European Services Strategy Unit
(Continuing the work of the Centre for Public Services)

UNISON Barnet: Future Shape of the Council Programme

September 2008

Briefing No. 6 The ‘shrinking by outsourcing’ models – implications for staff

Executive summary

The Council has indicated that it plans to ‘shrink the council’ by outsourcing services and transferring staff to private contractors, joint venture companies, social enterprises, arms length companies or retain direct provision. This Briefing describes the common elements and differences in these options and the type of privatisation being considered by the Council.

Recommendations

1. The Council should make a commitment to ensure that in-house improvement and innovation, with staff and user involvement, is an option for all services and fully assessed alongside other delivery options.
2. The procurement process should not be commenced until a rigorous options appraisal process has been completed, a comprehensive business case prepared, and staff and trade unions have been fully consulted.

Introduction

The London Borough of Barnet commenced the *Future Shape of the Council* project in May 2008 to review the organisation of the Council, challenges and changing demands on the capacity of the Council. The European Services Strategy Unit (ESSU) has been commissioned by Barnet UNISON to provide research and critical analysis for the Branch in the consultation process. This is the sixth in a series of Briefings, which will be produced over the next few months.

Council options

A staff briefing, *What is the Future Shape of the Council Project and how did it come about?* reported that the Council was looking at (their order):

- Private providers (Outsourcing)
- Joint Venture Companies
- Social Enterprise Companies
- Arms Length Organisations
- Direct Provision

The briefing stated went on to say that “No decisions have been taken yet on what shape the council will take. We can say at this stage that there is some agreement at cabinet and senior officer level that we need to deliver fewer services directly to free up space to deal with the bigger issues (obesity, climate change etc.) This will mean change all across the council."

What do the options mean in practice?

The Briefing describes the common elements and differences in these options. It includes a number of other outsourcing models not included in the above list but which are almost certainly being considered by the Council and their consultants, PricewaterhouseCoopers.

Direct Provision

The Council directly provides a service and employs the staff. It is located in one of the Council directorates under the management control of the chief executive. Services and employment policies are ultimately directly accountable to the Cabinet/Full Council.

Arms Length Organisations

Service delivery and staff are transferred to an arms length company owned by the Council. The new company is responsible for all employment matters as it operates separately and at a distance from the Council. Barnet has already transferred housing management to an ALMO, although it retains ownership of the housing stock. The company is jointly run by a board of directors made up of one third tenants, local authority members and 'independent' members (usually professionals with housing or business experience). Tenants retain security of tenure and the right to manage, repair and buy their homes.

Joint Venture Company (JVC)

A company in which the council would have up to a 20% stake with the remainder owned by a private company. Some Strategic Service-delivery Partnerships (see below) have JVCs with IBM, Capita, BT and Mouchel. Staff may be seconded or transferred from the council to the JVC.

Private or voluntary sector contractor

Responsibility for service delivery is contracted to a private company or a voluntary organisation. This is standard outsourcing. Staff would be transferred to the new employer under TUPE regulations. The contractor would be responsible for all employment matters including the hiring of new staff. Private contractors range from regionally based companies to large multinational companies.

Social Enterprise Company

This is a non-profit company run by a board of directors drawn from various community/voluntary organisations that may bid for council contracts. There are various organisational models under the social enterprise banner and include different company models (see below) and cooperatives. Procurement and employment legislation applies and to a large extent it is not relevant that a bidder is a social enterprise because they must first satisfy the contract requirements before the 'added value of being a social enterprise can be taken into account. There may be some parts of a service, which a social enterprise could be capable of providing, but the main competitors for Council services will almost certainly be national and multinational companies.

Trust

A Trust is a non-profit company established under the Companies Act 1986 and registered with Companies House as a 'company limited by guarantee', which means it does not distribute profits to shareholders and the directors are responsible for a specified level of liability. Alternatively, it may be registered as an industrial and provident society or non-profit company (with or without charitable status) with the Register of Friendly Societies. A Trust is run by a Board of Directors who would be responsible for delivering a council service under contract and would directly employ the staff transferred from the Council under TUPE regulations.

Community Interest Company (CIC)

A Community Interest Company enables a limited liability company to ensure that assets and profits are used for public benefit. It is an alternative to charitable status for limited liability companies. CICs are designated under the Community Interest Act 2004. Again, if a CIC won a council contract, staff would transfer under the TUPE regulations and the new employer would have to meet the pension provisions in the Local Government Act 2003. Irrespective of organisational objectives, a social enterprise company must have sufficient resources to meet public sector pension obligations. This would need detailed scrutiny.

Offshoring

Particular functions or parts of a service may be transferred to a contractor based overseas where the work is carried out. Large contractors such as IBM and Capita, have overseas subsidiaries or partners in Asia, particularly India. They regularly outsource to offshore locations, which of course means a loss of employment in Britain.

Types of privatisation

Outsourcing

This is simply another term for contracting out. The Council would prepare a specification, advertise a contract, select a shortlist of bidders who would submit bids which would be evaluated and a contract awarded. Staff would be transferred to the contractor under TUPE regulations (see Briefing No 3) unless an in-house bid was not successful or had not been submitted.

Trade sale or externalisation

Some Direct Service Organisations have been sold as going concerns to private contractors or outsourced in 'partnership' deals which amount to the same thing. Staff would be transferred to a private contractor under TUPE regulations.

Partnerships

Although a wide variety of relationships are described as 'partnerships' they basically fall into two types. Firstly, contracts which are dressed up to be partnerships in which services are outsourced and staff transferred under TUPE to a private contractor. Secondly, broadly based alliances of local public sector bodies, community organisations and business representatives, such as a Local Strategic Partnership, in which the local authority has a pivotal role in producing the sustainable community plan.

Strategic Service-delivery Partnership or Public Private Partnership

Strategic Service-delivery Partnership (SSP) is a long-term (usually ten-year with option for further five years) multi-service, multi-million pound contract between a local authority and a private contractor. Strategic Partnership contracts range from £50m-£600m over ten years financed by local authority revenue budgets. Private finance may be used to front load investment but is usually only a small percentage of the contract. Between 50 - 1,000 staff transfer to a private contractor or may be seconded or transferred to a Joint Venture Company (JVC) established between the local authority and contractor. The range of services usually include IT and related services such as human resources, payroll, revenues and benefits, financial and legal services, and property management. A few SSPs focus on planning and building services and related technical services.

Large Scale Voluntary Transfer - Sale of assets

There are rumours that the Council is considering a stock transfer option. This option involves the complete transfer of council housing to either a new housing association established for the purpose of transfer or to an existing housing association, which takes over ownership and management and maintenance of the stock. A tenant ballot is required by law (Housing Act, 1989). Tenants cease to have security of tenure and become assured tenants with a tenancy agreement, which can give similar, but not the same rights. The stock transfer and any future investment is funded by the housing association borrowing from the private sector (banks, building societies and other financial institutions).

Common elements in transfers and outsourcing – privatisation by another name

There are common issues in all the outsourcing options irrespective of the type of company involved. They have the same consequences for services and staff:

- Council services will be outsourced under contract to a new provider.
- Council staff will transfer under TUPE regulations to a new employer. In some cases secondment may be an option. The new employer will be responsible for staffing levels, terms and conditions and industrial relations. New industrial relations frameworks could have an impact on trade union organisation and representation.
- Pensions: Staff will have the right to either the Local Government Pension Scheme (LGPS) or a “broadly comparable pension” scheme approved by the Government’s Actuary Department (GAD). Large-scale outsourcing and transfer of staff to new employers could have profound repercussions for the future of the local government pension scheme.
- TUPE and the Code of Practice provide inadequate security for transferred staff and new starters and do not prevent a two-tier workforce. The Fremantle contract is a classic example. TUPE does not cover pensions and as a consequence pension provision for many workers, particularly women, is being significantly eroded.

- All the options which involve transfer of staff to a new employer means the termination of employment policies being subject to democratic accountability through Council structures. This means jobs, terms and conditions will be under constant threat of change.
- Outsourcing transfers risk from the Council to the staff – they bear the brunt of risks resulting from changes to terms and conditions of service, changes to pensions arrangements (not covered by TUPE regulations) and changes to staff consultation and representation.
- New directors and senior managers in arms length companies and other outsourcing options will almost certainly get pay increases because of their ‘additional’ responsibilities.
- A Contract Culture will increasingly dominate council services – commercial and business values will erode public service ethos, contracts normally determine what does and does not get done, and separate client and contractor interests usually create division and disputes.
- The Council will continue to control the budget – contractors will be squeezed and will in turn impose cuts in services and changes to jobs, terms and conditions. But the Council will hope that the contractors get the blame and their role as ‘strategic leaders’ would remain unaffected.
- Innovation is likely to be focused on how to operate at lower cost within the constraints of the contract.
- Staff/trade union and community participation is likely to be minimised, although attempts may be made to ‘reinvent’ or makeover participation in an attempt to make outsourcing more acceptable to service users and staff.

Rationale for change - Shrinking the Council

‘Shrinking the Council’ to obtain resources to take a bigger role in other major issues – the Council frequently quote obesity and climate change – means that they plan to outsource services to save money under the guise of ‘strategic leadership’. At this level the nature of the provider – contractor, social enterprise, trust – is largely irrelevant because the prime motive appears to be to save money. Since staffing costs are usually a significant percentage of public services, outsourcing inevitably leads to cuts in jobs, terms and conditions.

Red herrings

The Future Shape of the Council programme makes constant reference to ‘strategic leadership’, the new Comprehensive Area Assessment (CAA) which replaces the Comprehensive Performance Assessment in 2009, the responsibilities of ‘place’, but these are just red herrings to try to justify a privatisation programme. They are intended to obscure the real reasons.

Commissioning and procurement process

Irrespective of the apparent determination to ‘shrink the council’, Barnet Council must adhere to certain procedures and legislation.

Options appraisal: The development and appraisal of options must be rigorous and comprehensive.

Business Case: This must stack up in terms of delivering the service, meeting corporate and service objectives, quality standards, value for money and meet employment responsibilities.

Employment legislation: Staff transfers are governed by the TUPE regulations and the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts in England, 2003. The Local Government Act 2003 made the Cabinet Office Statement of Practice Staff Transfers in the Public Sector and its Annexe, A Fair Deal for Staff Pensions, legally binding. Staff will have the right to either the Local Government Pension Scheme (LGPS) or a “broadly comparable pension” scheme approved by the Government’s Actuary Department (GAD).

However, there are many inadequacies with the TUPE legislation and the Code of Practice, which is why the Employment Charter focuses on secondment and TUPE Plus (see briefing No 3).

Procurement process including evaluation of bids: The process is governed by European Union and UK legislation. The Invitation To Tender has to set out all the Council’s requirements and bids must be rigorously evaluated to identify that objectives, standards, processes, and legislative requirements will be met and the proposals provide value for money.

Gateway Reviews and Scrutiny: Large contracts will require Gateway Reviews at key stages of the commissioning and procurement process to ensure that the Council is meeting good practice requirements. These reviews are normally followed by reviews by the Council’s Scrutiny Panel.

Contract management and monitoring: Outsourcing will require the establishment of dedicated contract management and monitoring staff to manage contractual relations and variation orders, regularly monitor performance and the contractor’s employment obligations.

All these processes have high transaction costs, which have to be financed from Council budgets, thus reducing any claimed savings from outsourcing.

References

Barnet Council (2008) What is the Future Shape of the Council Project and how did it come about? Staff Briefing, September.

UNISON (2008) Commissioning and Procurement Toolkit: Local Government and Health, www.european-services-strategy.org.uk

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