

Supporting members



Defending services

Branch guide to securing in-house services



Introduction

Large areas of local government services have already been privatised. The privatisation band wagon continues to gather pace, despite high profile contractor failures and scant evidence that privatisation improves services or saves money. However there are signs that some councils are reviewing their privatised contracts and uncovering substantial waste and over-charging.

UNISON believes that services are best provided in-house in order to ensure value for money, accountability and the flexibility to respond to changing needs and priorities. We want to work with councils to ensure that the workforce are fully involved in designing and delivering improved services.

As well as campaigning against privatisation branches need to be equipped to campaign for in-house services – both to prevent privatisation and to bring services back in-house.

Councils, and those who support privatisation, will often seek to falsely paint UNISON as simply defenders of the status quo. But our campaigns are most successful when we are able to present in-house services as dynamic, flexible and better-equipped than the private sector to deliver service improvements and value for money.

This requires branches to give early thought to pushing for service improvement plans for their in-house services. Sometimes this can be enough to see off an active procurement process. But where the council does trigger a procurement process, branches need to secure agreement to the inclusion of an in-house option with the council providing the resources needed to develop and present it properly. In this guide we argue that the council cannot fully comply with the duty of Best Value unless an in-house service improvement option is considered.

This guide covers:

- 1 Fending off procurement
- 2 When privatisation is under consideration:
 - How to cast doubt on privatisation
 - How to rally support for in-house services
 - How to argue for the inclusion of an in-house option
- 3 Acting when an active procurement process has been triggered
- 4 If privatisation goes ahead
- 5 Bringing services back in-house
- 6 Additional information
- 7 Privatisation failures case studies
- 8 In-house successes case studies

1 No need to go to market – fending off procurement

Some councils come up with outsourcing proposals on purely ideological grounds – many Tory councils in particular are keen on the ‘commissioning council’ model where the council is no longer an employer or a provider of services, but simply a commissioner of contracts.

Many more councils embark on outsourcing of key services because they believe it is the only way to cut costs – often seduced by the promises of private contractors who look upon public services as rich pickings.

Even when outsourcing is not actively on the agenda, councils will be continually reviewing the cost and efficiency of their in-house services. If you can engage with these reviews you can be prepared for any issues which may sprout privatisation proposals.

Best value

Councils are bound by the duty of Best Value (see Branch guide to Best Value) which means that outsourcing cannot simply be the automatic option. The commissioning council model is risky electorally as it will lead residents to question the value of electing councillors when they have handed over all their responsibilities to private companies.

So for branches this means trying to ensure that in-house services are well-placed to respond to the continuing challenges of the austerity era. You will want to engage and organise members so that you are ready with facts and figures which help you demonstrate the considerable advantages they have over privatised provision.

It is important to remind councils that they have a wide range of powers and means of raising cash, as alternatives to the loss of

power that comes with jumping to privatise. These include charging and trading; sharing of services and the ability to borrow money for capital investment much more cheaply than the private sector. (See Branch guide to shared services; and Branch guide to local authority trading companies).

Contractors will often make great claims to councils about the additional ventures they could set up, and the jobs they could create. A key message that you should be taking to councillors is that ‘Anything the private sector can do in return for extracting a profit, a council can do for itself while keeping ALL the money within services.’

“We were saying to the council: ‘Give us the chance to do it. You’re prepared to pay them [private contractor] an awful lot of money on it – are you saying that we aren’t capable or competent?”

Tony Carr, IT administrator and UNISON steward – facing outsourcing of Newcastle City Council IT system¹

No obligation to go out to tender

There is no obligation to put services out to tender. The most recent guidance on EU procurement rules confirms that:

“It is entirely up to the public authorities to decide whether to provide a service themselves or to entrust it to a third party (externalisation). The public procurement rules only apply if the public authority decides to externalise the service provision...”²

1 Hilary Wainwright, Mathew Little, Public service reform...but not as we know it

2 European Commission, Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf

So your council should never take a desire to privatise as their starting point. Instead they should ask themselves, 'what do we want to achieve?' This gives you the chance to have the debate about how the in-house service can improve and change in order to achieve that goal – without the need for costly, complex and time-consuming procurement processes.

where services sit in a directorate and operate within a budget to a set of agreed performance targets – but there is no split between managers providing services and those setting out how the service should be provided. This can lead to a more collaborative delivery model, greater innovation and more efficient services.

Be prepared – key branch actions:

- 1.1 Ensure that service delivery issues are regularly discussed within your joint consultative arrangements and that there is good regular dialogue between your shop stewards and service managers.
- 1.2 Cultivate your contacts among elected members – plan ahead for elections and work to get pledges from party groups about keeping in-house services and scrutinising any privatised contracts on performance and costs.
- 1.3 Involve members in regular discussions about how they think services can be improved, savings generated, and whether there are opportunities to charge other organisations for their services and generate business from elsewhere.
- 1.4 Get agreement for a UNISON steward to have a place on all service review teams or steering groups.
- 1.5 If your in-house services are still organised according to a purchaser-provider (also known as client-contractor) split ask your council to consider the case for moving away from this. 'Integrated service delivery' is

- 1.6 Rather than use expensive consultants, encourage the council to engage 'critical friend' service reviews from organisations like APSE who have the expertise to look in-depth at how in-house service delivery can be developed and savings realised – see APSE case-studies.³
- 1.7 Talk to your council about new pre-procurement obligations to consider social, economic, and environmental benefits (England and Wales). They may see this as a means of outsourcing more work to voluntary sector providers. But you will want to show how in-house services are better placed to deliver social value through things like employment of local people, commitment to apprenticeships, equality policies and council-wide green policies and working practices (see Branch guide to social value).
- 1.8 Collect and highlight examples of how in-house services are able to demonstrate flexibility to changing needs and how they are able to join up with other council services to help people.

³ <http://www.apse.org.uk/briefings/10/10-56%20%20In-House%20service%20improvement%20plans.pdf>

1.9 Familiarise yourself with examples from elsewhere of how in-house services have been able to restructure to improve efficiency and save money (see UNISON report: The case for in-house services)⁴

⁴ <http://www.unison.org.uk/file/The%20case%20for%20in-house%20services%20-%20a%20branch%20guide.pdf>

2 When privatisation is under consideration

As soon as you get wind that your council may be considering privatisation you will need to start planning for a campaign with a view to preventing the council from moving into active procurement (see Branch guide to council decision-making). The chart overleaf shows the main stages of the standard procurement process.

“We used our technical knowledge to intervene on key strategic issues and set the scene for the unfolding privatisation story. Key themes we highlighted included: failed procurement elsewhere, track record of bidders, secret processes, weak scrutiny, absence of community consultation, poor legal compliance and financial risk. If you predict these features from the start then the credibility of the union campaign will grow as the procurement unfolds with its inevitable problems and crises.”

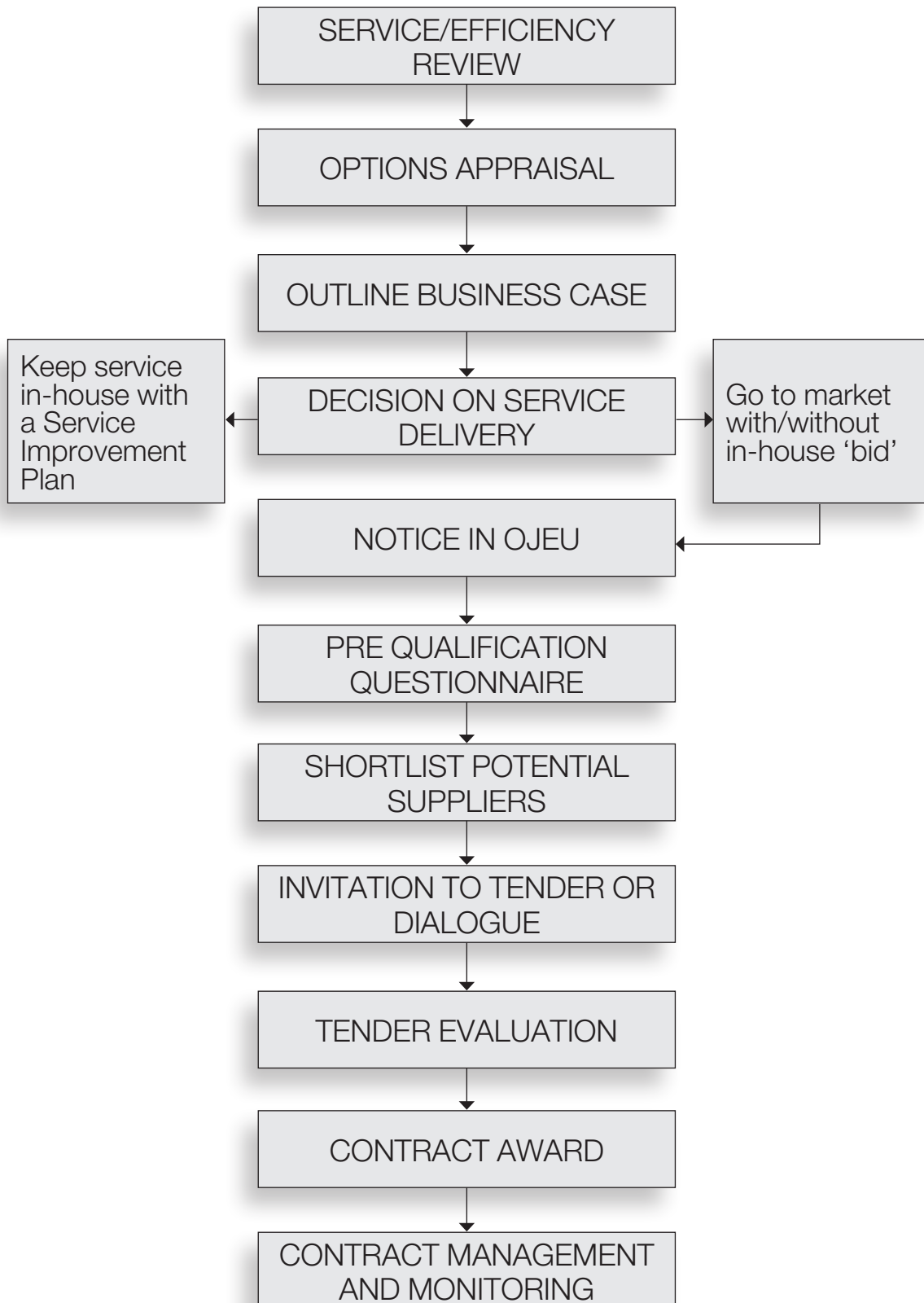
Defeating privatisation – the Edinburgh Campaign, UNISON, GMB, Unite – ‘Our city’s not for sale’⁵

Key branch actions

- 2.1 Consider what expertise you will need to bring in – your regional organiser or regional education officer can advise about the UNISON/APSE procurement training workshop which helps branches to ‘deconstruct’ what the council is proposing and draw up a branch strategy. The branch may also consider a GPF or regional pool bid to commission an independent report to scrutinise the case for privatisation and/or to contribute to a service improvement plan for the in-house service.
- 2.2 Seek an agreement with the council about how UNISON will be involved and engaged in procurement (see Branch guide to negotiating a procurement agreement).
- 2.3 Ask for disclosure of all relevant reports and documents to date.
- 2.4 Seek additional facility time to enable UNISON representatives to fully contribute and represent staff interests in the process.
- 2.5 Establish what the timescale will be for the council’s deliberations.
- 2.6 Organise meetings for members in affected areas and elect stewards where these are not in place – form the stewards into a working group across affected services. Staff working in the services are the experts in their services.
- 2.7 Ask for an immediate commitment from the council to including an

⁵ www.unison-edinburgh.org.uk/citynotforsale/

OUTLINE OF THE PROCUREMENT PROCESS



in-house service improvement option in any options appraisal.

- 2.8 Begin discussions with the council about what resources will be provided for staff and managers in the in-house service to help them work on a service improvement plan.
- 2.9 Find out what plans the council has for consulting service users, local businesses and other stakeholders – plan how you will communicate and work with them to get your messages across and help them raise their concerns.
- 2.10 Map out which councillors will be influential and make contact with them.
- 2.11 Map out who else will be your potential allies.

“The Edinburgh campaign was very strategic about the identification of community allies. Councillors are indifferent to the views of hardened community campaigners. Power lies in the “unusual suspects” - local people who get animated on this issue for the first time. That’s when councillors listen.”

**Edinburgh campaign
‘Our city’s not for sale’**

- 2.12 Brush up your local media contacts.
- 2.13 Start on a strategy and action plan for how you can cast doubt on the outsourcing option and promote the in-house service – use the checklists below and gather information to back them up

“Successful campaigning on procurement is a blend of community

campaigning, workplace strength, political lobbying, technical knowledge, and press work. Fighting on all these fronts can be demanding and complicated, so early planning is essential. After an activists workshop we wrote a campaign strategy and reviewed it regularly as the campaign grew. Procurement is laden with bluff, hype and jargon. You need to penetrate these defences if you are to expose the risk of contract failure and escalating costs. Some activists fear giving credibility to privatisation by participating in the process, but you must have a message which says more than ‘privatisation is bad’. You need specific evidence of the impact on service users. To expose the truth you need to get behind the façade and you only do that by engaging.”

Edinburgh campaign ‘Our city’s not for sale’

How to cast doubt on the case for privatisation:

- a) Query the council’s financial case for privatisation – despite the scale of local government funding cuts we still do find some councils which exaggerate the spending cuts they must make in order to support their case that privatisation is the only option. (See Branch guide to council finances and privatisation)
- b) Question the claims about how much money privatisation will save and highlight examples from elsewhere of failure to deliver on savings or overcharging (see Appendix 1)

- c) Expose the private sector's poor track record on efficiency on other contracts – both in local government and other services, for example G4S and the Olympics fiasco. A key moment in Edinburgh UNISON's successful campaign came when the council cited examples of successful privatisation ventures by other councils which included Liverpool Direct and South West One. The union was able to show that many of these had encountered major problems and some had been terminated early!
- d) Get expert advice on the options appraisal and business case – speak to your regional organiser and the national service group. If you can discredit the finances you can start to unpick the case for privatisation. Most councils bringing services back in-house do so for pragmatic reasons – the realisation that they are paying over the odds for things they can do better themselves⁶
- e) Ask questions about the likely impact on the local economy – is the contractor likely to use local suppliers or bring in its own? Cuts to pay and jobs mean workers spending less in the local economy which has a multiplier effect restricting growth and reducing local tax income to the council – see CLES report on Suffolk⁷
- f) Query claims from contractors that they can bring inward investment and create jobs – use examples of where these have failed to materialise
- g) Highlight the likely profit margins of contractors – and the money that will be lost to service delivery
- h) Emphasise the fact that risk is never fully transferred - contractor failure will always rebound on the council. When a homecare contractor⁸ or IT supplier goes bust⁹ the council will have to step in. Profits are privatised but losses are socialised. Privatisation means loss of in-house expertise which means higher costs when failures happen.
- “Often, a lawyer will indicate that the contract wording imposes all the risk on the counterparty. However, if the counterparty is delivering a critical and urgent service, the failure of that counterparty will itself create a potential failure of the authority's own responsibilities.”¹⁰*

Zurich risk assessment consultancy

- i) Warn that private contractors can and often do still demand compensation when a contract has to be cancelled – even when they themselves have failed to deliver.

6 APSE, Insourcing update; the value of returning local authority services in-house in an era of budget constraints, June 2011

7 CLES, The implications of Suffolk County Council's new strategic direction, 2010

8 Surrey pensioner dies after homecare provider shut down by UKBA <http://www.bbc.co.uk/news/uk-england-21361631>

9 Barnet emergency ICT procurement as provider goes into administration http://betterbarnet.nationbuilder.com/barnet_initiates_emergency_procurement_of_critical_ict_infrastructure_as_private_contractor_goes_into_administration

10 Public sector supply chain: risks, myths and opportunities - A New World of Risk: <http://www.zurich.co.uk/NR/rdonlyres/82A58CDF-D38F-414F-AC43-CB0C4CBB7CBF/0/thebriefingpaperfullversion.pdf>

Bedfordshire Council

A business services contractor won a 12-year £267 million contract with Bedfordshire County Council in 2001 to modernise support services. After a number of changes in the ownership of the contractor, service performance declined. The final straw was an accounting problem that prevented the council from filing its accounts for 2003/4. In September 2005 Bedfordshire County Council paid £7.7m to terminate its 12 year contract, after just four years, bringing 546 staff back in house.

Cost of procurement

In the UK £4.6bn is spent every year by central and local government on procurement exercises to award privatised contracts. The EU has calculated that the average transaction costs for a procurement exercise were 28,000, on an average procurement period of 108 days¹². A quarter of this cost falls directly on the client – and even then the rest will be clawed back in contractor's pricing. For many councils in the UK procurement processes last longer and cost more than this average.

- j) Highlight anti-competitive behaviour by contractors – the amount of genuine competition is low with many tenders receiving very few bidders. The large contractors tend to dominate the market as they have the margins to be able to absorb the non-recoverable costs of tendering. £1.3bn of public money is lost every year as a result of fraud in procurement processes (eg cartel pricing, fraudulent invoicing)¹¹.
- k) Show that the council can't afford privatisation – ask the council to estimate all the additional transaction costs of procurement for example legal fees, consultants' fees, staff time spent on negotiation and contract monitoring. Where your council has privatised previously you could also ask for the final totals of transaction costs using the Freedom of Information Act if necessary.
- l) Highlight the fact that councils have found it very difficult to secure quality and value through contractual penalties as they often prove to be weak and difficult to enforce. Privatised contracts require standardisation of processes so they can be parcelled up and priced – this takes away responsiveness, professional judgement and discretion. Outcomes-based bids which leave the detail of how the service will be provided up to suppliers are inherently risky – if the contractor gets their sums wrong there is inevitably a knock-on effect on the client (see the G4S Olympics debacle).
- m) Remind the council that changing one contractor for another is often disruptive and just swaps one weak set of contractual levers for another.
- n) Stress that no matter how much resource councils put into inspection,

¹¹ UNISON, Factsheet #36 the costs of privatisation <http://www.unison.org.uk/acrobat/20633.pdf>

¹² APSE, The case for direct service delivery <http://watford.moderngov.co.uk/documents/s3979/Appendix%206.1.pdf>

monitoring and use of contractual procedures this will not substitute for having direct control over quality and delivery. And as councils cut back their contract monitoring staff, more problems will go undetected.

- o) Ask the council how much it knows about potential contractors' tax affairs – many contractors (some owned by private equity) have a business model based on tax avoidance with large parts of the business registered offshore for

tax purposes¹³. Recent outcries over Amazon and Starbucks show how much local citizens care about such practices and councillors should be aware of the strength of public feeling on this issue. Central government has recently announced that for larger contracts, suppliers will have to declare and verify that they have not participated in certain failed tax avoidance schemes or other dodges.¹⁴

13 Paul Gosling, The rise of the public service industry, a report for UNISON, June 20w

14 <https://www.gov.uk/government/publications/promoting-tax-compliance-and-procurement-procurement-policy-information-note>

Paying over the odds

- £137,000 was overpaid by Calderdale Council to one provider of home care and meals on wheels last year – auditors fear much more has been wasted¹⁵
- £75m over the odds was paid over twelve years by schools to Capita for IT services, according to analysis by rival firm Bromcom¹⁶
- £300m is thought to have been overpaid for schools, hospitals and other projects as a result of bid-fixing by construction companies¹⁷
- £9bn was paid in total cost overruns on 105 outsourced IT contracts in central and local government, the NHS and other public bodies since the 1980s¹⁸

15 http://www.halifaxcourier.co.uk/news/local/what_a_rip_off_scandal_of_care_home_that_overcharged_by_thousands_1_3547360

16 <http://www.guardian.co.uk/business/2009/dec/06/capita-schools-technology-competition>

17 <http://www.ofst.gov.uk/news-and-updates/press/2008/52-08;>
<http://www.telegraph.co.uk/finance/newsbysector/constructionandproperty/2788332/Construction-cartel-may-have-cost-taxpayer-300-million.html>

18 <http://www.european-services-strategy.org.uk/news/2007/ict-contract-chaos/105-ict-contracts.pdf>

The price of failure

When services fail, it's the public that usually has to pick up the tab. For example:

- £25m is now the estimated loss to the taxpayer as a result of the collapse of private care home operator Southern Cross
- £265m had to be paid by the Home Office to Siemens on top of the £100m originally budgeted for when its passport IT system went way over budget
- £300m lost by Royal Bank of Scotland on a private equity buy-out of care home operator Four Seasons was ultimately borne by the taxpayer
- £410m was lost to the taxpayer as a result of the collapse of the Metronet 'public private partnership' for the London Underground, according to the NAO
- £10.4bn has had to be committed to the NHS IT project on top of its original budget – and still results have yet to be delivered

How to rally support for in-house services:

- a) Map and mobilise members in the services under consideration – ensure they are motivated and ready to feed in their views. Get non-members to join UNISON
- b) Build up a broad base of allies in support of an in-house service – talk to a representative range of service users, tenants groups and local businesses. As well as service users with a direct interest in service outcomes, local businesses can be a key ally because they stand to lose out if big contractors win contracts and bring in their own supply chains, or ‘offshore’ their workforce

Barnet branch has been involved in major community campaigning against the council’s ‘One Barnet’ privatisation proposals – forging a broad coalition of resistance encompassing all sections of the community and local businesses¹⁹

- c) Check whether the service has had any recent favourable inspection reports – or there have been positive findings from user satisfaction surveys. Also check whether the service has been awarded any charter marks or quality badges such as Investors in people. Assemble these reports as supporting evidence of the good quality of the in-house service which could be put at risk.
- d) Look for evidence to convince decision-makers that in-house services can best deliver on their objectives:

- i. look at the council’s manifestos, political objectives, health and well-being strategies and develop a case for how in-house service delivery is best placed to achieve them – look at things like joining up services, local jobs, skills and training
 - ii. argue that income generation can be retained, and innovation and technology harnessed to the council’s sole benefit
 - iii. highlight the importance of democratic control – councillors can more readily secure a direct response to constituents’ concerns without having to jump through contractors’ hoops
 - iv. the private sector has higher borrowing costs than the council would have – and these are passed back to the council
- e) Remind councils that in-house services mean flexible services. We are in an era of rapid changes to needs, demands and available budgets. Multi-year contracts with external providers lock councils into a certain way of delivering – and contractors are adept at charging extra for any changes a council subsequently wants to make. Extensive staff time is also required to negotiate changes. In-house services offer the flexibility to respond to changing needs, priorities, emergencies and policy contexts without having to pay a premium.

¹⁹ http://www.unison.org.uk/news/news_view.asp?did=8157

In Newcastle City Council, City Service, the in-house bid offered more than double the savings promised by BT, the preferred bidder at the time. This was based on the use of prudential borrowing to generate £20 million investment in new systems.

- f) Make the point that in-house services mean management objectives can be long-term and focus on service development and effective citizen involvement not the profit margin
- g) Highlight community benefit and the equality duty – in-house services can offer apprenticeships and take measures to promote equality and address disadvantage through employment of local citizens with no danger that jobs will be relocated elsewhere within the contractor’s business
- h) Cite public opinion and electoral consequences – about 2/3 of the public think it is unacceptable for shareholders to profit from running key public services.²⁰

How to argue for the inclusion of an in-house option:

It is vital that any options appraisal includes an in-house option with a service improvement plan (SIP). You want the council to agree that they will only proceed to incur all the expense and risk of going out to market if the SIP objectively cannot deliver the outcomes necessary.

Vital safeguard

Inclusion of an in-house option is a vital

20 Social Enterprise UK, The shadow state, a report about outsourcing of public services

safeguard in terms of value for money and risk transfer in a time of budgetary uncertainty. It acts as a benchmark and price regulator to guard against price fixing and restrictive practices by contractors. The in-house service often acts as the standard setter for local employment and training, allowing the council to directly influence local working practices and community development.

Inclusion by default

Ideally you want a procurement agreement between unions and the council which contains a commitment to having an in-house comparator in all procurement exercises. This should be on the basis of the best possible delivery by an improved in-house service. This is essential to be sure of complying with the duty of Best Value.

Get agreement from your council to commit resources to developing an in-house comparator.

Watch out for councils which try to include a ‘do nothing’ or ‘status quo’ option which assumes that no savings can be made by the in-house service. This is a distortion which will help the case for privatisation but will not ensure decisions are made on the basis of Best Value.

As the Audit Commission warned:

“Many have compared the annual charge paid to the contractor to the previous cost of providing the same service. However this approach does not account for additional efficiencies that may have been achieved from in-house provision.”²¹

21 For better, for worse: value for money in strategic service-delivery contracts www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/ForBetterOrWorseJan08REP.pdf

Where the council is claiming that the private sector is promising to generate revenue or create jobs – talk to members in the service about their ideas for how an in-house service could generate income through charging, or through carrying out work for other councils and public bodies (see Branch guide to: local authority trading companies.)

Service improvement planning (SIP)

Service improvement planning (SIP) is part of a continuous improvement approach which should be ongoing. However when a council is looking to make changes/deliver savings and considering going out to the market – this needs to step up a gear. If the outcome of the options appraisal is that in-house provision is the preferred option, a good SIP will be needed to convince the council not to go out to tender. But even if the council does decide to go out to tender, the SIP needs to be as good as it can be so it can outshine bids from contractors.

APSE says:

“The SIP must convey to local authority elected members, service users, staff and inspection bodies that an in-house option has clarity and is sustainable. A SIP is in effect a commitment to improve the quality and cost of the service and sets out the activities and action required to achieve improvement.”²²

Checklist for service improvement planning:

- Establish a joint working group with trade union involvement and commitment to securing change through negotiation and agreement.
- Get agreement on whether and which consultants will be used but ensure that the real experts – the staff delivering the services and the people using them – are fully involved.
- Staff need to be reassured by trade union involvement and negotiation in order to participate freely in workshops and exercises to map current processes and where inefficiencies may lie.
- Don't be restricted by traditional service boundaries – are there opportunities to integrate better with related services?
- Are there equipment or plant purchases or leases that can be reviewed?
- You will need an accurate baseline service profile with effective management information. With cuts to performance monitoring many councils no longer collect detailed performance data so this will need to be resourced. Comparative performance data from other authorities will be vital (see APSE www.apse.org.uk/performance-network.html).
- Benchmarking data should not just look at cost it should also measure things like quality, satisfaction levels, contribution to environmental sustainability and community cohesion.
- SIPs need to cover at least a three-year improvement programme

Service improvement planning is not an easy option. Managers are likely to come forward with proposals for new working practices

²² In-house Service Improvement Plans, APSE <http://www.apse.org.uk/briefings/10/10-56%20%20In-House%20service%20improvement%20plans.pdf>

which may not be popular with members such as reduced staffing, flatter management, self-service options, rationalisation of premises, merging services, changed working hours, multi-skilling. A 'management of change agreement' may be needed with a commitment to no compulsory redundancies and redeployment, new skills and training needs etc.

3 Acting when an active procurement process has been triggered

The inclusion of an in-house option in the options appraisal may not have been enough to stop the council deciding it needs to go out to tender.

All is not lost. You still have the opportunity to push for development of a SIP and ensuring that all the bids received from contractors are considered alongside the improved in-house option. Many branches have successfully done this and having the developed in-house option to benchmark against contractor bids has helped many councils realise that the bids received would not deliver the best value for money. As a branch you also have a big role to play in ensuring that any external bids are properly assessed and all relevant value for money and equalities issues are scrutinised.

After the options appraisal the council should normally produce an outline business case (OBC) setting out why it believes the best option is to go out to tender. This should contain details of the service proposals, the benefits, the options appraisal and a feasibility study – setting out the key risks and financial analysis. It should also describe the consultation and engagement of stakeholders and what consideration there has been of the equality impact and employment implications – transfer, TUPE, secondment, pensions, route for procurement etc.

If your council has not done an OBC then you will need to work with the options appraisal report and ask questions to try to obtain the missing information.

This is a key document and must be carefully examined and challenged. This is where, if you haven't already done so, you

would be advised to get an independent critique, for example through APSE.

This is where the twin track approach really kicks in – keeping up your campaign around the dubious value of the private sector options, while also preparing and negotiating around a possible transfer.

Involvement in active procurement

Get hold of the council's general procurement policy document and any agreement you may have. If you don't have one, seek agreement that there will be proper involvement and consultation of UNISON throughout the tendering process including in the drawing up of tender documents, service specifications, pre-qualification questionnaires, key performance indicators, and interviewing short-listed bidders (see UNISON procurement guide for full details).

Keep the campaign going – councils can and do decide not to award a contract at all if they judge that none of the bids meet their needs and that the in-house option represents Best Value. Some councils may be fearful of challenge by unsuccessful bidders but as long as they have followed the procurement rules and can justify their decision to keep services in-house in terms of Best Value then there is nothing to worry about, and no obligation to make a contract award.

In parallel with this activity, you will need to keep up the pressure to ensure that a proper SIP is being developed for the in-house option so that the final bids received are held up to a proper benchmark.

‘Invitation to tender’ document

This document is critical. What goes in it determines how the council must deal with the bids it receives – if something is not in this document, it cannot be used to assess the contractors or the in-house comparator. You must ensure that you get consulted on the contents of this document in good time.

- The key section is the tender evaluation criteria which outlines how the council will decide what is the most economically advantageous tender (MEAT)
- To ensure that the in-house option can show its worth, quality criteria need to include service standards, community well-being, local economy, environmental impact, retention of skilled and experienced staff, equalities and diversity impact on staff and service users, and two tier workforce matters
- Make sure the document states that there is an in-house option under consideration

If there are fewer than three bidders you should lobby the council to abandon the process on grounds of lack of competition and go with improving the in-house service.

If however the council does pick a contractor as preferred bidder, it will then move to produce a final business case. This is your last chance to stop the privatisation through whatever action – political, industrial and community – that you can muster. But your chances will be much greater if you can convince decision-makers that the bids from contractors they have received are not as favourable as the in-house option.

Case study: Taunton Dene – in-house innovation wins the day

In 2010 Taunton Deane Borough Council commissioned a firm of consultants called Turner and Townsend to review the Direct Labour Organisation – a development which looked to the branch like a done deal for putting the service out to tender. The report recommended that savings of £278k per annum could be made through privatisation. The council decided to embark on a path which would begin with a ‘root and branch’ review of the service, with a view to subsequently undertaking a procurement process.

The DLO covers housing repairs, grounds maintenance, street cleansing and public toilets, parks, nursery and trees. The service was traditionally organised with a costly and inefficient structure leading to potentially poor customer outcomes. At the heart of the review was an aim to improve the service and ensure a ‘fix first time’ approach, which would ensure better productivity and improved customer satisfaction.

The UNISON branch submitted a bid to the General Political Fund for funds to engage APSE to produce a critique of the proposals and suggestions for an alternative. The Branch Secretary presented the APSE report at the key council decision meeting and succeeded in getting the council to follow a twin track approach. The council agreed to build up a service improvement business case which soon began to show that the service could be transformed internally.

Case study: Taunton Dene continued

Nonetheless they still proceeded with undertaking the procurement process.

UNISON engaged in the procurement process and while opposing the proposed privatisation the branch took part in the short-listing of potential bidders, while informing members on the ground what was going on. This has the effect of increasing overall membership across the DLO with UNISON reps talking to managers and members each day. There was a specific consultation forum set up for staff and UNISON where they could contribute vital information to build the case for internal transformation.

As the review progressed, it transpired that the projected savings from improvements to the in-house service would save £3.2m. This was way beyond what the consultants' report suggested could be saved through privatisation. On the basis of this the branch was in a strong position to lobby for the in-house option to be pursued by the council – and they succeeded.

The DLO is now seen as best practice in the eyes of the LGA. The LGA's peer review report commended what it called a 'notable service transformation', commenting that it 'should serve as a model for service transformation in other service areas'.

Improvements in the service are clear – in 2010 the DLO was awarded approximately two-thirds of all minor work voids, with all major voids going to the private sector. The average turnaround time was 32 days. By September 2012 both minor and major works voids were undertaken by the DLO and the average turnaround time had decreased to just 18 days. Projected savings to 2015 now stand at £5.1M.

Without intervention from the branch the DLO would have almost certainly been privatised. Instead, the service is now competing for business across the sector, has recently won contracts in the private sector and has transferred staff in, a rarity in the current climate.

4 If privatisation goes ahead

If, despite your best efforts, privatisation can't be stopped, you will be into trying to protect your members' interests through the transfer of work – see UNISON's guides to procurement and TUPE.

However, the fight against privatisation doesn't stop there. Recruiting and organising members pre- and post-transfer is vital to the union's future and to protecting workforce interests.

Being able to track what happens on a privatised contract is vital for the branch's ability to a) challenge other privatisation proposals and b) argue for the work to come back in-house.

If UNISON doesn't have active members working on privatised contracts, then employers will get away with cutting pay and conditions and we won't hear about the problems and concerns that may be emerging behind closed doors.

Monitoring privatised contracts

If you get reports of problems on a contract, this can give you ammunition to seek further scrutiny of the contractor's performance.

- Talk to councillors who are involved in scrutiny about your evidence and ask them to consider conducting a scrutiny inquiry on how the contract is performing.
- If you have council elections coming up talk to key councillors about what you know about the contract – see if you can make it an election issue and get pledges from them to review the contract

Councils often find out some disturbing facts when they start delving below what key performance indicators (KPIs) are showing and really examine the costs and quality of what they are getting. In some cases they find out that some KPIs are not being monitored at all, or that there is a mismatch between performance on paper and in reality (see Branch guide to key performance indicators).

5 Bringing services back in-house

When you know about, and can evidence, poor performance on a contract you may be able to mount a campaign for returning the service in-house. Severe problems may lead a council to terminate a contract early but failing that you can target the time when contracts come up for renewal and get in with an argument that instead of re-tendering a return in-house would be a better option.

- Study the contract you have been looking at and see what it says about early termination for non-performance – there may be trigger clauses or review points which you can seek to exploit.
- Monitor when contracts are coming up for renewal – ask your council for a schedule of major contracts and dates. In England a Code of Practice issued by the Department of Communities and Local Government (DCLG) states that local authorities should be publishing copies of all their contracts and tenders with businesses and the voluntary and social enterprise sector – for public access. Ask your council where they publish this and if they do not, remind them of the Code
- www.communities.gov.uk/documents/localgovernment/pdf/1997468.pdf.

If necessary, Freedom of Information requests can also be used.

- Draw up a schedule of key contracts up for re-tender that you can target a year in advance.
- Plan how you can intervene in good time to push for returning services in-house rather than letting the council retender them. Use information you have been able to gather from members and key questions about how much has been

paid to contractors and what promises have been kept. Offer to work with the council on commissioning expert advice to help you cost out how an in-house service might compare with what they are paying the contractor.

- Show the council that the tide is turning and many councils are bringing services in-house for pragmatic reasons. Give the council copies of the APSE research and case studies on insourcing²³ (Insourcing a guide to bringing local authority services back in-house; Insourcing update: The value of returning local authority services in-house in an era of budget constraints).

“The council’s contract with Cambridge Education as the borough’s provider of education services will come to an end in April, a move that will save the council around £500,000 per year...The council has decided the time is right to bring the management of education services back in-house...”

Islington Council, March 2013

²³ APSE, *Insourcing a guide to bringing local authority services back in-house*; *Insourcing update: the value of returning local authority services in-house in an era of budget constraints*

6 Additional information

UNISON Local government Guides series – see UNISON website or stock orders for series including:

- Community right to challenge
- Co-ops and mutuals
- Negotiating a procurement agreement
- Social impact bonds
- Sustainable Communities Acts
- Shared services
- Key performance indicators
- Equalities in procurement
- Local authority trading companies
- Social value
- Best Value
- Privatisation and council finances
- Council decision-making

Public service reform... But not as we know it, by Hilary Wainwright with Mathew Little, published by Compass, 2009

UNISON Factsheet #36: The costs of privatisation:
<http://www.unison.org.uk/acrobat/20633.pdf>

Insourcing: a guide to bringing local authority services back in-house, APSE, 2009:
<http://www.apse.org.uk/page-flips/2011/insourcing/index.html>

Insourcing update: The value of returning local authority services in-house in an era of budget constraints – Report by APSE for UNISON, June 2011 <http://www.unison.org.uk/acrobat/20122.pdf>

Fighting privatisation in local government, a UNISON guide <http://www.unison.org.uk/acrobat/19989.pdf>

The value of trade union involvement to service delivery, a UNISON report by APSE <http://www.unison.org.uk/acrobat/19226.pdf>

Think twice: the role of elected members in commissioning, UNISON, APSE, LGIU:
<http://www.unison.org.uk/acrobat/B5150.pdf>

Appendix 1 Privatisation failures

Capita in Sefton

In 2008 Capita Symonds were awarded a 10-year contract to deliver technical services such as road maintenance, engineering, property management and regeneration. In November 2011 Sefton Council decided to terminate its £65m technical services contract with Capita Symonds.

What was promised?

Capita had promised savings of 5.5% over the in-house option and investment in staff and new technology which would create new jobs.

What was the reality?

Three years in the council could see that the contract was not delivering the savings that had been promised and fortunately there was a break clause which allowed it to give notice of termination and bring the service back in-house – with staff due to transfer back in September 2013.

Value for money?

There were serious concerns about value for money with reports of an £18,000 charge to fill a hole in the road which would have cost the council itself only £3,000 to do. A council spokesman said: “After significant reduction in funding and activity as a result of government savings targets, the contract, in the opinion of the council, is no longer the appropriate vehicle to address the future challenges.”

However, the story comes with a sting in the tail. In October 2012 Capita sought and received permission to make compulsory redundancies among the staff who had

transferred to it. It claimed it could not afford to continue to employ the staff for the nine months left until the return of the contract to the council. Capita proposed to handle the redundancies and the council would get a reduced workforce and paybill transferring back in September 2013. Redeployment opportunities are within Capita, not the company. The branch continues to fight on this issue.

IBM in Somerset – South West One ends in tears

Southwest One was set up in 2007 as a joint venture company between Somerset County Council, Taunton Deane Borough Council, Avon and Somerset Police and US computing giant IBM – in which IBM own 75% of shares. The £400m contract involves a whole range of back office support service functions.

What was promised?

When Southwest One was established, both councils and the police claimed it was intended to ‘deliver a range of support and customer services, currently being provided in-house, and will enable the delivery of efficiency savings for both councils, which will allow better investment in front-line services’.

The contract was advertised as a ‘framework agreement’, with many of the projected savings based on the assumption that around thirty other public authorities would join the venture. In the end no other authority joined.

The local UNISON branches campaigned together to oppose the joint venture, strongly

advocating an alternative in-house strategy in negotiations. Coming up against numerous barriers, the contract was eventually signed and all staff seconded, despite a lack of public engagement or scrutiny of what was a very secretive deal.

What was the reality?

Southwest One was mired in controversy from day one – even the local Conservative MP was one of many voices campaigning for greater transparency of the contract and for the original business case to be made public.

In 2010 it was reported that the company had made losses of £16m in its second year, dwarfing the £2m loss recorded in the previous year. It also emerged that the two councils would be fined £15,000 each because of the extra checks that the Audit Commission had to make on the accounts prepared by Southwest One. The Internal Auditors report commented that it was ‘also notable that these errors are not closely related to SAP²⁴ functionality or expertise but they are basic accountancy treatment issues’.²⁵

Following this, a Somerset County Council review into the contract concluded that only £2m out of a promised £45m of savings from procurement had been delivered in the first two years of the joint venture, and that there was no clear plan in place to identify future savings. However the council was reluctant to pull out of the deal because of likely costs involved – instead they sought to

negotiate a ‘realignment’ of the contract. Both Taunton Deane Borough Council and Avon and Somerset Police remain with their original contracts.

UNISON engaged in negotiations with the council on the Staffing Agreement (drawn up back in 2007) as part of the ‘realignment’. The council’s view was that making Southwest One more ‘flexible’ would enable it to meet its savings targets – by creating a more ‘flexible workforce’. Under review were key workforce issues around location, terms and conditions and assured employment. Despite talk of creating a new ‘culture’ amongst employees, the branch reported that staff morale had been damaged by the move, with many secondees feeling stuck between the public and private.

In October 2011 it was revealed that Somerset County Council had decided to take a number of services back in-house following contract renegotiations, including HR and finance, with staff on secondment going back to their Council employment.

A protracted legal dispute between IBM and Somerset Council was finally settled in March 2013. The dispute centred on service standards and non-payment of fees – in particular the council’s wish to end a bonus payment to the company for finding procurement savings. The Tory administration has blamed its Lib Dem predecessors, saying they had effectively written the company ‘a blank cheque’.

Value for money?

The European Services Strategy Unit (ESSU) provided expert advice for UNISON on Southwest One. They stated at the time that

²⁴ The software system bought in by IBM to SouthWest One.

²⁵ Somerset County Council Audit Committee report, September 2010 <http://www1.somerset.gov.uk/council/board9/2010%20September%2023%20Item%207%20Approval%20of%20Revised%20Accounts.pdf>

the contract with IBM was ‘a classic example of ideologically driven outsourcing’. Commenting on the declining level of savings and higher contract management costs, they went on to assert that ‘the increasing annual losses of the joint venture company serve to illustrate the high risks involved in these contracts’.

Liverpool Direct

Liverpool Direct Limited was set up in 2001 as a joint venture company between BT and the council, with BT owning 80% of the company. As well as providing services to the council it also trades in its own right.

What was promised?

The contract saw the company providing the council’s IT service, contact centre, one stop shops, human resources, payroll, revenues and benefits, as well as the Careline social care service.

The original contract was extended in 2006 and again in 2010, just after Labour took over from the Liberal Democrats. At the time of renewal BT gave a number of assurances to the council about their commitment to invest in IT infrastructure as well as job creation, housing and social care schemes in the city.

What was the reality?

Just months after the renewal in 2010, a report commissioned by the council was leaked to the press in which it was claimed that BT were overcharging the council by £10m a year on the contract.

Until this time many had viewed Liverpool Direct as a ‘flagship’ for privatisation and an

example of a successful service delivery partnership. The report uncovered a very different story however, outlining a shocking record including:

- Historical overcharging amounting to £19m
- A ‘complete lack of transparency’ around promised BT investment into the company
- Excessive mark up on the cost of equipment (93%-139%)
- Some activities which were within the scope of the contract charged as ‘extras’
- Concerns about the transparency and effectiveness of governance arrangements

Value for money?

The report went on to state that the cost of services could be reduced by some £10m per year, and that £23m could be saved per year by taking services back in-house. As a result of the report and the controversy it caused within the city, the Labour leader undertook to review the findings before considering whether to continue with the contract or seek to renegotiate it. UNISON played a key role in calling for the report to be scrutinised.

Appendix 2 Better off in-house

Edinburgh – ‘Our city’s not for sale!’

UNISON’s Edinburgh branch defeated “the biggest privatisation of council services in Scottish history”. The council’s ‘alternative business models’ project would have handed three major areas of council service over to private contractors: environment services, integrated facilities management and corporate and transactional services. Faced with a challenge of this size, UNISON got together with Unite and the GMB, plus community groups, to launch a broad campaign under the slogan ‘Our city’s not for sale’. As well as public campaigning, the Edinburgh branch worked hard on creating in-house bids as alternatives to the privatisation proposals and producing briefings to back them up. When the facilities management contract came up for discussion at the council in November, UNISON reminded councillors of their responsibilities under Best Value to look at services holistically.

The branch pointed out that plans in the sell-off tender “to downgrade recycling efforts, dismiss workers and close the pension scheme will have a damaging social, economic and environmental impact and may be unlawful.” On the other hand, when the private and public-service options were compared on a like-for-like basis, said the union, the in-house bid would save £20.5m – and deliver a better service. The council agreed and voted to keep the service in-house. Then in January it made the same decision over the other two privatisation contracts, for integrated facilities management and corporate and transactional services.

Mid Devon Council – leisure services

In 2001 the council decided to explore the possibility of transferring its leisure centres, sports courts, and swimming pools to a leisure trust, mainly to take advantage of possible savings from VAT and business rate relief. While UNISON members had reservations they understood the council’s reasons for considering the change, and were reassured that staff would remain under council control and that their pay and conditions would not be affected.

What was proposed?

However, despite all the talk, the idea was never seriously pursued. Unknown to the union the council ruled out the trust option, but in 2005 decided instead to put leisure services out to tender, with no in-house bid. Worried staff flocked to join UNISON. Initially the UNISON branch strategy was to persuade the council to allow an in-house bid. At the same time the union sought to show that savings from outsourcing the service were unlikely and that local leisure services, particularly for disadvantaged groups, would be at risk if a private contractor took over.

Tender documents were not sent out to potential bidders until 2007. UNISON tried to engage with the council to influence the procurement process but unfortunately the council kept important tender documents secret, arguing that they were ‘commercially confidential’. Despite this obstacle, the branch campaigned successfully to have its concerns heard. Eventually two private companies were shortlisted and invited to tender by the council. UNISON branch

officials met senior representatives from both companies, and were alarmed at the lack of clear proposals for dealing with staff issues properly. It was clear from visits by the union to other contracts run by the two companies that there would be major problems if the privatisation went ahead. UNISON was convinced that both staff and service users would suffer. Despite all these warnings the council decided to appoint one of the bidders – SLM Leisure Ltd – as its ‘preferred supplier’, with the intention of awarding the contract to the company following further negotiations. Fortunately a more diligent approach by the council at this stage soon showed that privatising the services would not lead to any significant savings or the promised investment. And in November 2008, to its great credit, the council reversed its previous decision and decided instead to retain the service in-house, acknowledging the hard work of the ‘excellent’ existing workforce.

Value for money

Since the planned privatisation was abandoned, changes have been made to the way the services are run. These have been supported by staff and the union and have led to both increases in revenue and use by the community of the leisure facilities. And both the leisure services managers and the local union are developing a new and more open working relationship to ensure that services continue to improve and that staff benefit from better job security.

Source: The value of trade union involvement to service delivery, APSE

York City Council – easy@york

The council developed the easy@york initiative following a successful UNISON campaign, which prompted it to reconsider plans for privatising customer and IT services as part of a partnership with Agilysys. ‘Easy’ is an acronym for Electronically Accessible Services in York. Easy@york aims to improve customer access using latest technology and business process re-engineering to improve in-house efficiency. Key milestones for the programme, which involved £3.1 million capital investment and is partially government funded, were agreed in 2005.

Changes made as part of the initiative include interactive web forms enabling customers to contact the council seven days a week, 24 hours a day and the York Customer Centre telephone service. The authority has achieved almost £11 million in savings overall over the last three years as part of the national efficiency drive without cutting services.

As a result of the easy@york initiative, service requests from customers increased by 18% with no increase in costs, 11% of business is now handled via the self-service function on the website and more than 90% of phone calls to the customer centre are answered within 10 seconds. Directing some 200,000 calls a year to the automated phone system frees up employees’ time, which enables them to work on more detailed queries.

UNISON involvement

The easy@york programme was awarded second place in the Local Government IT Excellence Awards for its use of technology

to transform customer contact. UNISON had not been involved in initial attempts to redesign services, but became integral to service improvements as the easy@york in-house programme developed. Staff were initially fearful as the programme was seen as a threat to jobs and levels of pay. Changing job descriptions so that receptionists took on a new, generic 'customer services representative' role was crucial to the success of the initiative and the union made sure staff were involved as much as possible in drawing up the new job descriptions.

Formal union engagement in easy@york was made possible through York's network of Joint Consultative Committees (JCCs) with a UNISON representative sitting on the on easy@york JCC. The union was able to ensure that shop stewards were present at any staff events organised by managers. An initial barrier to overcome was that senior managers tended to develop ideas first and then consult, whereas the union wanted to be involved from the earliest stage.

Value for money

A transparent relationship between UNISON and the employer enabled services to be transformed through the easy@york programme.

Source: The value of trade union involvement to service delivery, APSE

Newcastle City Council – City Service Business Transformation

A drive to improve efficiency began in the early 2000s in Newcastle following inspection reports highlighting that the authority was at that time underperforming. Greater corporate coherence was needed as departments within the council were operating as separate entities with nineteen different customer reception points in the civic centre alone. A range of council core business computer systems were unable to share data and becoming increasingly outdated and expensive to maintain.

What was proposed?

The well-organised UNISON branch built on its strong level of organisation and ran a successful campaign against proposals to outsource ICT, back office and customer service functions to the private sector as a means of improving efficiency. The workforce and unions worked closely with managers and politicians to develop an in-house improvement plan for functions collectively termed 'City Service' – ICT, revenues and benefits, customer services, exchequer services, and business development and transformation – as a viable alternative to privatising.

The in-house plan to transform City Service tapped into the capacities and commitment of frontline workers to bring about a radical internal overhaul of services. A new management team was created in 2003 to promote new ways of working and, more importantly, a new culture within City Service. Fujitsu was appointed as the council's transformation partner under a

Guaranteed Maximum Price contract for the procurement of hardware, new ICT systems and services. The transformation of City Service required 150 out of 600 posts to be cut at fixed points over a period of three years and the council committed to avoiding compulsory redundancies. The job reductions were achieved through resource planning, vacancy management, redeployment and retraining, and the selective application of voluntary severance trawls. This was accompanied by skills development and support in establishing alternative careers. The Building Schools for the Future programme provided an opportunity to further limit redundancies, with some staff providing ICT managed services to the internal clients of the contract, through a competitive process with the private sector. New payroll technology also provided City Service with the ability to support wider strategic functions.

UNISON involvement

The management team was committed to involving unions and employees at every stage of the change. Newcastle City Council funded a full time secondee in the UNISON office to represent staff throughout the transformation agenda. A City Service board met regularly with trade union representatives, who gave feedback on key issues. Every department also had its own workstream group, which included a trade union and a staff representative. On a practical level this involvement meant that, for example, when a new payroll system was implemented, staff were seconded from the payroll department onto a project team to manage the implementation and address any teething issues that arose. Trade union representation was organised to mirror the

management structure at City Service during the overhaul and each division head met their trade union counterpart on a fortnightly basis. Proposals were discussed with the union and then opened up to wider consultation. The City Services Joint Consultative Committee fed into the more formal industrial relations structure and there were a few instances when action was threatened, but most matters were dealt with at an informal stage.

Significantly, union representatives had input into senior management appointments within the service. The council's approach to service improvement has been 'customer-centric' and there is an acknowledgment that staff can understand customer needs and help to engage service users in decisions about improvements.

Value for money

The transformation that has taken place at Newcastle City Service has resulted in £28 million net savings over eleven years. Newcastle is now outperforming other comparable cities on a number of key indicators.

A key lesson from the Newcastle experience is that trade union involvement and workforce involvement are not one and the same, but are complementary. Events at Newcastle show that the union's role is to create the conditions for meaningful engagement between managers and staff, but is not responsible for that engagement per se. Instead, UNISON supported the council in involving the workforce in the transformational process by acting as a 'guarantor' and providing the security that was needed to underpin that involvement.

An associated lesson is that while it can be difficult for union activists to be proactive rather than reactive, the proactive stance taken by UNISON in Newcastle made the in-house bid possible and successful.

Source: The value of trade union involvement to service delivery, APSE

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