



Unite response to call for evidence on public service reform
and Modernising Commissioning Green Paper

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, not for profit sectors, local government, education, the NHS and other health services, prisons and Royal Mail. Unite is a significant player in public services representing over 250,000 workers, including 60,000 employees in the not for profit sector.

Executive Summary

- Unite has serious concerns about the consultation process in respect of its failure to comply with the Code of Practice on Consultation and failure to consider the principles behind the proposals put forward.
- The Government's proposals for reform can not be separated from its severe and rapid cuts to public spending which will have critical consequences for public service users and workers, particularly the most vulnerable.
- The outsourcing and privatisation of public services will result in the increasing fragmentation of important services, an abandonment of universal access in key areas and increased inequality.
- The not for profit and third sector has a different role to that of the public sector and privately run organisations. It brings advocacy and a strong independent campaigning voice to represent the most vulnerable in society. In this sense it adds value to core public services.
- Unite is supportive of genuine social enterprises and cooperatives as valuable contributors to social and community development. However, the union has serious concerns about the push towards social enterprises in public services and the impact that this will have on services, their users and employees.
- The proposals to give public sector employees "rights to provide" raise serious concerns, not least in respect of real and meaningful staff engagement.

- The move towards more ‘marketised’ systems of funding and payment raises concerns about appropriate national minimum standards and growing inequality.
- The *collective* dimension to public services necessitates a democratic accountability and transparency that can not be delivered by contracts in a market.

Introduction

1. This response covers key issues for Unite in respect of both the call for evidence on public service reform and the ‘Modernising Commissioning’ Green Paper noting that the Cabinet Office has advised that it is not necessary to submit duplicate information to both.
2. Unite is seriously concerned that both of these consultations fail to meet the requirement in the Code of Practice on Consultation that “*consultation should normally last for 12 weeks*”¹. The short timescale allowed for responses (less than six weeks over a period that included Christmas) not only limits the ability of all legitimate stakeholders to respond effectively to the important issues concerning the Government’s proposals, but questions the credibility of the consultations.
3. The credibility of the public service reform consultation is also brought into question by the assertion that any responses “not directly relevant to the questions being considered will be deleted”. The points made in this submission are relevant to the questions posed, but the consultation ducks the big question of whether what is being proposed is right. It seems as though any evidence that the reforms proposed will lead to a deterioration of services and increased costs will be discarded. One public services commentator has already questioned the extent to which the Government is genuinely listening saying of this call for evidence “they are asking for evidence to support their prejudices, it can only lead to doing the wrong thing righter”².
4. Unite is also clear that the Government’s proposals for reform can not be separated from its severe and rapid cuts to public spending which will have severe consequences for public service users and public service workers, particularly the most vulnerable³.

Independent provision in key public services (Questions 1-3)

¹ <http://www.bis.gov.uk/files/file47158.pdf>

² John Seddon in *Vanguard News*, December 2010

³ See for example TUC (2010) *Gender Impact of Cuts* - <http://www.tuc.org.uk/extras/genderimpactofthecuts.pdf> and Tim Horton and Howard Reed (2010), *Where the money goes* - <http://www.tuc.org.uk/extras/wherethemoneygoes.pdf>

5. The Government's drive to increase independent provision in key public services does not appear to be based on any evidence that this will lead to better public services or acknowledge the important role that properly funded, directly delivered public services play in the economy and society.
6. A recent TUC paper compiles a range of evidence that explodes a number of privatisation myths⁴. It finds:
 - Public money is best kept within the public sector during a downturn;
 - There is no evidence that the private sector is more efficient than the public sector;
 - Public services are too important to compete on price;
 - Only the public sector can respond to society's collective needs;
 - Public services create public value – but this is hard to measure;
 - In reality, support functions are just as important as the front-line.
7. The outsourcing and privatisation of public services will result in the increasing fragmentation of important services, an abandonment of universal access in key areas and increased inequality.
8. The Government's proposals for the NHS, for example, are geared towards financial and business contractual relationships and outcomes rather than meeting health needs. This will lead to increasing health inequalities and ultimately put at risk the concept of a universal, free health care service. Unite members want a National Health Service that is publicly owned, publicly funded and publicly accountable, providing comprehensive and universal health services. The Government's proposals seek to replace that collective public service with a myriad of competing businesses and enterprises.
9. Privatisation, and the drive to make profits and reduce costs as much as possible, will lead to reduced staff numbers. This will mean the ending of some health care provision and increased staff workloads for those employed. Unite believes that reduced costs also threaten to come at the expense of staff terms and conditions.
10. The contracting out of services can have a detrimental impact on quality. Taking cleaning services as an example, these have been subject to privatisation since 1983 and approximately 40 per cent of hospitals now have contracted out cleaning services⁵. Since the introduction of compulsory competitive tendering in 1983 the levels of cleanliness in hospitals have declined. Cardiff University research⁶ has cited a range of evidence to support this, and the decline in standards

⁴ TUC (2010), *Exploding privatisation myths* - <http://www.tuc.org.uk/extras/speakupprivatisation.pdf>

⁵ BBC, 2008 – see <http://news.bbc.co.uk/1/hi/health/7372992.stm>

⁶ Steve Davies, Cardiff University, 'Making the Connection: Contract Cleaning and Infection Control', (2009) and 'Hospital Contract Cleaning and Infection Control', (2005).

has been accepted by clinicians, academic researchers and the Department of Health.

11. There have also been significant recruitment, retention and sickness absence problems and high staff turnover with contracted out cleaning services. All of these will be contributory factors in lower standards of cleanliness and create barriers to cleaning staff being part of the wider health team. The Government's privatisation programme will replicate these serious problems across the NHS.
12. 'Efficiency savings' often translate into simple cutbacks in services and staff, rather than genuinely engaging staff about how services and work can be redesigned effectively. For example, NHS Sheffield Primary Care Trust has previously employed a consultancy firm to find efficiency savings, who recommended cutting the Whole Time Equivalent Health Visitor numbers from 95 to 84.86. Union members reported that the company carried out 'time and motion' studies and were unwilling to recognise the role of Health Visitors in child protection. This example comes from a time when the 'NHS competitive market' and 'efficiency savings' were on a comparatively small scale compared to what is now being proposed. Unite is already receiving reports of many staff performing vital roles who are being told their jobs are at risk.
13. In local government, research published by the Association of Public Service Excellence (APSE) identifies a range of evidence-based reasons as to why dozens of councils are returning services that have been delivered by private and voluntary sector contractors in-house and that benefits are being reaped from doing so⁷.
14. APSE finds four core reasons why services have been returned in-house: poor performance, drive for quality and value for money, strategic governance and local policy drive, and the workforce. In respect of the workforce, the report states that "services have also been insourced as a result of unmotivated workforces contributing to poor performance. Poor terms and conditions, and poor career development opportunities would appear to impact upon the quality of service delivered".
15. In respect of the not for profit and third sector, it needs to be recognised that this sector has a different role to that of the public sector and privately run organisations. The universal provision of services enabled the charitable sector to bring additionality, innovation, advocacy and a strong independent campaigning voice to represent the interests of the most vulnerable in society. In this sense it adds value to core public services.

⁷ APSE (2009), *Insourcing: a guide to bringing local authority services back in-house*

16. Open competition for funding in the sector has caused many organisations to change their emphasis or undercut the true value of the contract in the bidding process, to guarantee them the contract over increasingly poorer providers or private enterprises.
17. The extra demands of 'more for less' in the sector have resulted in people having to work excessive hours or having their terms and conditions of employment cut. These issues should be part of a commissioner's considerations as they impact on service delivery. Quality investment in the workforce is a prerequisite for the delivery of quality public services.
18. Issues relating to third sector funding and continuity of care are dealt with later in this response under the section relating to Qs 19-20.
19. In a network business with statutory obligations such as Royal Mail and the Post Office, consistency and conformity is critical. Fragmentation and decisions taken in isolation may impact negatively on other parts of the network or levels of service.
20. The Government's refusal to guarantee Royal Mail business to local post offices threatens the post office network. Royal Mail provides a critical and unique service to rural and urban communities across the country. Privatisation will lead to the closure of Post Offices, threaten the universal service and lead to a deterioration of services, particularly for small businesses, domestic customers, vulnerable groups and communities. These concerns are shared by the public with a YouGov poll in August 2010 showing that only 15 per cent of the public agree with privatising Royal Mail while 60 per cent believe the Royal Mail should remain a wholly-publicly owned organisation.
21. Unite also condemns the Government's recent announcement to withdraw the code of practice on workforce matters – also known as the 'two-tier code' – in respect of Government contracting out of services. This will only serve to chip away at the public service ethos, and the pay and conditions of public sector employees.
22. As a TUC Touchstone report makes clear, the elements required for improving the effectiveness and quality of public services are no secret. It requires strategic leadership and vision by managers and politicians, and the active involvement and engagement of public service users, staff and their trade unions⁸. But engagement does not equate to transferring out of the public sector.

Rights for communities and public sector employees to provide services (Questions 4-6)

⁸ TUC (2009), *Speaking up for Public Services*

23. Unite is supportive of genuine social enterprises and cooperatives as valuable contributors to social and community development and regeneration. Trade unions have a long history of support for such organisations. However, Unite has some serious concerns about the push towards social enterprises in public services and the impact that this new emphasis will have on services, their users and employees.
24. The union's most serious concern is around public service reform. It is clear that social enterprises are being used as a tool to privatise significant parts of the country's public services. The union is clear that there is a significant difference between an organically created social enterprise set up to fill a social need in a community or a gap in public services and social enterprises created with the sole purpose of taking on provision of outsourced public service work.
25. Government support and increased funding pressures for contracts are forcing more and more charities to become social enterprises and adopt business models. Many Unite representatives in the not for profit and third sector report that this is damaging the ethos of many organisations as they are being forced to become more business minded and divert resources from their other work.
26. The push to have more social enterprises and cooperatives/mutuals provide public services can be seen as part of a wider policy framework of privatising those services. This will lead to the fragmentation of public services and collapse of cooperative working between providers.
27. The proposals to give public sector employees "rights to provide" their services to their current employer under contract raise serious concerns, not least in respect of real and meaningful staff engagement.
28. In the NHS, Unite members' experiences of the 'right to request' to become a social enterprise has identified significant problems. Unite has campaigned across the country for NHS staff to be given a ballot to decide if services are outsourced to a social enterprise. Where staff have been given a ballot they have overwhelmingly rejected services being transferred to social enterprises. In November 2010 staff at Plymouth primary care trust (PCT) voted overwhelmingly against plans for community services to be transferred to a social enterprise by April 2011, because of fears about the quality of patient care and safety. A joint trade union survey of over 1,000 PCT employees has found that just four per cent support the move out of the NHS into a social enterprise. Services that could be affected include health visiting, mental health nursing, children's services, and community services.
29. Despite the frequent arguments that social enterprises are being established to empower staff, Unite has come across instances where Trusts have refused to hold ballots or sought to push ahead with their plans in the face of ballot results showing staff wishing services to be retained in the NHS. For example, the management of community

services at NHS Mid Essex and NHS South East had committed to hold a staff ballot on services transferring to a social enterprise in December 2009. This commitment was withdrawn after staff at NHS West Essex voted overwhelmingly against moving to a social enterprise.

30. A report by the Nuffield Trust found that “NHS staff are motivated by the opportunity to deliver high-quality services that make a difference to patients. But they feel that their ability to do this is being threatened by the adoption of a more business-oriented approach within the health service”⁹. The same report also found that “Research consistently demonstrates that employee ownership only produces (or only sustains) benefits when two further factors are present: human resource management practices that foster staff participation; and a culture of ownership that is associated with staff having a collective voice in the organisation”. The report goes on: “this raises questions about whether staff participation and collective voice (in the absence of ownership) would achieve similar outcomes”.¹⁰
31. It is staff involvement not transfer of employment that is crucial. Public sector workers should be more involved in the running of their services and participate in decision making concerning the services they deliver. But that can happen inside the public sector. It does not need the wholesale transferral of services and employment out of the public sector.
32. Unite has produced a briefing on social enterprises in the NHS which outlines some of the implications for healthcare¹¹. These include:
- **Cost** - Privatised healthcare tends to cost more. The break up of NHS services into lots of different private sector competitors operating in a market is a huge financial drain. This competitive market needs to be ‘managed’ and has a large number of transaction costs, such as legal fees in drawing up and monitoring contracts, invoicing and billing for services, advertising for patients and service users and money spent on trying to win contracts. Professor Allyson Pollock has estimated that the marketised healthcare system may cost up to £20billion a year¹².
 - **Long term public health needs but short term contracts** - There is an inherent contradiction between the aim – and need –

⁹ Jo Ellins and Chris Ham (2009), *NHS Mutual: Engaging staff and aligning incentives to achieve higher levels of performance* (Nuffield Trust)

¹⁰ The Nuffield report also found that: “Access to NHS pensions remains a major barrier to PCT provider arms becoming social enterprises. Unless the rules on new staff employed by social enterprises not being entitled to join the NHS pension scheme are changed, then the number of provider arms choosing to go down this route is likely to be extremely limited”.

¹¹ <http://www.unitetheunion.org/pdf/002-Social%20Enterprise%20briefing.pdf>

¹² Professor Allyson Pollock, ‘What Sicko doesn’t tell you.....’, September 2007
http://www.guardian.co.uk/politics/2007/sep/24/health_publicservices

to develop healthcare services that invest in public health initiatives that will not bear financial fruit for many years and a brutal short-term competitive market where contracts are renewed every few years. There is a risk that companies who don't generate profits will go bust. What then happens to the health services they were supposed to provide?

- **Competition not cooperation** - High quality holistic healthcare can not be delivered to people, families and communities through a competitive market. Unite has examples from our not for profit sector membership where competitive tendering among children's charities hindered the sharing of best practice and knowledge. A business will not share innovative practice with others as it will lose its competitive advantage and risk losing its income and contract, therefore threatening the future survival of the company. To attract patients and clients to a service – and therefore generate an income stream – organisations will have to spend money on marketing and advertising. There is then a further incentive to 'cherry pick' and prioritise treating those patients and users with the least complex needs, who will be the most profitable.

- **Accountability** - Accountability suffers when private involvement increases. 'Commercial confidentiality' makes it impossible to scrutinise public spending because the information is not available. Turning health services over to private companies increasingly means that holding organisations to account means ensuring contract compliance. If a change of organisation is demanded to deliver on new goals set democratically by governments or councils, this can only be done by re-negotiating contracts.

33. In respect of communities providing public services, a recent report identifies some of the challenges concerning the public's appetite for participation in public services. It shows that whilst the public supports the idea of individuals and communities playing a role in public service design and delivery, the public also thinks that the state should also continue to be the main provider of services. In particular, 94 per cent said the state should be most responsible for providing health care, 93 per cent look to the state to keep them safe, and 93 per cent see the state as the main provider of education¹³. Whilst the public might have a desire to get involved, it is not, in the words of one of the report's authors "at the price of the state absenting itself and leaving individuals and civil society to get on with it"¹⁴.

34. The Government's approach of pushing the delivery of key public services onto communities could result in short-termism and a lack of

¹³ Institute for Public Policy Research and PricewaterhouseCoopers (2010), *Capable Communities* - <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=727>

¹⁴ <http://www.ippr.org.uk/pressreleases/archive.asp?id=3870&fID=284>

appropriate strategic planning arising from a lack of certainty and stability over the time frame services are to be provided.

35. Along with the TUC, Unite shares a number of concerns in respect of proposals to promote employee ownership of public services and the implications for public services, their users and employees¹⁵:

- Can mutualism ever be consistent with universal coverage?
- What will all this mean for accountability?
- What is the problem to be fixed? Advocates say that employee ownership boosts staff autonomy and motivation. But if this is the case, do we really need a radical change in ownership? And would it not be better to promote fairer capitalism and workplace democracy in private sector firms first?
- What happens if a social enterprise or cooperative fails? It is unclear what would happen if an employee owned organisation was deemed to be failing, either by the public sector or by the cooperative itself. Would the staff be able to challenge its own Board or sack its managers? Will the taxpayer have to pick up the cost if an organisation went bust?
- What will this mean for pay and pensions? Any workers transferred to a cooperative or social enterprise would have their employment rights protected by TUPE, but any future improvements to public sector employment terms and conditions and pay would not automatically be granted. TUPE prevents public sector workers transferring their public sector pensions with them.
- How will governance arrangements be established? Would all employees have identical shares and equal votes? Who will set the performance standards and will they be consistent across the country?

External investment and expertise into the public sector (Questions 7-8)

36. The severe consequences of inappropriate private sector involvement in the funding of public services are demonstrated by the private finance initiative (PFI). PFI contracts have been found to be “notoriously inflexible, limiting the ability of public sector bodies to strategically plan for the future as they are contractually bound to pay for a building and a pattern of service provision which could later prove inappropriate and unfit for purpose... Experience shows that governments remain accountable to deliver services regardless of how well the PFI project or company fares”¹⁶.

37. The House of Commons Public Accounts Committee recently concluded that the Treasury should find ways to retrieve up to £440m

¹⁵ TUC (2010), *Employee ownership, cooperatives and social enterprises in the public sector* - <http://www.tuc.org.uk/extras/speakupmutualism.pdf>

¹⁶ TUC (2010), *Exploding privatisation myths* - <http://www.tuc.org.uk/extras/speakupprivatisation.pdf>

of the £1bn of extra costs charged by the banks for PFI projects signed during the financial crisis¹⁷. The Committee also notes that the long-term nature of the deals signed means that taxpayers were locked in for 30 years, concurring with the findings of a National Audit Office report into PFI projects¹⁸.

38. The purported purpose of PFI is to transfer the risk attached to building projects such as hospitals to the private sector. However, once a hospital is built the risk is so small that astronomical profits can be made from refinancing deals – as in the case of the Norfolk and Norwich Hospital, where the Octagon consortium made gains of £95m, and tripled its original expected internal rate of return from 19% to 60%, but left the hospital with extra potential liabilities of up to £257m should it need to terminate the contract early¹⁹.
39. An accountants' report for the Audit Commission of Queen Elizabeth Hospital in Woolwich found that half the Trust's deficit of £20million in 2005-6 was due to the annual PFI charge it has to pay, £9million a year more than it would have to pay if the hospital had been traditionally funded²⁰.

Payment and funding mechanism (Questions 9-13)

40. The move towards more 'marketised' systems of funding and payment raises concerns about appropriate national minimum standards and growing inequality.
41. In the NHS, for example, the NHS Outcomes Framework makes no reference to the "national minimum standards" that people should expect. There is no detail on what will happen if a contracted provider does not achieve a 'goal' (assuming that the goal is incorporated into a contract as a standard to be reached rather than an aspiration). The logic of the market/contract system is that the provider in question is not paid. This will make local health services worse for the local community and is another example of why health is a public good that should be delivered collectively, not a privatised commodity.
42. The emphasis on generating business revenue will lead organisations to assess how they can raise funds and improve profitability. Moves such as removing the private income cap for Foundation Trusts will allow organisations to prioritise attracting and treating fee paying

¹⁷ Public Accounts Committee (2010), *Financing PFI projects in the credit crisis and the Treasury's response* - <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpublic/553/55302.htm>

¹⁸ National Audit Office (2010), *Financing PFI Projects in the credit crisis and the Treasury's Response* - http://www.nao.org.uk/publications/1011/pfi_in_the_credit_crisis.aspx

¹⁹ Watchdog brands profits on PFI scheme 'unacceptable', The Financial Times, 3 May 2006 <http://www.ft.com/cms/s/eb886818-da40-11da-b7de-0000779e2340.html>

²⁰ Flagship PFI hospital 'technically bankrupt', The Guardian, 16 December 2005 <http://www.guardian.co.uk/frontpage/story/0,1668839,00.html>

patients. This amounts to the opening of the door to a two, or multi-tiered service, which will increase inequality. The business market the Government proposes is based on short term profit and volume of activity. It does not incentivise or reward public health programmes whose benefits are not financially rewarding in the short term, and is not concerned with assessing or funding unmet need in a local community.

Democratic accountability at a local level (Questions 14-18)

43. The *collective* dimension to public services necessitates a democratic accountability and transparency that can not be delivered by contracts in a market. Transferring public services out of the public sector detaches public institutions from the democratically elected state bodies that own and govern them, including local councils.
44. Elected councillors and robust, properly resourced arrangements for local scrutiny are critical in ensuring properly accountable public services at a local level. The fragmentation of public services and multiplicity of providers resulting from the Government's proposals will stretch the capacity of councillors to hold service providers properly to account.
45. In health, Unite believes the proposals in the NHS White Paper will erode democratic accountability and structures through which local people can change the direction of local health policy and action, the services that are delivered, by whom and how they are delivered.
46. The 'choice' that is contained within the proposals is not needs based or patient based – it is a narrowly defined, market based choice. The actual choice about who to commission – and therefore the determination of what is available in a local area – lies with the GP Commissioners. Unite does not believe that there will be meaningful democratic oversight of this power.

Continuity of service and managing risks (Questions 19-20)

47. The reforms proposed by Government contain a number of risks to continuity and quality of service. The 'marketisation' of public services will undermine universality of provision and create an environment of constant upheaval and uncertainty for public service users and workers. It also risks expense to the taxpayer in respect meeting the costs of market failure or provider withdrawal.

48. The most vulnerable in society risk losing continuity of care, an important aspect of many important services as they find that those on whom they depend will often change, or a service closes.
49. In respect of the not for profit sector, the issue of short-term contracts and funding mentioned earlier in this response means that organisations are unable to strategically plan services and campaigns because of short funding cycles resulting in service users and employees being put at risk.
50. A holistic service is being reduced to a tick box culture and without funding stability, strategic planning is being replaced by a short-term approach to meeting long-term needs. Stability is essential for the sector to perform and is being denied by the way funding in the sector is organised²¹.
51. The potential for organisations to fail to provide a service in the longer term could result in a discontinuity of service with often severe consequences for the user of that service and the need for local or central government to provide an interim or emergency service which may prove to be short of the service required and more expensive.
52. In healthcare, Unite does not believe the Government's proposals will drive up quality standards in health services. In addition to the impact of privatisation on cleaning services mentioned earlier, consideration can be given to the impact on social care. The Commission for Social Care Inspection reported in 2005 that in providing care for older people in care homes, and home care services, private sector providers were more likely not to meet minimum national standards. Furthermore, it also reported that a consequence of competition amongst private sector care providers is that to lower costs there are examples of staff not being paid for the time and expenses involved in travelling between care visits²².

Gail Cartmail
Unite, Assistant General Secretary, Public Services
gail.cartmail@unitetheunion.org

For further information, please contact:
John Earls
Unite, Research Section Head
john.earls@unitetheunion.org

²¹ Unite's recommendations for funding in the not for profit sector are available at http://www.unitetheunion.org/sectors/community_youth_workers/campaigns-1/funding_campaign/unite_recommendations_for_fund.aspx

²² Former Commission for Social Care Inspection, 'Time to Care, 2006

020 7611 2657

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