



**Unite response to Department for Communities and Local  
Government consultation on ‘Best value: new draft statutory  
guidance’**

**This response is submitted by Unite. 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, transport, local government, education, health and not for profit sectors.**

**Executive Summary**

- Unite opposes the repeal of the ‘Two-tier Code’ and related guidance. This move appears to be motivated by a desire to undermine conditions of employment in outsourced public service contracts.
- The revocation of the Duty to Involve and the Duty to Prepare a Sustainable Community Strategy will make this process worse still as it will undermine local accountability for service users and communities affected.
- By removing these obligations the new draft guidance is now vague and open to wide interpretation. It makes no mention of employees or working conditions and significantly waters down previous obligations to consult and plan service delivery.
- This is part of an explicit policy of extending the privatisation of many vital public services that people depend on. It will create a return to commissioning based on lowest bidder rather than best value and service quality will suffer.

## **1. The Unite case in detail**

1.1. Unite is extremely worried by government plans for public services. Government strategy is now explicitly about “opening up government procurement and reducing costs”<sup>1</sup> rather than providing the best quality service to service users.

1.2. This is an ideologically driven approach to public services that prioritises increased competition and outsourced delivery by the private sector over evidenced based service design. There is no stated justification for arbitrary targets such as the aspiration that 25% of government contracts should be awarded to small and medium-sized businesses.

1.3. The view of Unite is clear – there has been no consultation on the decision to remove the ‘Two-tier Code’ and it appears to have been motivated by a desire to drive down the pay and terms and conditions of staff. The responsible employers cited by government statements would not have been deterred by the ‘Two-tier Code’. In fact during meetings hosted by the TUC, contractor companies have regularly emphasised that the code protects service quality as it deters unscrupulous ‘bottom feeders’ from bidding for contracts.

1.4. The outcome will be a return to the race to the bottom in service contract bids and will further undermine the viability of many not for profit organisations. This is a green light to bad employers to squeeze workers’ conditions in order to make profits from public services and to local governments to cut costs in their service contracts.

## **2. Is the guidance clear, specific and proportionate?**

2.1. The new guidance is sending a message to service deliverers and commissioners that the issues previously covered by the ‘Two-tier Code’,

---

<sup>1</sup> <http://www.cabinetoffice.gov.uk/sites/default/files/resources/two-tier-code.pdf>

the 'Duty to Involve' and the 'Duty to Prepare a Sustainable Community Strategy' are no longer priorities for government.

2.2. This means that service providers and commissioners will not be obliged to consider crucial issues of employment conditions, staff morale and wider public accountability in service contracts. The new guidance does not even include reference to the considerably weaker 'Principles of Good Employment Practice for Government, Contracting Authorities and Suppliers' brought in to replace the code.

2.3. Unite would like to see these issues reintegrated into guidance on Best Value. In particular, there should be explicit reference to the consultation and treatment of staff and trade unions when deciding how to fulfil the Best Value duty.

### **3. Is there anything else that we should cover in order to provide more clarity to councils, contractors and the voluntary and community sector?**

3.1. The 'Two-tier Code' arose in response to serious – and evidenced – concerns from trade unions about the negative impacts of outsourcing on workforce matters and service quality. These concerns centred on:

- Workforce issues not being given proper attention during the process of outsourcing public services, and
- New staff being employed on worse pay and other terms and conditions to those who had transferred out of the public sector, once services were outsourced.

3.2. The creation of a two-tier workforce in any organisation is not only grossly unfair to new staff, but can lead to increased industrial disputes and be used to erode the pay and terms and conditions of all staff employed by that service. The impact of this race to the bottom in terms and conditions is disastrous for staff morale and, thus, service quality. Both the

Association of Public Service Excellence (APSE) and the Trade Union Congress (TUC) have provided extensive evidence to show that quality services need fairly paid staff. As the 'Two-tier Code' stated "there is no conflict between good employment practice, value for money and quality of service. On the contrary, quality and good value will not be provided by organisations who do not manage workforce issues well."

3.3. The code was motivated by the need to create a level playing field in service contract design and prevent organisations from bidding down the cost of service delivery, through cuts to staff terms and conditions, in order to win contracts. Bidding organisations were strongly in favour of this as it allowed them to bid on quality rather than service cost.

3.4. The code covered the following key points that Unite believes are still relevant and should be re-included in all contracts as part of the Best Value duty:

- a. Service providers who intend to cut costs by driving down the terms and conditions for staff, whether for transferees or for new joiners taken on to work beside them, should not be selected to provide services for public sector organisations.
- b. There should be an explicit requirement to protect the pensions of staff transferred into new service providers and detailed conditions for quality pensions for new employees.
- c. New employees should receive fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees.
- d. Clear conditions and arrangements for the consultation and participation of trade unions throughout any service transition and during the contract period. This includes in dispute resolution and in raising breach of contract issues.
- e. A duty on the public body awarding the contract to monitor its implementation by the private contractor and a duty on the private contractor to provide required information for effective monitoring.

f. Provisions for complaints, dispute resolution and the enforcement of service contracts.

3.5. By repealing the 'Two-tier Code' and the removal of these issues from specific guidance, service contracts are likely to ignore these important safeguards. Service quality and staff terms and conditions will almost certainly suffer as a result. This will yet again hit the lowest paid service users and employees and disproportionately affect women.

3.6. Similarly, the 'Duty to Involve' and the 'Duty to Prepare a Sustainable Community Strategy' were both brought in to increase public accountability in public sector commissioning. The new guidance is vague and does not provide for processes of consultation and accountability. This will undermine local democratic accountability in the commissioning process and have a likely negative impact on service outcomes.

#### **4. Are there any other issues you wish to raise?**

4.1. Unite would like to ask which organisations, if any, were actually calling for the repeal of the 'Two-tier Code' and the two statutory duties?

4.2. Unite has not come across a single respectable organisation that saw the code or these duties as a hindrance to their work. There were no public calls for their removal and there was no public consultation on their repeal.

4.3. During the previous government it was widely accepted by the contracting industry, Local and Central Government, that the race to the bottom brought about by compulsory competitive tendering had damaged the reputation of public service delivery and quality.

4.4. The Coalition Government is making all the mistakes of the past and service users will suffer as a result.

**14/06/2011**

This response is submitted on behalf of Unite the Union by:

**Gail Cartmail,  
Unite Assistant General Secretary**

**For further information on this written response, please contact:**

**James Lazou, Research Officer**  
[James.Lazou@unitetheunion.org](mailto:James.Lazou@unitetheunion.org)  
**020 7611 2504**

**Unite the Union  
Unite House  
128 Theobalds Road,  
Holborn, London, WC1X 8TN**

**Priti Taneja**  
[bestvalue@communities.gsi.gov.uk](mailto:bestvalue@communities.gsi.gov.uk)  
**Department of Communities and Local Government  
Eland House  
Bressenden Place  
London SW1E 5DU  
14/06/11**