from other local authorities which have externalised services
- trade unions branches in other local authorities which have externalised services and those which are currently considering proposals
- councillors and senior officers in the authority*

Some basic questions

1. What are the precise aims and objectives of externalisation?
2. What evidence is there that the authority, adopting a best practice strategy, will not be able to win all or a large proportion of work under CCT?
3. How can a private sector firm, operating in the same economic climate, provide any more security of employment than the local authority when both are heavily reliant on the council's capital programme.

4. What specifically can be achieved by externalisation which cannot be achieved by an effective and efficient in-house service?
5. What are the results of a full cost benefit analysis of externalisation?
6. Is the local authority prepared to specify in the contract that jobs, pay and conditions of service, including comparable pensions, are maintained over the contract period?
7. What is the expected impact on the local economy and unemployment levels?
8. What will the environmental impact be of privatising the service?
9. What are the wider public costs to the welfare state in terms of, for example, increased state benefits?

Previous externalisations

- ◆ Has the company been involved in other externalisation proposals with other local authorities or other parts of the public sector? If so, what was the outcome of these proposals?
- ◆ Did any redundancies result and, if so, what percentage of staff were affected, and how did the company deal with the matter?
- ◆ What percentage of staff are still in the company's employment?
- ◆ What has been the performance of the service since externalisation?
- ◆ Has the firm provided a comparable pension scheme?
- ◆ Has the firm continued to recognise the trade unions and is there collective negotiation over terms and conditions?

Future strategy

- ◆ Why is the company interested in acquiring the assets of this authority and how does this relate to the company's longer term strategy?
- ◆ What is the company's strategy for each of the services being considered for externalisation, for example, architecture, highways, engineering, quantity surveying?
- ◆ Does the company intend to compete for CCT contracts?

*Profiles of private contractors can be obtained by branches from the Public Services Privatisation Research Unit, UNISON, 1 Mabledon Place, London WC1H 9AJ (Tel: 0171-388-2366)

Organisational matters

- ◆ How will the department and service fit into your organisation?
- ◆ What is the intended structure for the management of the transferred department?
- ◆ Will the transferred department have complete devolved financial and accounting responsibility?
- ◆ To what extent do you require a consensus amongst staff in favour of their being transferred to your company?

TUPE

- ◆ What is the company's policy with regard to implementing the TUPE regulations and how would the company comply with these regulations?
- ◆ Does the company agree that the TUPE regulations should apply for the length of the contract?
- ◆ For how long are you prepared to guarantee employment to transferred employees?
- ◆ How would you manage the transfer process?
- ◆ What are the company's redundancy terms?
- ◆ Who will be responsible for monitoring the contract with respect to compliance with the TUPE regulations?

Administrative and clerical staff

- ◆ The department has its own in-house administrative, clerical and finance staff. Will your company require the full support staff currently employed?

Employment policies

- ◆ Will all staff remain in their present posts after transfer, or will they have to undergo interview and selection before being offered a post?
- ◆ What is the company's policy regarding the transfer of staff to other offices or contracts operated by the company? What happens to employees who do not wish to or are unable to transfer to another location?

Conditions of service

- ◆ Has the company studied the employee handbook for the authority? Are you aware of all our existing terms and conditions of contract and employment?
- ◆ Will you honour existing council arrangements including flexi-time, job sharing, part-time employment, annual leave entitlement, London weighting, car allowances, standby payments, conditional overtime etc?
- ◆ What arrangements will be made for those with council car loans and will your company reimburse employees for any increase in interest payments?

- ◆ Council employees presently receive annual wage awards and career increments. What are your company's criteria in awarding wage increases? How are they applied and to whom? At what time of the year do they occur?
- ◆ Do employees participate in profit sharing, share ownership or other incentive awards, when are these awarded, are they applicable to all staff, and how are staff eligible to participate?
- ◆ Our existing terms and conditions of employment are the result of a tried and trusted method of collective bargaining. How does your organisation react to this concept?
- ◆ When and if you seek to change existing terms and conditions of transferred staff, how do you negotiate and with whom?
- ◆ There are council staff who are entirely dependent upon public transport for their travel to work and for whom the location of a new office must take account of frequent and reliable bus and rail services. What assurances can you give that the location of premises will take account of these matters?

Pensions

- ◆ What arrangements will be made to ensure that the pension scheme will be 'broadly comparable' in all aspects to the current local authority scheme?
- ◆ Will the council and/or contractor provide staff with independent financial advice on the comparability of pensions.

Equal opportunities

- ◆ Does your organisation have an equal opportunities policy?
- ◆ How does your organisation implement its equal opportunities policy?
- ◆ Who has senior management responsibility for implementing equal opportunities?
- ◆ How will you ensure that the Equal Opportunities Commission Code of Practice on Equal Pay is followed?
- ◆ What equalities monitoring procedures does the company have?

Training

- ◆ What type of training opportunities are available to staff?
- ◆ What opportunities are there within your organisation for the career development and promotion of existing staff?
- ◆ Does your company intend to offer training opportunities to clerical and administrative staff?

Trade union organisation

- ◆ Does your company recognise the right of staff to be members of a trade union?
- ◆ Does your company recognise and negotiate with trade unions?
- ◆ What facilities will be offered to trade union representatives and stewards?

Staff involvement

- ◆ Does your company seek the regular views of staff on working methods, procedures, assessing contract and/or company performance?

Conclusion

Other questions can be formulated and added to this list. Try to word questions carefully so that it is clear what you are asking. If you get evasive, short and brief answers then this can be taken as reflecting the company's attitude. If you don't get adequate answers then reword and repeat the questions.

Use the response to these questions as part of the strategy outlined in Part 2.

Useful sources of information

- Audit Commission,
'Management Buy-outs: public interest or private gain', 1990
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'Study of Alternatives to the Externalisation of Transline and Lincway Public Service Units', March 1996.
- Centre for Public Services for UNISON, *'Externalisation of Design and Building Services: Sheffield City Council'*, 1994.
- Centre for Public Services for Coventry and West Midlands UNISON, *'Assessment of Externalisation Proposal: City Engineers, City of Coventry'* 1994.
- Centre for Public Services for Ealing UNISON, *'Putting Public Services at Risk'* 1994.
- Department of Environment Press Release, *'New scope for local councils to harness private finance'* 21st October 1995.
- Equal Opportunities Commission, *'The Gender Impact of CCT'* 1995.
- GMB, *'Brown and Root in Ealing—externalisation in crisis'* 1997.
- Hereford and Worcester UNISON, 'A report on the proposed externalisation of the Civil Engineering Consultancy' 1995.
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- Newcastle City UNISON, *'Potential Impact of Externalisation of Leisure Services'*, 1996.
- Surveyor, *'Fight for survival: Engineering Consultancies'* 19th October 1995.
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