



London Borough of Barnet

Failure to Assess Options

for

Future Shape of the Council



**European Services
Strategy Unit**

(Continuing the work of the Centre for Public Services)



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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services, which began in 1973.

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Main conclusions

1. **The Council has failed to identify the range of organisational and delivery options and evaluation criteria, nor has it carried out a rigorous options appraisal.** Members are being asked to adopt a one-model approach, with the implication that all other options are unsuitable. The Council may claim that they are 'only' agreeing to a detailed assessment of one model but an options appraisal will be required for all Business Cases and procurement. An external Gateway Review would expose this flawed process.

The Department for Communities and Local Government (DCLG), Office of Government Commerce (OGC), Local Government Association (LGA), Public Private Partnerships Programme (4ps) and the Improvement and Development Agency (IDeA) has requirements and good practice guidance for this process. **The Council should therefore carry out a full options appraisal now to meet these requirements and make the most effective use of resources.**

2. **The report fails to justify why a joint venture model is the best option for Barnet.** The consultant's background report, commissioned by the Council, merely focuses on the legal and operational niceties of a joint venture structure.
3. **The Council will be failing in its fiduciary duty to secure value for money if it proceeds without fully examining other options and carrying out a rigorous appraisal. Furthermore, to proceed to a Business Case, a procurement process and organizational change without this being underpinned by a full options appraisal could leave the Council open to judicial review and performance criticism under the Comprehensive Area Assessment.**
4. The Council is proposing a strategic council/joint venture/service delivery vehicle model in Barnet **without any public consultation.**
5. It appears that **other public bodies in Barnet have not been formally consulted.** The report does not contain the views of the Police Authority, the Primary Care Trust, Barnet and Chase Farm Hospitals NHS Trust, Barnet College, Middlesex University, Barnet Jobcentre and other public bodies.
6. The Council is being asked to agree in principle to the mass transfer of staff to a joint venture vehicle or service delivery vehicles. The report finally reveals the Future Shape agenda when it states the aim is not *"to simply outsource the services that are currently provided"* – **the plan is to hive off almost all council functions and staff.**
7. The Council has stated that TUPE would apply to *"future movement of staff from the council to the proposed joint venture and/or other vehicles"* (para 6.3) and *"is committed to only working with partners that have admitted body status, or can offer a pension scheme better than the local government one"* and to the Code of Practice on Workforce Matters. However, **the Council have not monitored or enforced the Code for staff who have been previously transferred.** For the past three years the Trade Unions have been trying to ensure the Council takes this matter seriously, promises have been made but nothing has been done.

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8. UNISON has produced detailed response to Barnet's draft Procurement Strategy 2008-2011. It identified significant gaps and flaws, which make the procurement policy 'not fit for purpose' and concluded that radical changes and improvements are urgently needed. A PricewaterhouseCoopers review of nine contracts revealed that client and contract management is inconsistent and inadequate. The Council should be engaged in an improvement programme before it considers options let alone a proposal to outsource virtually all services and staff.
 9. The Future Shape proposal implies that the voluntary sector and/or social enterprises may be involved in service delivery. Voluntary and social enterprises do not have the expertise, resources and experience to run most council services. Many are unwilling to compromise their advocacy role to bid for contracts. They will continue to have an important role in some elements of service delivery but it is false to pretend that Barnet Council can implement the strategic council/joint venture/service delivery vehicle model using voluntary organisations and/or social enterprises.
 10. The report is devoid of any consideration of democratic governance, accountability and scrutiny of the alliance partners, joint venture and service delivery vehicles.
 11. The proposal makes reference to user and community participation except as customers – there is no recognition of the government's empowerment initiatives and what effect the proposed model will have on community organisations in Barnet.
 12. The strategy of in-house improvement and innovation recommended by the trade unions (see UNISON Briefings No's 1 – 6) has been ignored to date. This approach remains a viable option, which should be fully explored as a matter of public interest and fiduciary duty. Barnet trade unions are committed to working with Members and management to explore this option.

Recommendations

- 1. The recommendations in the Cabinet report should be replaced by "Agree to undertake a comprehensive options appraisal on the future responsibilities, organisation and structure of the Council in participation with public sector partners, service users, staff and their representative organisations."**
- 2. The appraisal should include in-house options and bids.**
- 3. The council adopts the secondment and TUPE Plus employment models for future staff transfers.**

Introduction

This report examines the implications of the Future Shape proposals for council services, staff and other public bodies in Barnet, the failure to examine options and the lack of evidence to support the proposals.

Failure to undertake options appraisal

The Council is being asked to agree to *“develop a detailed assessment of the overall model for public service commissioning, design and delivery.....procuring a capacity vehicle.....and a number of service delivery vehicles”* (Report to Cabinet, 3 December 2008) but:

- No other options have been identified – the report sets out only one model.
- No evaluation criteria
- No options appraisal process
- No service user/community organisation, public, or staff/trade union consultation in the identification or appraisal of options

This approach by the Council ignores the detailed requirements and guidance published by the Department for Communities and Local Government (DCLG), Office of Government Commerce (OGC), Local Government Association (LGA), Public Private Partnerships Programme (4ps) and the Improvement and Development Agency (IDeA). This guidance is too numerous to detail in this report.

The Council will be failing in its fiduciary duty to secure value for money if it proceeds without fully examining other options and carrying out a rigorous appraisal.

Furthermore, to proceed to a Business Case, a procurement process and organizational change without this being underpinned by a full options appraisal could leave the Council open to judicial review and performance criticism under the Comprehensive Area Assessment.

Public sector takeover

Barnet Council is proposing the *“development of a pan public-sector strategic commissioning role is the key element in the future shape of the Council”*.

“The future Council should be strategic rather than operational, focused on convening and working with its partners to prioritise and commission the public services that should be provided in the borough, rather than delivering services itself.” (para 9.3.1)

There is no democratic mandate for this approach. Other public bodies in Barnet have not been consulted, debated or consented to this model.

“Senior officers in the Council should be the ‘senior officers of the whole borough’ working across current organisational boundaries, leading programmes of work relating to key problems and challenges rather than service departments.” (para 9.3.1)

Outsourcing and privatisation

The Joint Venture will consist of private, public or voluntary sector partners and *“work closely with markets to test and develop models of service delivery. It would not*

deliver services itself but would be responsible for managing the alliances procured” (para 9.6.1 and 9.6.2).

We estimate that the strategic council model will require nearly 4,000 Council staff to transfer to either the Joint Venture Company or to the ‘procured service delivery vehicles’, leaving a few hundred staff in ‘strategy’.

Furthermore, Future Shape proposes “**pan public-sector strategic commissioning**” (para 9.4.2) which means the separation of commissioning and service provision across all public services in Barnet. This will mean **the outsourcing of hundreds of staff in police, probation, health, higher education and employment service in Barnet.**

The Council has stated that TUPE would apply to “*future movement of staff from the council to the proposed joint venture and/or other vehicles*” (para 6.3)

A standard TUPE transfer is not good employment practice because it does not provide adequate protection for terms and conditions of transferred staff nor does it cover pensions. UNISON Briefing No 3 (amended) set out the advantages of secondment and a TUPE Plus agreement, which must form the basis of any future staff transfers.

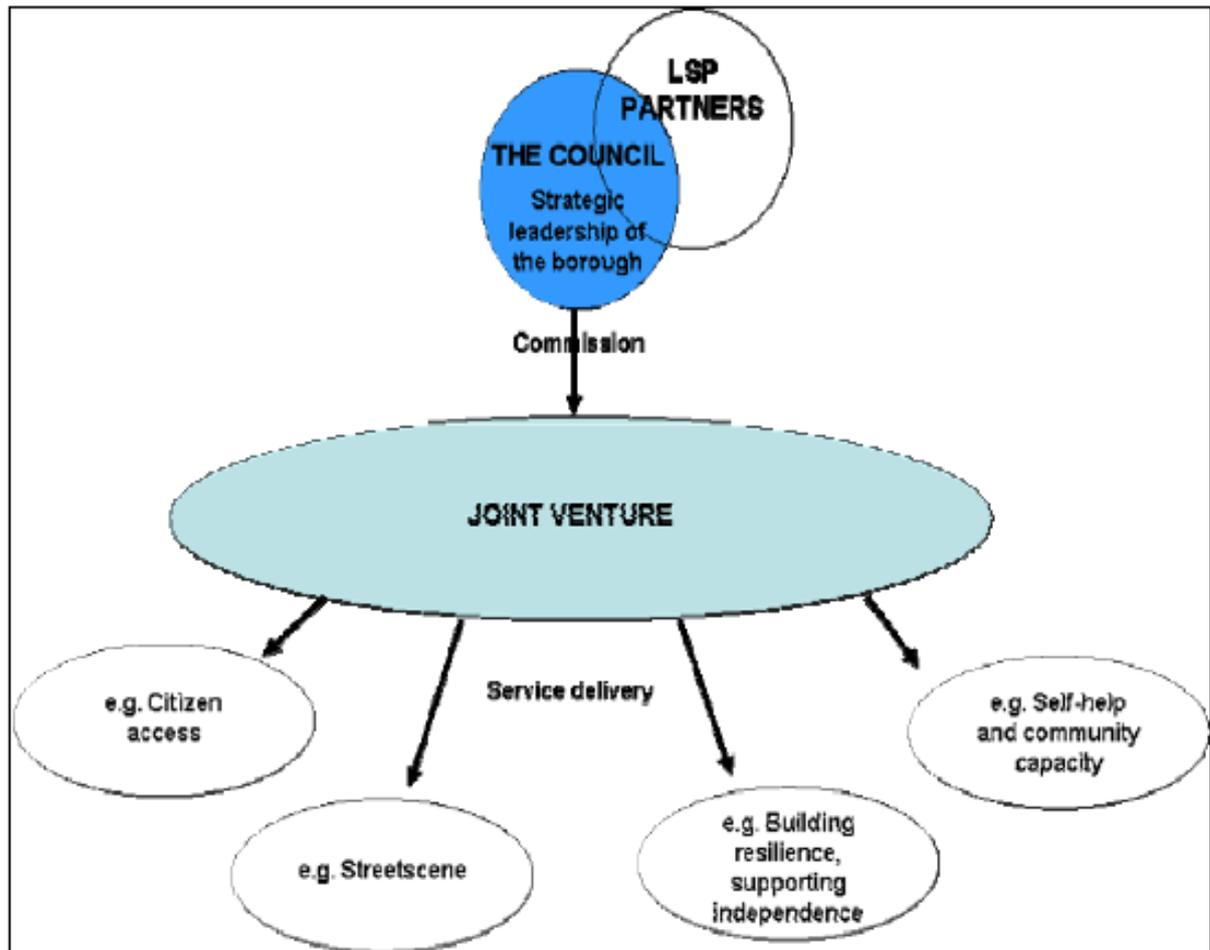
The trade unions have sought a commitment to TUPE Plus but to date we have not had a formal response to our TUPE Plus proposal. The Council says it is “*is committed to only working with partners that have admitted body status, or can offer a pension scheme better than the local government one. It is also committed to the Code of Practice on Workforce Matters, which means that staff transferring under TUPE to a partner will receive the same nationally negotiated pay awards as they would have received had they remained in local government*” (Councils Future Shape web page, 30 November 2008).

The simple fact is that the Council have not monitored or enforced the Code for staff who have been previously transferred. For the past three years the Trade Unions have been trying to ensure the Council takes this matter seriously, promises have been made but nothing has been done.

If the Council wants to allay staff fears of what may happen to them if they are privatised they need to formally respond to our Briefing 3 (amended) and ensure that the Council start enforcing the Code now.

Future Shape of the Council

This diagram from the Cabinet Report illustrates the proposed three level structure with a ‘strategic council’ in ‘partnership’ with the Local Strategic Partnership – Police, Health, University, Barnet College, Employment Service and others – which will commission services from a new Joint Venture Company (JVC). The JVC will in turn procure service delivery from several ‘service delivery vehicles.



Source: Future Shape of the Council, Report of Leader of the Council to Cabinet, 3 December 2008.

New contract bureaucracy

The Council is proposing a multi-tiered organisation in which resources will be consumed in a contract bureaucracy between the ‘strategic’ council and the Local Strategic Partnership (LSP), the Joint Venture Company and the ‘service delivery vehicles’. The chart (para 9.8.2) separates commissioning, procurement and delivery into three organisational responsibilities

1. Council: policy making, prioritisation and strategic commissioning;
2. Joint Venture: service design and procurement;
3. Delivery vehicles: service delivery.

Commissioning and procurement must be one continuous integrated process

The focus on becoming a ‘strategic council’ and ensuring that nothing should “encumber” that role (para 9.3.2) **could mean that commissioning is also outsourced**. Some Primary Care Trusts already have access to fourteen private consultants in the Framework for procuring External Support for Commissioners (FESC).

Review of partnership vehicle

The Council's consultants, PricewaterhouseCoopers, produced a review of partnering vehicles, which is a background paper to the report to Cabinet. This further illustrates the one-option approach by the Council.

The report reviews the strategic, operational and legal aspects of the joint venture model, identifies a list of local authorities with partnership arrangements and has eleven case studies, many of which are brief, descriptive and superficial. This list of contracts:

- Is selective and does not report on their performance – it includes one contract which has been substantially reduced and another where there have been cost overruns.
- Fails to mention three failed strategic partnership contracts. Another council has recently received a no-star score for its housing benefits service after ten years operation in a strategic partnership.
- There is an attempt to brand outsourcing contracts as 'partnerships'.
- Four of the case studies are contracts with social enterprises, at least of one of whom adopts the same employment policies and practices as private contractors in that sector.

There may be scope for genuine partnerships but they should be an outcome of options appraisal rather than the imposition of a joint venture company.

Weak Local Strategic Partnership

A recent Council review of the Local Strategic Partnership revealed fundamental weaknesses despite the LSP having been reconstituted in 2006. The Community Steering Group had recently disbanded. The report made reference to the LSP having "no real authority", that it "could not bind individual partner organisations to undertaking particular areas of work or influence their priorities in the context of consultation. The LSP was not a legal entity and lacked accountability" (Report to Resources, Performance and Partnerships Overview and Scrutiny Committee, 8 October 2008).

Yet the LSP is at the heart of the Future Shape proposals for 'partnership working' and 'alliance management'. The apparent lack of community involvement in the LSP, poor governance and accountability and weak working relationships indicates that the basis of an genuine 'alliance' for the planning, design and delivery of public services is a very long way off. It would be grossly irresponsible to claim otherwise.

Threat to pensions

Pensions are not protected by TUPE, only secondment and TUPE Plus do this, which is why UNISON has been pressing the Council to adopt the Employment Charter (see Briefing No 3). The Conservative Party Leader, David Cameron, has hinted that he wants the public sector to switch from final salary schemes to money purchase/defined contribution pension schemes that are significantly inferior (Financial Times, 26 November 2008).

Flawed rationale

Future Shape gives the impression that the strategic council/joint venture/service delivery vehicle model is the only way of identifying local needs, aspirations and future challenges; engaging residents, service users, local businesses, staff and partner organisations; setting priority outcomes and delivering quality services (para 9.4.2/3). This is not the case. There is substantial evidence that large scale outsourcing will make these objectives more difficult to achieve.

If the proposed model was approved and implemented without TUPE Plus the long-term viability of the Pension Scheme and the Councils finances could be at risk.

Undermining successful city suburb plans

Creating a successful city suburb is one of the Council's Corporate Priorities. The Trade Union Briefing 3 specifically seeks a commitment that jobs will not be offshored, (to date we have not had a response). In the absence of any commitment the Future Shape proposals could lead to many jobs being transferred out of the borough and Britain. This will have a detrimental effect on employment, businesses and the local economy. Audits have demonstrated that every four council jobs lost, one additional job is lost in private services in the local economy because of reduced spending on goods and services (Equal Opportunities Commission, 1995).

Savings and cost effectiveness

The proposals do not address Barnet's financial situation. In fact the Council is draining reserves to finance Future Shape, which so far has revealed nothing of any substance. Recent Strategic Service-delivery Partnerships have cost between £2m - £3m to set-up and taken two or more years to procure. Barnet's proposed model with cascading contracts to service delivery vehicles will absorb multi-million pound costs and officer time. Transaction costs (procurement and contract management) of between 3% - 5% of the annual contract value plus 8% - 10% profit levels will mean 11% - 15% efficiencies before service delivery even starts!

Capacity to deliver

The UNISON and PricewaterhouseCoopers procurement reports demonstrate that the Council does not have the capacity to effectively commission and procure many services at present, let alone on the scale planned. "Managing performance at a strategic level" requires the capability to manage performance at the micro level too, another weakness in Barnet.

'Sound theory' claim

The Future Shape report claims that the model "has a sound theoretical basis' and that it borrows from successful innovations in the UK, Canada and Australia (para 9.6.6). The report draws on 'alliance management principles' by Vantage Partners, USA which are based on a survey of 108 chief executives and presidents in 93 companies in food products manufacturing, internet business services and the pharmaceutical industry with the majority companies having over \$1 billion annual turnover (Vantage Partners, 2006). Their definition of 'alliance' ranged from "acquisition, merger, joint venture, strategic alliance, franchise alliance, joint teaming relationship, outsourcing partnership, strict licensing to a traditional customer-vendor relationship.

Although lessons can be drawn between private and public sectors and there are inevitably some common principles in building alliances, this does not provide evidence that the proposed Future Shape model is theoretically sound.

Risk management issues

The Future Shape report claims:

“The procurement of a special purpose vehicle could enable the Council to bring in best of class expertise in these areas, thereby reducing significantly the level of risk to the Council and enhancing the Council’s existing skills and systems.”

This is a gross assumption because it assumes that the best of class expertise comes from private and voluntary sector contractors of one type or another. It implies a win-win situation that does not exist in practice. For example, an ESSU study identified 105 outsourced public sector ICT projects with significant cost overruns, delays and terminations in the last decade (ESSU, 2007). Total value of contracts was £29.5 billion, 57% of contracts experienced cost overruns (£9bn), 33% of contracts suffered major delays, 30% of contracts were terminated. More have failed in the past year. There is a 12% risk of a Strategic Service Delivery Partnership failing.

Outsourcing and the Strategic Council model will create new and additional risks. The Council may be better placed able to spread the risk amongst its partners but that only extends the ‘blame game’.

Equalities and diversity issues

If Council staff transfer to another employer, “the usual procedures ensuring equality of treatment will apply.” In fact, low waged workers, mostly women and ethnic minority staff, are unlikely to receive equal treatment in a standard TUPE transfer.

More complexity

The Cabinet report admits that *“casework could become more complex in the proposed model and the Council would need to provide support for Members in navigating the system of service provision.”* (para 4.4)

But what about service users and council staff – and how will board members and staff from public sector bodies in the Local Strategic Partnership “navigate the system”?

Use of resources implications

The strategy appears to be driven, at least in part, by the potential sale of Council property assets (para 6.5). A ‘strategic council’ with a handful of staff will require much reduced office accommodation and the joint venture vehicle/local service delivery vehicles will have to find their own accommodation.

The overall accommodation needs are unlikely to achieve large savings after taking into account sharing/merging of offices, ‘hot desking’ and mobile working, the effects of which are usually exaggerated. It will almost certainly start a property merry-go-round, which is likely to have minimum benefit to the Council when all the costs and benefits are taken into account.

The trade unions are also concerned about the secondment of advisers from the private sector and what safeguards have put in place to protect the public interest.

Recommendations

4. The recommendations in the Cabinet report should be replaced by "Agree to undertake a comprehensive options appraisal on the future responsibilities, organisation and structure of the Council in participation with public sector partners, service users, staff and their representative organisations."
5. The appraisal should include in-house options and bids.
6. The council adopts the secondment and TUPE Plus employment models for future staff transfers.

References

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