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**“More freedom, more choice”  
– but better public services?**

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# Editorial

## Winter 2011

This issue of *Research in Public Policy* focuses on the coalition government's *Open Public Services* White Paper, published in July 2011, which sets out the government's agenda for public service reform, based on five principles of choice, decentralisation, diversity, fairness and accountability.

The White Paper raises important questions about what is the best way to organise and deliver public services – such as whether and how competition can deliver better public services, what are the potential benefits, risks and barriers to the involvement of private and not-for-profit organisations, how to enable informed consumer choice and how to ensure accountability in a pluralised and fragmented model of public service delivery.

Here we bring together a set of articles from CMPO members and researchers at the London School of Economics, the Social Market Foundation, the Third Sector Research Centre and the Institute for Government, which provide valuable research evidence on these issues.

**Helen Simpson and Sarah Smith**

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# Delivering better public services?

**How to provide good quality public services is a crucial question that every government faces. The challenge of improving public services has become even greater in an age of fiscal austerity. The kind of spending increases that took place under the Labour government are no longer an option.**

In the summer, the government published a White Paper – *Open Public Services* – that sets out its view on how to achieve better public services. At the heart of the White Paper are five principles:

- Greater **choice** wherever possible;
- **Decentralisation** to the 'lowest appropriate level';
- **Diversity** of provision by opening up public services to for-profit and not-for-profit providers;
- **Fairness** and in particular fair access; and
- **Accountability**, with an emphasis on local democratic accountability.

There seems to be an important distinction between the first three of these principles – which describe mechanisms for the organisation and delivery of public services, emphasising a move away from centralised public sector provision – and the final two principles – which describe the values that public

services should embody. And as we argue further below, there may be tensions between these principles.

The ideas around increased choice and competition and decentralisation are not new. Much research at CMPO has been concerned with providing rigorous analysis of the effects of earlier reforms – particularly in health and education.

In the first article in this issue, Julian Le Grand reflects on his experiences as a key driver of the 'quasi-market' reforms introduced by Labour. His conclusion is that the evidence – much of it from researchers working at CMPO – is largely positive. 'By 2010 the NHS was providing quicker, higher quality care, and doing so in a more efficient and more responsive manner.' While some of the improvement may have been driven by improved funding, 'the relatively poor performance of the better-resourced but unreformed Scottish and Welsh health services suggests that there was more going on'.

In her article, Carol Propper discusses the evidence on opening up competition and choice in healthcare covering the series of NHS reforms carried out during the 1990s and 2000s. Although the take-up of choice under the 'choose and book' system was slow, there is evidence that patients were

responding, for example, selecting treatment at hospitals with shorter waiting times. There is also some evidence that quality of care rose in hospitals facing the most competition. She also highlights a number of important areas, including the impact of competition in health and community care beyond the hospital sector, where evidence is currently lacking.

In education, however, the effect of choice and competition to date appears to be much weaker. In their article, Rebecca Allen and Simon Burgess suggest that the evidence shows 'a small and statistically weak impact of increased choice on overall standards'. There is a, however, a correlation – but not necessarily a causal relationship – between higher levels of pupil sorting by socio-economic background and by ability and the degree of choice.

What is new in the White Paper is the desire to take choice, competition and diversity further and to apply the principles systematically across pretty much the entire reach of public services, ruling out only the military and parts of the judiciary. The government has very recently expanded the contracting out of 'welfare-to-work' under the Work Programme. Ian Mulheirn's article critically assesses the prospects for success. He concludes that 'done well, such policies can spur innovation and improve value for money. But done badly they can end up costing the taxpayer more and result in poorer services.'

Also new is the increased emphasis on involving the voluntary sector. Coinciding with the cutbacks, this has been seen by some as a cynical attempt to 'voluntarise' public services. There is, however, a genuine recognition that voluntary organisations have several potential advantages compared with for-profit organisations. But David Mullins, James Rees and Rosie Meek raise important questions about 'the power of third sector organisations to challenge and compete in the new environment [and] the power of commissioners to prevent the emergence of new monopolies'.

Developing this idea further, Paul Grout argues that, given the size of the voluntary sector, any additional funding is going to come from the private sector. His article emphasises that this can be beneficial – at least in areas where private provision is appropriate. 'The general theme of private delivery of public services is that, on average, privatisation, partnerships and outsourcing have been reasonably successful.' The challenge for the government, however, is in overcoming public hostility to the idea of running any public services for private profit.

As mentioned above, it is easy to see some potential tensions between the five principles that are set out in the White Paper. One such tension is between the principles of choice and fairness. A choice-based system is likely to give an advantage to those best placed to exercise choice, potentially threatening the principle of fair access.

In education, there may be limits on the extent to which a choice-based system can achieve equality of access. Rebecca Allen and Simon Burgess argue that the main policy challenge in achieving fairer access is a reduction in the prominence of

proximity as factor determining school admissions. Writing about the use of performance measures, which are a key tool for effective consumer choice, Deborah Wilson argues that some people may 'need more guidance in processing complex performance information, which has implications for equity'.

There is another potential tension between diversity (which practically may involve the commissioning of both for-profit and not-for-profit organisations) and accountability. This is a theme developed in the final two articles.

Law professor Tony Prosser writes that 'traditional means [of accountability] are not well suited to government by contract.' Kate Blatchford discusses a number of potential new mechanisms for accountability that may operate in a fragmented and pluralised system. One of the main challenges is to make multiple channels of accountability coherent and consistent. With an array of different accountability mechanisms, there is a danger that 'service users will not know which form of accountability best suits their needs'. One idea is for policy-makers to think about an 'accountability map' to guide people through.

Following the publication of the White Paper, public services will continue to be the subject of intense academic and policy debate. The rolling out of new models of delivery – such as the Work Programme, free schools and mutuals – will also provide an opportunity for rigorous evaluations to learn important lessons about what works. This will be a crucial area for research in the years to come.

# Delivering Britain's public services through 'quasi-markets': what we have achieved so far

**Julian Le Grand, London School of Economics (LSE) professor and former Downing Street adviser, reflects on the development of ideas about choice and competition in education and healthcare, his role in their implementation as practical policies – and the outcomes for public service quality.**

It is rare that academics working in the area of public policy get called to account for their specific policy recommendations. Normally you write your article or book in glorious isolation in your academic ivory tower. Then if you're lucky, on the day of publication, you may get called on to the *Today* programme for what is usually a respectful interview about whatever policy ideas you have come up with. There follows a ripple of interest in the quality press, and then the pool of indifference closes over the ideas, leaving the surface unruffled and government policy unchanged.

In a way, frustrating though it can be, there is an element of relief in all this. Obviously you believe that your idea will work, but you can never *know* that it will. There is always the risk of failure, the possibility that the grand claims you made for the idea will prove to be empty – or, worse, that the proposal, once implemented, will be counterproductive, creating perverse incentives that make the problem the policy was supposed to resolve worse.

In fact, the testing of policy proposals against the evidence is itself a testing experience, especially for their proponents – as indeed I can now bear witness. In the early 1990s I was lucky enough to work with Carol Propper and other colleagues at the School for Advanced Urban Studies (one of CMPO's precursors at the University of Bristol) on the analysis of a revolution in public provision in Britain (Le Grand and Bartlett, 1993).

The then Conservative government had introduced what we termed 'quasi-markets' into the delivery of public services, including the NHS and schools. Quasi-markets involved retaining state funding for these services, but replacing state monopoly in the provision of these services by a plurality of independent providers who competed for business from state-appointed purchasers (in healthcare) or directly from users (in education).

As a result of the 'quasi-market' reforms, the NHS is providing higher quality healthcare – more efficiently, more responsively and more equitably

Although I was initially fairly sceptical of the likely effectiveness of these measures, as we developed the theory underlying them and analysed their operation in practice, I became increasingly



convinced of their potential to transform public service delivery. Properly designed quasi-market measures could, it seemed to me, simultaneously raise the quality of the service concerned and the efficiency with which it was delivered. In technical terms, they could improve both productive and allocative efficiency.

Moreover, they could stimulate the responsiveness of providers to the needs and wants of their users, and even improve the equity of service delivery through giving the less well off the power of 'exit' from unsatisfactory providers – as the better off had always had through moving house or going private (Le Grand, 2007).

In fact, the actual experience of the Conservatives' quasi-markets was not all that favourable, especially in healthcare (Le Grand et al, 1998). There was some improvement in the productivity of hospitals, and some gains in efficiency in prescribing and hospital referrals from the GP fundholding experiment. But there were not the massive changes that their advocates hoped or their critics feared.

This was basically because in practice the government found it difficult to let go of the reins of central control, and, through the bailing out of inefficient hospitals among other things, blunted the incentive effects of the quasi-market. There was also a somewhat worrying piece of research by Carol Propper and CMPO colleagues, which found that price competition between hospitals appeared to lead to a deterioration in the quality of care (Propper et al, 2004, 2008).

But I judged that the potential for quasi-markets to transform public services was still there – if the central constraints could be removed, and the incentives for quality competition sharpened. With colleagues at the LSE (where I now was) I spent some time trying to convince the Labour Party, then in opposition, of the potential merits of quasi-markets, especially in healthcare and education. But in this we only partly succeeded.

On taking power in 1997, the new government retained some elements of the quasi-market reforms – including the purchaser/provider split – but abolished others – including, ironically, one of the most successful, GP fundholding. But after a few years of health service stagnation, Labour reversed direction, first applying a regime of numerical targets and strong central control (which became known as ‘targets and terror’), and then re-invigorating the quasi-market through introducing new providers, stimulating patient choice and generating competition among providers.

I was part of the quasi-market policy implementation process. I was initially invited into the policy unit in 10 Downing Street to work on choice in healthcare and education, and then appointed as health policy adviser to the prime minister, Tony Blair. Armed with research on the performance of quasi-markets in education by Simon Burgess and in healthcare by Carol Propper and their CMPO colleagues (Burgess et al, 2005), we were able to overcome the entrenched resistance of many powerful players in the worlds of healthcare and education.

## Without choice, competition and other incentive measures, the NHS will revert to its old status of an inefficient monolith

In the NHS, we introduced patient choice, ‘payment-by-results’, foundation trusts and independent treatment centres; and in education, there were parental choice and academy schools. I only played a bit part in the development of these specific policies, but nonetheless felt a measure of responsibility for them. For they were the concrete realisation of ideas that I had long advocated, and I was now in a position to influence their implementation and thereby contribute to their eventual success – or failure.

In the light of my opening remarks about the anxieties to which academics who have their ideas taken seriously are prey, readers will not be surprised when I say how relieved I am to record that the reforms do not seem to have failed, at least in healthcare. On the contrary, evaluations by Carol Propper and colleagues at CMPO, LSE and York University suggest that they have succeeded (Gaynor et al, 2010; Bloom et al, 2010; Cooper et al, 2011; Cookson et al, forthcoming).

As a recent book reporting on these and other evaluations concludes: ‘the evidence... shows broadly that the market-related changes introduced by New Labour from 2002 tended to have the effects predicted by proponents’ (Mays et al, 2011). By 2010 the NHS was providing quicker, higher quality care, and doing so in a more efficient and more responsive manner. It was also more equitable in certain key respects, such as waiting times (Cooper et al, 2009).

Although some of these improvements were undoubtedly due to the increase in resources that characterised the later parts of that period, the relatively poor performance of the better-resourced but unreformed Scottish and Welsh health services suggests that there was more going on than simply increased resources. The targets and terror regime that preceded the market-oriented reforms in England also played a considerable part in the improvement (Propper et al, 2010); but the research demonstrates that patient choice and provider competition did have an independent effect.

All this has lessons for the current NHS reform debate (or debacle) generated by the coalition government – in particular, for the backlash against market-oriented reform that seems to have developed as the debate has gone on. The evidence suggests that this reaction is misplaced: provider competition and patient choice must be maintained, and indeed developed further.

If this does not happen, and if other incentive measures such as targets and performance management are also removed, then the NHS will revert to its old status of an inefficient monolith, offering long waits for poor care. This would be bad for patients, bad for those who work in the NHS – and bad for the coalition’s electoral prospects.

**Julian Le Grand** is the Richard Titmuss Professor of Social Policy at the London School of Economics.

### Further reading

Nicholas Bloom et al (2010) *‘The impact of competition on management quality: evidence from public hospitals’*, Centre for Economic Performance Discussion Paper No. 983

Simon Burgess et al (2005) *‘Will more choice improve outcomes in education and health care? The evidence from economic research’*, CMPO (<http://www.bristol.ac.uk/cmipo/publications/publicservices/choice>)

Zack Cooper et al (2009) *‘Equity, waiting times and NHS reforms: retrospective study’*, British Medical Journal (3 September)

Zack Cooper et al (2011) *‘Does hospital competition save lives? Evidence from the English NHS patient choice reforms’*, Economic Journal 121: F228-60

Richard Cookson et al (forthcoming) *‘Effects of the Blair/Brown health reforms on socio-economic equity in healthcare’*, Journal of Health Services Research and Policy

Martin Gaynor et al (2010) *‘Death by market power: reform, competition and patient outcomes in the National Health Service’*, CMPO Working Paper No. 10/242 (<http://www.bris.ac.uk/cmipo/publications/papers/2010/wp244.pdf>)

Julian Le Grand (2007) *‘The Other Invisible Hand: Delivering Public Services through Choice and Competition’*, Princeton University Press

Julian Le Grand and Will Bartlett (eds) (1993) *‘Quasi-Markets and Social Policy’*, Macmillan

Julian Le Grand et al (eds) (1998) *‘Learning from the NHS internal market: a review of the evidence’*, King’s Fund

Nicholas Mays et al (2011) *‘Understanding New Labour’s market reforms of the English NHS’*, King’s Fund

Carol Propper et al (2004) *‘Does competition between hospitals improve the quality of care’*, Journal of Public Economics 88: 1247-72

Carol Propper et al (2008) *‘Competition and quality: evidence from the NHS internal market 1991-9’*, Economic Journal 118(525): 38-170

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# The White Paper, competition and the NHS



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**With the White Paper advocating greater choice in public services, CMPO's Carol Propper explores what choice and competition have delivered in healthcare to date. She weighs up the evidence on the impact of the 1990s 'internal market' and the 2000s NHS reforms in England.**

The White Paper advocates choice in public services as the way to bring about higher quality services that are more appropriate to individuals' needs and better value for money. Health services are a central part of this vision, and the White Paper makes several references to the existing choice-based reforms in healthcare as being one component of the desired direction of travel.

As articulated by politicians, the appeal of choice – and its natural associate, competition between providers of services – is simple. Competition delivers greater productivity in the rest of the economy and choice is generally valued by consumers. Extending this to the healthcare sector seems a logical way of improving productivity. Competition between suppliers will encourage efficiency and raise quality, while increasing choice will meet demands for more personalised services and potentially make consumers more responsive to differences in quality and price.

Two decades ago, competition in healthcare was confined to the United States among OECD countries. But in the last 20 years, competition has been widely advocated as a model for reform. The UK has been a leader in trying to introduce competition on the delivery side, albeit confined to patient choice of hospitals and the competition between them that results.

Yet at the same time as competition was being proposed as a model for Europe, US healthcare providers were

consolidating, leading to a large rise in market concentration. From other quarters, there is growing evidence of an association between volume and outcomes, particularly for high-tech services. This has driven an interest in the consolidation of specialist services with an attendant decrease in the number of providers of these services and growing integration of primary and secondary care.

All these developments raise questions about the role of choice and competition. So what have we learned from our experience in the UK?

## Differences in the outcomes of the 1990s internal market and the 2000s choice reforms highlight the importance of information

### Evidence from the 1990s

The evidence from the NHS 'internal market' of the 1990s is relatively limited but it suggests the following. First, costs may have fallen more where there were more hospitals in a local area and buyers of healthcare had more options from which to choose.

Second, the buyers of healthcare who were also primary care providers (GP fundholders) seemed able to extract better deals from hospitals than larger area-based purchasers. This was perhaps because the former had stronger financial incentives, in that any gains from purchasing could be retained within their

businesses. The larger purchasers were also concerned about the viability of local services if they moved services at the margin, while the fundholders were less concerned with this issue, as they had no remit for provision of all secondary care services.

Third, hospitals facing more competition focused on bringing down waiting times but at the expense of unobserved quality. This finding is uncomfortable for proponents of competition but it fits with the predictions of simple models of competition with imperfect information. These show that as competition increases, sellers will focus on those aspects of care for which demand is more responsive. As buyers of care in the internal market were primarily interested in increasing volume and reducing waiting times (and care quality was not made public), it is unsurprising that sellers engaging in competition focused on bringing down waiting times at the expense of unmeasured quality.

Fourth, despite political fears about 'two-tier' services, there is little evidence that patients whose secondary elective care was purchased by GP fundholders received more care than those patients covered by the larger health authorities.

#### **Evidence from the 2000s choice reforms in England**

The reforms of the 2000s – of which the centrepiece was the 'choose and book' policy, from the mid-2000s – were only in England. This time, choice was accompanied by a system of prospective payments for acute hospital care, and by more information on the quality of care provided at NHS hospitals. The latter went from a base of almost none in the 1990s to a large battery of measures, albeit at a relatively aggregate level – the hospital trust level rather than site, individual doctor or ward level.

Evaluation of this set of choice reforms is still in progress, but the following stylised facts have emerged.

First, the take-up of choice was slow and GPs did not offer it to all patients. Some have interpreted this as choice not working. But this is to misinterpret the nature of competition in markets. It is not necessary for all individuals to switch services for competition to occur: it simply requires sellers to know that buyers could switch for competition to have an effect. And there is evidence that patterns of care-seeking changed after the reforms. Research has shown that hospitals with shorter waiting times and higher quality (as measured by lower death rates) were chosen more often.

Second, there is evidence that hospitals located in more competitive areas had improvements in quality. Quality in hospital care is very difficult to measure, so to date researchers have only examined crude proxies measured at the hospital level. Research has shown that quality in hospitals located in areas with the most potential competition did not fall and, on some measures (mortality rates), quality actually rose.

Third, despite fears that poorer patients would be disadvantaged by increasing choice and competition, there seems to be little evidence that this is the case.

The differences between the findings from the 1990s internal market and the experience of the 2000s highlight the

importance of information. While the information available in the 2000s was not perfect, it was greater than in the 1990s and perhaps allowed doctors (as agents for their patients) to steer patients away from poorer performing local hospitals. The fact that prices were not part of the choice process meant that they did not have to trade off price against quality.

#### **The research agenda**

We have learned much in the last 10 years about the impact of competition in UK healthcare, but there are still lots of areas we know little about. These include the fact that the outcomes that have been measured are only a small part of the activities of hospitals. Some would argue that these are not well enough measured to base strong conclusions on them.

## The White Paper offers an opportunity to try to understand where exactly choice may work and where it may not

Furthermore, the mechanisms by which apparent improvements have occurred are not well understood. There is some evidence that competition brings about better management and that, as in the rest of the economy, this is associated with better outcomes. But more research needs to be done to understand the link between competition and outcomes.

The drive for competition is also taking place at a time when there are emerging calls for consolidation and vertical integration to achieve higher clinical quality. As a response, there are already efforts to reduce the number of hospitals in England and to consolidate high-tech services into high volume centres. While there is evidence that there are gains from this for particular services, such as trauma and cardiac care, the extent to which this applies to all services that might be consolidated is unknown.

Finally, we know little about competition in primary care in the UK (or indeed elsewhere). More broadly, the impact of competition in community services, including mental health services, has been a neglected area. Yet these services, where patient choice may be easier, are arguably those on which the White Paper is focused.

So, in summary, the evidence base for choice is small and the extent to which choice has been used is quite limited. But this is not an argument for a return to 'command and control': rather it is a call to try to understand where exactly choice may work and where it may not. The White Paper may offer that opportunity.

**Carol Propper** is a Professor of Economics at the University of Bristol and Imperial College London.

# Open public services: how do the White Paper's five principles apply to schools?

**Rebecca Allen** of the Institute of Education and CMPO's director **Simon Burgess** explore the implications of the White Paper for schools – and whether in education it can achieve the goal 'to make opportunity more equal'.

The White Paper promises a revolution in how public services are delivered. The principles and policies it describes 'signal a decisive end to the old-fashioned, top-down, take-what-you-are-given model of public services'. In the foreword, the reforms are not advocated for their potential efficiency gains, but in terms of fairness, equality of opportunity and equal access to quality. Education is at the heart of the discussion, with inequality of access to good schools highlighted in the foreword and opening chapter.

So what are the implications for schools? A focus on unequal access to high quality education is welcome given the well-documented differences in attainment by social background (Goodman et al, 2009). Part of this inequality is due to differences in school access: children from poor families are about half as likely to go to a high-performing schools; and most of this gap arises from where people live rather than from 'the middle class working the system' (Burgess and Briggs, 2010).

We consider each of the five principles set out in the White Paper and how they relate to schools policies. The first principle gives the client – here, children and their families – control of the process, which, in this case, means supporting and strengthening school choice. Is this a good idea?

Choice and competition might affect standards overall through a 'competitive threat' effect; they may affect sorting or segregation in schools; and they may affect inequalities in school access. The UK and international evidence is mixed (see Allen and Burgess, 2010, for a review). In England, the national implementation

of legislation arising from the 1988 Education Reform Act, combined with a lack of historical pupil-level datasets, makes it difficult to evaluate the effect of the introduction of choice.

The quasi-experimental evidence suggests at best only a small and statistically weak impact of increased choice on overall standards. There is evidence showing a correlation between higher levels of pupil sorting (by socio-economic background and by ability) and the degree of choice, but there is no evidence establishing a causal link. The evidence on school access shows that the main factor is residence. Stronger school choice should weaken that constraint, but it is undermined by other aspects of the school market, which we discuss below under the fourth principle of 'equal access'.

The second principle is to devolve power to the lowest appropriate level. In some ways, the acceleration of the academy programme fulfils this aim. Schools are given freedom from local authority control, greater freedom over the curriculum and freedom to change the pay and conditions of teachers. Some head teachers have welcomed the opportunity to take their schools in new directions.

## The introduction of free schools and a pupil premium are unlikely to do much to raise equality of access

But there are countervailing factors. Freedom from local authority control means a lot less than it did before the implementation of local management of schools. *De jure* freedom over the curriculum is all very well, but the decisions of schools are strongly driven by the incentive framework in which they are placed. This means that the national exam system and the central importance to schools of the performance tables will often over-ride any desire to try something new.

An example is the introduction of the new E-Bacc – a centrally imposed measure of extra kudos for the school, given to pupils passing a particular (centrally-determined) set of subjects. It seems that this is already having an effect on subject choices. One of the main centralising features arises from the fact that the governance structures of academies are not clear. Currently the person immediately responsible for failing academies is the Secretary of State, a level of almost Napoleonic centralisation.

The third principle in the White Paper is that provision should be open to a range of new providers. This has an obvious counterpart in education: the coalition government's flagship policy of free schools. It is clearly too early to tell how this policy will play out. But the focus cannot just be on the 5,000 or so pupils who have just started, less than a twentieth of 1% of their cohort. If so, this would be a very expensive and high profile way to change the education chances of such a small number.



Rather, the focus has to be on the systemic effects of the reform, notably any impact that the new option of opening a free school might have on the local schools. We have argued that free schools are likely to be disappointing in working as a spur to higher standards (Allen and Burgess, 2011). But they are potentially an important part of 'open public services', and are highlighted in the White Paper as a key route to achieving fairer access. Free schools do offer this in principle: parents very dissatisfied with their state school can opt out and set up their own school.

But there are two reasons why free schools are unlikely to be the best answer to this. First, there are very significant set-up costs, both in time and energy from the founders, but also in the straightforward sense of acquiring premises. While currently these are being generously funded by the government, this cannot continue if the policy matures and spreads.

But second, it seems inconceivable that any local area with one free school and plenty of spare school capacity would be offered the resources for many others. So as a performance discipline device, this is a one-shot game, not a process of continuing pressure on low performing schools, which is what is needed.

## The schools policy most likely 'to make opportunity more equal' is to reduce the use of proximity as the main criterion for allocating places

The White Paper's fourth principle is the one presented as the over-riding aim of the policy: ensuring fair access to public services. With a strict and now well-policed school admissions code in place, private schools educating only 7% of the population and grammar schools only a few more, we have to ask what it is about the school system that prevents fair access.

The answer is that there is one ubiquitous admissions criterion that militates against this. That criterion is where you live. Most over-subscribed schools use distance from the family home as the tiebreaker in deciding whom to admit. Our research shows that this proximity rule strongly favours children from more affluent family backgrounds. The gap in accessible school quality between rich and poor families widens by over 50% once a proximity criterion is imposed.

Clearly something has to be used as a tiebreaker if a school is over-subscribed. While using proximity makes sense in rural areas, one possibility in cities is a lottery. The United States has a great deal of experience of using lotteries for school admissions: put all the applicants' names into a hat and draw out as many as the school has places.

Such systems do not work perfectly and, as shown in our study of the Brighton and Hove lottery (Allen et al, 2010), there are complex design issues that can thwart the best of intentions. But by its very

nature, a lottery ensures that places are allocated in a way that ignores social background. To achieve the goal of ensuring fair access, something needs to be done about the proximity criterion.

## The proximity rule for allocating school places strongly favours children from more affluent family backgrounds

The final principle in the White Paper is that public services should be responsive and accountable. The accountability system for schools in England is well developed. Its potential evolution under an open public services agenda is discussed in the next article, which explores the use of performance indicators, including in schools.

So how does the coalition's education policy match up to the opening paragraph of the White Paper's foreword by the prime minister and the deputy prime minister? They write: 'There is an overwhelming imperative – an urgent moral purpose – which drives our desire to reform public services. We want to make opportunity more equal.'

England has had two decades of parental choice and school competition – and a thorough national accountability system. These are important parts of the system, and they can no doubt be tweaked and improved. But this alone will not make opportunity more equal. The introduction of free schools and a pupil premium are also unlikely to do much to raise equality of access.

The single policy most likely to achieve the goal described in the White Paper's foreword is a reduction in the prevalence of proximity as the main criterion for allocating school places.

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### Further reading

Rebecca Allen and Simon Burgess (2010) '*The future of competition and accountability in education, report for the 2020 Public Services Trust*' ([http://clients.squareeye.com/uploads/2020/documents/ESRC\\_Allan%20and%20Burgess\\_FINAL.pdf](http://clients.squareeye.com/uploads/2020/documents/ESRC_Allan%20and%20Burgess_FINAL.pdf))

Rebecca Allen and Simon Burgess (2011) '*What are free schools for?*' (<http://cmpo.wordpress.com/2011/09/05/what-are-free-schools-for/>)

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# Information, information, information: transparency and open public services

**A key aim of the White Paper is to make information on the quality of public services more transparent so as to raise standards. CMPO's Deborah Wilson reviews the evidence on performance indicators and 'management by numbers'.**

The White Paper emphasises the devolution of power over public services to the lowest appropriate level. In the case of individual services, such as health, education and housing, the aim is to put power in the hands of service users. This implies a continued focus on 'choice and voice' as the means by which improvements in standards can be realised:

'Our plans to create open public services replace bureaucratic accountability with democratic accountability' (para 5.21)... 'Providers will be held to account through a combination of mutually reinforcing choice, voice and transparency mechanisms, depending on the service being provided' (para 5.26).

Publication of information on the performance of service providers is central to achieving transparency:

'To make informed choices and hold services to account people need good information, so we will ensure that

key data about public services, user satisfaction and the performance of all providers from all sectors is in the public domain in an accessible form' (para 3.4).

This article reviews the evidence on the use of performance indicators (PIs) as part of the 'management by numbers' of public service providers in light of the aims of the White Paper (Hood et al, 2009; Wilson, 2010). What do we know about different kinds of PI? How do providers respond to the publication of PIs and does that improve service quality? And within which kinds of accountability mechanism are PIs most effective?

## Three kinds of performance indicators

PIs come in three general forms. The simplest are measures of the outcomes of a provider at some designated date: the percentage of patients in a hospital who do not die after emergency admissions for heart attacks, for example, or the percentage of pupils in a school who achieve five GCSEs at grade C or above.

While easy to understand and relatively low cost to collect, these PIs deal with only one dimension of a potentially complex output. Such simple PIs also fail to take account of the characteristics of the users being served and how, say, the wealth or health of those users might affect the measured outcome.



One implication is that the PIs may unfairly penalise effective providers serving disadvantaged and higher cost populations while concealing poor or 'coasting' performance from providers serving lower cost populations. A second implication is that PIs are susceptible to 'cream skimming': by adjusting the quality of its intake, a provider can boost its performance as measured by raw outcomes.

## Performance indicators are most effective within a system of accountability that links success and failure with explicit rewards and sanctions

Risk-adjusted or value-added PIs take account of differences in intake. Thus, they are better able both to reduce the incentive to cream skim and to isolate the impact of, for example, the school environment on pupils' progress over time. But generally they still only reflect one dimension of output.

One response has been the development of composite indicators that attempt to combine many dimensions of a provider's output into a single figure. Examples include the star rating of hospitals in England and the system of 'comprehensive performance assessment' for evaluating local government. While intuitively appealing and easy to understand, in practice these indicators are somewhat opaque and can be extremely sensitive to the methods used to produce them.

Despite their shortcomings, all three forms of PI are likely to feature, often concurrently, in the coalition government's plans to provide sufficient performance data to enable informed choice. And where data are published to encourage explicit comparison between alternative providers, rankings and league tables are bound to follow.

Two points are worth highlighting here. First, what may appear to be an ordered ranking of providers on the basis of a specific PI may in fact be largely spurious if the statistical uncertainty involved in calculating that PI is not explicitly taken into account. For example, CMPO research shows that over half of all secondary schools in England are not significantly different from the national average when 'ranked' on their contextual value added scores, a measure of pupil progress that takes account of social factors (Wilson and Piebalga, 2008).

Second, the same provider is likely to have different positions in ranking exercises depending on which aspects of performance are measured, resulting in conflicting rankings. With transparency comes complexity, and the extent to which a balance can be achieved that maximises the benefits of this inevitable trade-off for individuals choosing between public service providers is an open question.

### Do performance indicators improve public service quality?

The aim of the White Paper's shift towards democratic accountability through increasing choice and voice is to improve the quality of public service provision while not increasing spending:

'We believe that when people have the power to make decisions and exercise choices to meet their own needs, the value of public funds can be greater than when the state makes decisions for them' (para 1.10).

The need to justify the resources used to implement the measurement systems required to inform such choice may be particularly important in the current era of fiscal constraint, given the opportunity cost of not employing resources on more 'frontline' uses. Accompanying this will be a heightened political need to demonstrate success: to show that public service outcomes are improving as a direct result of the emphasis on user-based accountability mechanisms.

While there is a large and growing body of evidence on how individuals and organisations respond to 'management by numbers', there is less on the extent to which PIs actually improve public service quality, and even less on the costs of achieving any such improvement. This is partly due to the difficulties of isolating the effect of PIs themselves, given that they have generally been introduced as part of broader programmes of reform.

## With transparency comes complexity – and a trade-off for individuals choosing between public service providers

In some areas, PIs do appear to have improved public service performance. For example, CMPO research shows that the abolition of secondary school league tables in Wales in 2001 reduced school effectiveness relative to England by an average of almost two GCSE grades per pupil per year (Burgess et al, 2010). Other CMPO research shows that waiting times for elective surgery fell faster in England than in Scotland in the early 2000s, when the English PIs were linked to sanctions for missing waiting time targets that were not in place in Scotland (Propper et al, 2010).

But sometimes service improvement in measured aspects of performance has been achieved at the cost of distortions to provision in other, unmeasured aspects, as in the case of the Quality and Outcomes framework introduced for family doctors in 2004.

More generally, there are many examples of 'gaming' and other undesirable responses to PI regimes. League tables provide the incentive to focus effort on boosting the published

measure, possibly to the detriment of other, unmeasured aspects of performance. There are numerous examples in education, including evidence of schools focusing attention on the so-called C/D borderline pupils: while this can raise the percentage of pupils achieving five GCSEs at grade C or above, it can also be to the detriment of the progress of lower ability pupils in the school.

## Performance indicators invariably leave some opportunity for undesirable as well as desirable responses from providers

### Within what accountability mechanisms are performance indicators most effective?

So there is some evidence that PIs work, particularly when the output is clear and focused as in the case of hospital waiting times, but that such improvements may be accompanied by other, less desirable responses. But PIs do not work in isolation but as part of broader performance management regimes. Such regimes incorporate rewards for success and/or sanctions for failure that create consequences for providers and thereby incentives for service improvement.

In theory, such consequential accountability can be achieved using PIs as part of user-based mechanisms such as choice. A classic example is a 'quasi-market', in which providers of services are rewarded for good performance by gaining more contracts, pupils or patients, for example, and thereby more funding. Consequences can also be imposed as part of 'top-down' incentive schemes: hospital managers in England faced dismissal if their hospital performed poorly against waiting time targets, but gained the freedom to keep certain surpluses if they performed well (Propper et al, 2008).

While the language of the White Paper is very much in terms of increasing democratic accountability through choice and voice, there is still an acknowledged role for the state:

'As information about services becomes more transparent, people should be able to make more informed choices about the providers they use... and elected representatives should be able to scrutinise providers more effectively on people's behalf' (para 1.23).

In addition, there is an explicit role for the state as guarantor of minimum performance standards that will be raised over time, accompanied by a 'zero tolerance' of failure. So in practice PIs will form part of concurrent democratic and bureaucratic accountability mechanisms.

The evidence suggests that PIs have been most effective in achieving performance improvements through their use as part of bureaucratic accountability mechanisms, which link success

and failure in terms of measured performance with explicit rewards and sanctions. The evidence on the use of PIs in conjunction with user-based accountability mechanisms such as choice is much more mixed.

In education, for example, it is far from clear that school choice in England has improved the academic performance of schools. In the comparison of England and Wales, the relatively low level of potential choice in Wales suggests that it is unlikely user-based accountability via parental choice is the main driver of the results.

In the context of healthcare, the evidence suggests that while consumers claim to want information on hospital performance, they do not in practice make great use of the data. Indeed, direct patient choice is limited in many healthcare systems. There is also evidence that some patients need more guidance in processing complex performance information, which has additional implications for equity.

### Conclusions

The alternative forms of PI leave some opportunities for undesirable as well as desirable responses from providers. Encouraging service users to make explicit comparisons of performance gives providers incentives for both kinds of response.

Given that the evidence suggests that PIs are most effective within a system of bureaucratic accountability, the danger of increased transparency across numerous aspects of public service performance is that providers will respond to the new regime in undesirable ways. In particular, they may focus their efforts on attempting to rank highly on potentially conflicting performance measures to avoid bureaucratic sanctions, rather than responding to the needs of the full range of individual service users.

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### Further reading

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# Will the Work Programme work?



**The government's Work Programme is outsourcing the task of getting the unemployed back to work to private and voluntary sector providers. Ian Mulheirn, director of the Social Market Foundation, examines its prospects for success and the lessons for other 'payment-by-results' policies.**

In June 2011, amid rising unemployment and anxiety over economic growth, the coalition government launched the Work Programme, its flagship back-to-work scheme. Boldly trumpeted by the Department for Work and Pensions (DWP) as a 'revolution in back to work support', the programme is an innovative new policy designed to help over 2.4 million long-term unemployed people find work over the next seven years.

By paying private and voluntary sector organisations for each person they get into sustained employment, the Work Programme encourages those providers to develop tailored solutions to different people's very personal barriers to employment. But our analysis shows that this excellent idea is at risk of failure due to over-optimistic assessments of what providers are able to achieve, excessively tight financing and a rapidly deteriorating economic environment (Mulheirn, 2011).

With similar 'payment-by-results' policies under consideration in policy areas ranging from offender management and family interventions to public health and Sure Start performance, it is important to understand the lessons of the Work Programme if the government's ambitious agenda of public service reform is to succeed.

## **Demanding minimum performance expectations**

Under the Work Programme, employment service providers are set to be paid only when jobseekers find and retain work.

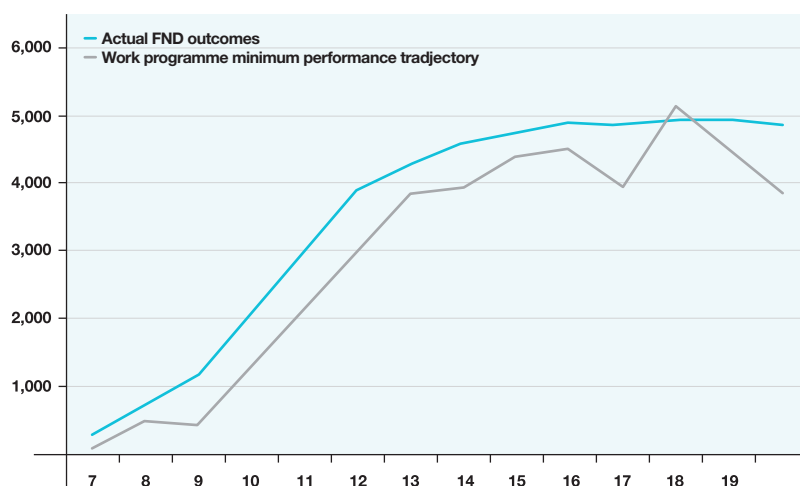
Nevertheless, it is inevitably the case that most successful jobseekers on any back-to-work programme would have found employment of their own accord. Indeed, research suggests that even a successful employment programme is only likely to produce around 10% more jobs than would have been achieved anyway (for example, Hales et al, 2003).

This marginal difference is worth paying for, given the huge costs that come with people disengaging from the labour market. But it was to safeguard against poorly performing providers that in designing the Work Programme, DWP combined the principle of paying for job outcomes with a threat to terminate providers' contracts should they underperform centrally determined minimum performance levels.

**The Work Programme is at risk of failure due to tight financing, a deteriorating economy and excessive optimism about what providers can achieve**

These levels were set at 10% above DWP's estimate of how jobseekers would fare without any employment programme: the non-intervention or 'policy off' performance level. DWP's 'policy off' estimates and minimum performance levels for the main over-25 long-term unemployed group are shown in Table 1. DWP expects providers to 'significantly exceed' these minimum standards and those that fail to achieve them face contract termination (DWP, 2010).

**Figure 1**  
**Six-month job outcomes under the new Flexible New Deal compared with the performance required under the Work Programme**



X: Months after start of new programme Y: Six-month jobs achieved by all providers

To be successful in the bidding process, providers were required to show that they would achieve the minimum standards. But how achievable are these targets? If they are possible for most, then only poor performers are likely to fall foul of DWP. And removing poor providers is an important part of a well-functioning scheme. But if the targets are too ambitious, providers risk either widespread contract termination or the whole scheme faces financial collapse. This would be a disaster for jobseekers as well as for the government's reform agenda.

#### Forecasting likely performance levels

While there are some new aspects to the Work Programme, the policy owes its basic structure to its forerunner: Labour's Flexible New Deal (FND), which ran from October 2009 to May 2011. Since bids were invited for the Work Programme, at the end of 2010, substantial new FND performance data have become available, allowing us to assess the likely performance of providers under the new scheme.

Like the Work Programme, FND served Jobseekers Allowance (JSA) claimants who had been unemployed for at least one year, and providers were paid primarily by results for the job outcomes they achieved. But the two schemes also had a number of significant differences, most notably: that Work Programme providers have two years to work with their clients rather than one; that the definition of a job outcome is broader under the Work Programme than under FND; and that more of the outcome payments under the new programme are made for keeping people in work for longer.

Taking account of the major differences between the schemes, it is possible to estimate the likely performance of Work Programme providers under a set of assumptions. By combining evidence on the likely outcome profile of a cohort of jobseekers in the months after they are referred to a provider,

it is possible to estimate the monthly performance trajectory of FND contractors if they had been delivering under Work Programme rules.

Unless providers can significantly improve their performance, almost all will fall well short of the Work Programme minimum performance levels

Figure 1 illustrates how the number of six-month job outcomes secured each month by FND providers was consistently well below the trajectory required for providers to achieve the minimum performance expected of them under the Work Programme.

#### Undershooting minimum performance levels

The results of this analysis are alarming. They suggest that unless providers can significantly improve their performance, almost all will fall well short of the Work Programme minimum performance levels. Even by year three, it is estimated that average provider performance will be around 28% compared with a minimum expected performance of 33%. Around nine out of ten providers look set to underperform the minimum.

What is even more worrying is that providers seem likely to undershoot even DWP's estimate of what would have happened had there been no programme at all. Since Work

**Table 1**  
**How minimum performance compares with predicted performance under the Work Programme**

JSA 25+ group	Year 1	Year 2	Year 3
'Policy off'	5%	25%	30%
DWP minimum performance	5.5%	27.5%	33%
Performance estimate in Mulheim, 2011	4.1%	20.5%	27.8%

Programme providers have less money per jobseeker and, at least for the foreseeable future, face significantly worse labour market conditions than under FND, it seems far from likely that they can buck past trends.

Clearly it would not be credible for DWP to terminate the contracts of 90% of job-brokers at a time of high unemployment. There is little publicly available information on how DWP arrived at these exacting minimum performance levels. But since the 'policy off' level of job outcomes can be expected to fluctuate with the performance of the labour market, it would seem sensible to adjust the minimum performance expectations in the light of changing economic conditions. But DWP has no plans to adjust the performance rates it expects from suppliers (Work and Pensions Committee of the House of Commons, 2011).

## Providers seem likely to undershoot estimates of what would have happened had there been no programme at all

Moreover, even if contracts are not terminated for perceived underperformance, with Work Programme funding so dependent on achieving job outcomes, below-expected performance will create severe funding pressures for providers. This will leave them with the choice of either handing back their contracts or cutting spending on services to jobseekers, putting the entire programme at risk of failure. As unemployment mounts, this would be precisely the wrong time to allow services to be reduced due to low levels of funding.

### Conclusions

For the Work Programme the combination of tight financing and excessively optimistic projections of what providers can achieve could have severe consequences, particularly if unemployment continues to rise. Past experience shows that rising long-term worklessness carries a high human, social and economic cost for years to come, unless people remain engaged with the labour market. So what options do policy-makers have?

First, it would seem sensible for DWP to ease up on its expectations for providers and ensure that they are revised

in the light of the changing economic outlook. More realistic minimums would be a more credible incentive for providers and would remove a great deal of uncertainty in the market.

Second, DWP should consider whether it is trying to pile too much risk onto contractors by attaching all of its funding to success in getting people into jobs, regardless of the state of the labour market. Under these conditions, a deteriorating economic outlook is likely to mean that resources for frontline services are reduced as the need for them rises. This topsy-turvy design will have serious consequences for jobseekers as well as community sector subcontractors. These problems should be considered as part of a wider rethink about the finances behind the Work Programme.

All of this carries important lessons for other payment-by-results programmes. Most importantly, policy-makers should recognise that offloading all the financial risk for achieving good policy outcomes onto contractors is not the same thing as good risk management.

Done well, such policies can spur innovation and improve value for money. But done badly they can end up costing the taxpayer more and result in poorer services. It would be unfortunate if the government's exciting reform agenda were to be derailed by taking too many risks with risk.

**Ian Mulheim** is the Director of the Social Market Foundation.

### Further reading

DWP (2010) *The Work Programme invitation to tender: specification and supporting information* (<http://www.dwp.gov.uk/docs/work-prog-itt.pdf>)

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# Open public services and the third sector: what's the evidence?

**The White Paper notes that voluntary organisations have several potential advantages compared with for-profit organisations as providers of public services. David Mullins, James Rees and Rosie Meek of the Third Sector Research Centre (TSRC) explore the evidence on their role.**

The White Paper starts from a belief that public services are 'old, centralised and broken'. This echoes the critique made by Conservative governments of the 1980s. But the White Paper does not acknowledge the significant and permanent shift in the management and organisation of public services in the UK as a result of subsequent reforms, especially those associated with the 'new public management'.

The growing role of the third sector in a mixed economy of welfare has been much discussed, and there are clearly continuities with New Labour's concern to expand the role of the third sector in public service delivery in a spirit of 'partnership' (Alcock, 2010). If the White Paper does herald a yet greater role for the third sector, concerns remain about the strength of the evidence base on the ability of the sector to fulfil it, as well as its potential implications.

More generally, that role must also be seen in the context of the White Paper's strong ideological emphasis on the primacy of market competition, individualism rather than collectivism, and scepticism about the notion of the public servant and the public realm.

The White Paper aims to push control over public services as low as possible, and it recognises three different categories of public service: individual, neighbourhood and commissioned

services. Our research focuses on the third sector's role in service delivery in criminal justice, employment, health and social care, and housing, exploring such generic themes as partnership working, procurement and commissioning. Table 1 maps this work against the White Paper's three categories and five principles.

The first point that stands out is how difficult it is to match policy fields to the three categories of service identified in the White Paper. For example, while health and social care is the terrain in which *personalisation* is most advanced, our research indicates the importance of the collective context in which individual choices are made. This involves relationships with formal and informal carers and advocacy organisations, and the need to group individual purchaser's decisions if collective elements of provision, such as day centres and advice services, are to be sustained (Larkin and Dickinson, 2011).

## The White Paper fails to address crucial questions about the power of third sector organisations to challenge and compete in the new environment

The White Paper sees housing principally as an individual transaction amenable to market-based provision, thereby neglecting the more collective aspects of housing that often play out at the neighbourhood and local level. In criminal justice, while prison services are necessarily publicly funded and legislated for, many activities fall within the individual and collective provision categories and have the potential to be user-driven, as our research on prisoner involvement in volunteering shows (Meek et al, 2010).

Self-help housing, where groups of local people bring empty properties that are in limbo back into use, provides an excellent example of a *neighbourhood* service provided on a collective basis. While self-help housing has an obvious policy fit with the agenda of 'open public services', its expansion to deliver its potential at a time of stalled development activity will require that a number of barriers are overcome. It does not fit the large-scale procurement model adopted for affordable housing, nor are self-helpers attracted by the idea of 'scaling up'.

Property owners, including social landlords, often adopt a narrow asset management approach based on notional rates of return. Some prefer to pay security firms to guard their unused assets rather than embracing a 'meanwhile use' by the community until regeneration schemes can proceed. The beneficial outcomes that community action to bring empty properties into use can deliver – training, skills and reduction of blight – are not readily recognised in savings for public service funders, making ideas such as 'social impact bonds' difficult to apply.



Table 1  
How policy fields map into the White Paper’s five principles and three categories of public service

	Individual (personal)	Neighbourhood (community)	Community (central and local government)
Choice	Health and social care		
Decentralisation			
Diversity		Housing	Partnerships Criminal justice
Fairness			
Accountability			Employment services
Ensuring diversity and enabling open public services: ‘new innovative providers’, entry barriers, ‘continuity regimes’, ‘avoid switching from one monopoly to another’			

X: Categories Y: Principles

But there are some encouraging signs of the kinds of adaptation to public service delivery that will be required if communities are to take greater control of local services (Mullins et al, 2010). Part of the Empty Homes programme has now been earmarked for a Community Grants programme: an impressive 70 unregistered community groups have responded with plans to bring empty homes back into use. The need for capacity-building and shared support services for such groups has been recognised, and work is progressing to attract philanthropic and social investment to support this work.

But even if these measures bear fruit, the number of community self-help homes that will be delivered in the four-year programme is unlikely to exceed 500. This is a drop in the ocean of the 750,000 empty homes and a fraction of those that community-led groups have expressed an interest in providing.

The 2007 Offender Management Act empowered private and third sector organisations (TSOs) to take a greater responsibility within *commissioned* services for offenders. The benefits of public-third sector partnerships have been widely acknowledged, particularly in relation to provision in offender rehabilitation and efforts to reduce re-offending (MoJ/NOMS, 2008).

But there has also been a great deal of speculation about the strategic position of the third sector, and the course of their future alliance with the criminal justice system to provide joint care and service. One issue is the potential tension that arises when TSOs are involved in running prisons or administering punishment in the community (Meek et al, 2010). Secondary analysis of existing datasets has revealed high numbers of TSOs claiming to work with offenders. Yet in a national survey carried out on behalf of TSRC, prisoners reported engaging with a maximum of just one TSO, despite identifying resettlement support needs that were not being provided elsewhere.

Although a Prison Service Order issued in 2002 stated that every prison should have a third sector co-ordinator, many prisons still do not have a named person with responsibility for managing third sector provision. Until such partnerships are better established and coordinated, diversity of providers risks failing to translate from policy to practice.

# The White Paper’s distinction between individual, neighbourhood and commissioned services does not map neatly to the third sector’s contribution to public service delivery

The Work Programme is perhaps the most high profile example of the coalition government’s approach to *commissioning* national employment services from a range of providers, and a blueprint for how the third sector will be engaged in other fields of public service delivery. It has been hailed as a ‘gold standard’ for commissioning – incorporating a ‘payment-by-results’ regime, a longer-term approach, and flexibility for prime contractors to tailor services to localities and changing economic conditions.

Yet many in the sector fear that it will further subjugate TSOs as a delivery arm of the state, and put them under intolerable financial stress. In relation to the principles of the White Paper,

early evidence suggests that choice will in fact be constrained, as clients are unlikely to have much leeway in their choice of provider and will have little information on which to base decisions.

On decentralisation, although central government has relinquished control over design and supply, success for prime contractors is likely to depend on hierarchical management or strongly led consortia within their complex supply chains. This raises questions about genuine accountability to 'users'. The initial design of the Work Programme has ensured a diversity of providers in supply chains. But contrary to some rhetoric, a majority are large organisations, and it is not clear either the extent to which they will be engaged in practice or the extent to which there will be provider attrition and concentration.

All of these examples illustrate the importance of including criteria of social and public value within the principles of open public services, and the need to avoid these areas of value simply being reduced to monetary value. For example, the development of 'payment-by-results' and the Ministry of Justice's social impact bond scheme risks focusing on narrow outcomes of prevention work that generate savings on public spending rather than longer-term impacts on the quality of life of users (Battye, 2011).

To be able to compete in these markets, TSOs need to prove their effectiveness. Yet many smaller organisations (which are often best able to offer the flexible support that offenders require to meet their complex needs) will not have the resources or capacity to collect data demonstrating outcomes, particularly over long periods.

The White Paper's normative presumption against public forms of provision needs further scrutiny. For example, it highlights 'arm's length housing organisations' to support its unstated premise that the further services are moved from democratic governance the better. Research has shown that such organisations are a somewhat unstable form, largely because without asset ownership and ability to borrow, their investment capacity is necessarily limited, while local authorities faced with budget cuts may be frustrated by inability to control externalised spending.

But to assume that moving them into the more independent space occupied by housing associations would not generate conflicts with the localism agenda and the espoused aim to 'avoid replacing one monopoly with another' is to ignore the well-documented story of life 'after council housing'. Over half of former local authority stock transfer landlords have now re-agglomerated into larger and generally less locally based group structures (Pawson and Mullins, 2010).

## Conclusions

The open public services agenda is at an early stage and it is too early to say how genuinely different it is from New Labour's rhetorical preference for a 'partnership' with the third sector for public service delivery and its promotion of a strategic unity through horizontal support for the sector.

TSRC research suggests that the delineation between individual, neighbourhood and commissioned services does not map neatly to the contribution that the third sector makes to public service delivery. The assumption that services are best delivered to individuals through competitive markets is at odds with the evidence on the institutional contexts in which services, such as personal social care, prison services, housing and employment services, succeed or fail.

In general, the realm of commissioned services has already extended much farther than the White Paper's classification would suggest, thereby constraining the scope for community-led services, such as self-help housing, to thrive at a time when it has a clear policy fit. Equally, the realm of collective neighbourhood services has been squeezed by both growing 'consumerisation' as well as the encroachment of large-scale commissioning.

Finally, the White Paper is profoundly silent on the issue of power. Crucial questions remain about the power of third sector organisations to challenge and compete in the new environment, the power of commissioners to prevent the emergence of new monopolies, and whether citizens are genuinely empowered to enact the public service choices that are being opened.

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## Further reading

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# Private delivery of public services: the struggle for legitimacy

**There is huge potential for greater private sector involvement in the delivery of public services, according to CMPO's Paul Grout. But as he shows here, private delivery of public services is faced with widespread scepticism by the public and the considerable challenge of demonstrating when and why it is the best option.**

The White Paper proposes to throw open the door to private and voluntary (third sector) delivery of public services. In David Cameron's words, it 'says loud and clear that it shouldn't matter if providers are from the state, private or voluntary sector – as long as they offer a great service'.

Coincidentally, and extremely conveniently, this will enable access to new forms of external finance at a time when the public finances are in poorer shape than they have been for decades and without much hope for rapid recovery. The White Paper states 'there is substantial external capital available that could improve the quality and availability of public services', and that as part of this process, 'work is under way to develop effective measures of the social impact of investment'.

It is clear that the potential for private and third sector involvement in the delivery of public services is huge. The non-public sector's involvement in the delivery of services to the public sector has grown enormously in the last 30 years. For example, the business department's 'public services industry review' (Julius, 2008) estimated that the turnover of the public services industry (defined as private and third sector delivery to the UK public sector) was £79 billion in 2007/8. Of course, the public services industry defined thus is not the same thing as the delivery of public services to the public sector, which is a smaller and far more contentious part of the industry.

The general theme of private delivery of public services is that, on average, privatisation, partnerships and outsourcing have been reasonably successful

Despite some horror stories (for example, London Underground), which quite rightly capture enormous attention, the general theme of private delivery of public services is that, on average, privatisation, partnerships and outsourcing have been reasonably successful. Sadly, the thorny question of how to identify in advance when private provision is likely to succeed and when it will not has proved exceptionally difficult. But looking at the chequered history of publicly provided projects, it is clear this was always going to be a tough challenge.

But given the coalition government's push for more delivery and financing by the private and third sector, it appears that

these sectors will have a significant and growing role to play. If all goes to plan, this could help to soften short-term financial constraints by providing investment; it could also keep costs down in the long term if open services bring more competition and better, cheaper services.

Hence, the government argues, this is a win all round. Sadly, things are never this straightforward. The third sector is only around 2% of government spending so while voluntary provision is growing rapidly, the government is going to have to look mainly to the private sector to contribute to the short-term financial hole.

But here is the big problem. The prime minister may wish to shout loud and clear that it should not matter if providers are from the state, private or voluntary sector, but for the man or woman in the street, it clearly does seem to matter. Surveys and focus groups frequently show that the private delivery is greeted with scepticism by the public.

A private company will always struggle to justify profit from delivery of public services unless it is legitimised

For example, recent research by Ipsos MORI showed that 'the idea of private provision of public services tends to be greeted with suspicion. In general, alternative service provision by the private sector is rejected by many, both because the remit of private provision is perceived to lack a public sector ethos and because the profit motive is usually considered unacceptable in public services.'

In contrast, not-for-profit delivery is perceived in a positive light although there is no large body of evidence showing it is better. For example, Ipsos MORI found (as part of the same investigation) that many people felt strongly that the voluntary sector should have more of a role in achieving social outcomes (even though the public has little knowledge of the sector).

There is a genuine conflict between, on the one hand, what the government wants and what private delivery can offer in the right circumstances and, on the other, what the public think of it and want from it. This is likely to be one of the biggest constraints on the growth of private sector delivery of public services. Saying it should not matter who provides is not enough. The fact that the public are reluctant to accept private sector delivery of public services is something that has to be taken seriously. Far too little is done to deal with these constraints of 'political economy'.

In particular, the political economy constraints have to be recognised when delivery mechanisms are designed and monitored. This is a big issue and here I can only flag the general problem. But I will cite two examples and suggestions that may help to foster private delivery.

The White Paper speaks extensively about making data available to support individual choice of mode of delivery. But often the dearth of public sector information is a core problem for private delivery. The White Paper talks about private and voluntary sector agencies investing upfront and bearing the consequent financial risk that comes hand in hand with 'payment-by-results'. This has clear advantages since the public sector does not need to fund upfront and payment-by-results creates incentives for quality delivery.

But while better data may enable the end-users to make the best choice from their perspective, we also need data to know which mechanism is really best. The cost to the public sector agencies of private delivery is the whole-life cost of the private project. To know if this is a cheaper method, we need to compare the whole-life cost of the private option with the whole-life cost of the public alternative. The problem is that no one keeps a record of the whole-life cost of public activities. The whole budgeting structure in the public sector does not lend itself to this way of doing things.

This is the classic problem that has bedevilled public-private partnerships. As the National Audit Office has pointed out: first, central government rarely collects data from local government funded projects or devolved funding; second, the costs of services for conventionally procured buildings are rarely monitored, making whole-life costs very difficult to compare; and third, different procurement routes collect data on different bases. So while it is clearly important to provide quality data for users, we need better data about public sector delivery to get beyond assertion and case studies.

## The challenge for the government is to overcome public hostility to the idea of running any public services for private profit

Another problem is the need to ensure that profits are perceived to be 'legitimate'. I do not mean by this that profits are earned legally as opposed to illegally, although obviously we should also ensure this is so. I mean that payment mechanisms should not be designed to provide maximum incentives but consideration should also be given to how the payment mechanism affects perception of profit.

Unless private profits are generally perceived to be the legitimate reward for better delivery and hard work, then there will always be pressure for government agencies and regulatory bodies to reduce returns and public pressure to retain public provision will remain.

Crudely put, a private company will always struggle to justify profit from delivery of public services unless it is legitimised.



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Fixed price contracts with penalties do not help here because then the way to maximise profit is to deliver the minimum that is acceptable and cut costs wherever. Even if the contract achieved the best outcome, it is hard for those outside the negotiations to know for sure.

In contrast, a reward structure that is heavily based on quality improvements will at least provide a positive association between quality and profitability even when there is uncertainty about how hard it really was to earn the money. Although payment systems that heavily reward quality improvements may be sensitive to subjective assessments of how hard improvements are to achieve and may increase the focus on measurable quality outcomes at the cost of harder to measure outcomes, the gain in perceived legitimacy of profit may still be worth the cost.

So if the government really wants to make service and not sector the benchmark (and help fill a funding hole along the way), then it may not be enough to open the door. The government should confront the political economy problems of private delivery if it wants to encourage people to walk through willingly.

**Paul Grout** is a Professor of Political Economy at the University of Bristol.

### Further reading

Paul Grout (2009) *Private delivery of public services*, CMPO (<http://www.bristol.ac.uk/cmpo/publications/publicservices/ppfinal.pdf>)

DeAnne Julius (2008) *Public services industry review – Understanding the public services industry: how big, how good, where next?*, BERR (Department for Business Enterprise and Regulatory Reform), predecessor of BIS (Department for Business, Innovation and Skills)

# Open and accountable public services?

**The White Paper's aim of commissioning almost all public services from a range of providers implies 'government by contract' on a large scale. Tony Prosser, CMPO researcher and University of Bristol professor of public law, outlines the many potential legal difficulties that lie ahead.**

The White Paper 'sets out a comprehensive policy framework across public services'. This big claim includes commissioning services from a range of diverse providers, in what will become the default approach in all areas where it is feasible. The range of eligible services is enormous: only national security and the judiciary, characterised as natural monopolies of state provision, will be excluded in principle.

The legal instrument for this apparent revolution will be the use of contract, and thus the proposals build on earlier experiences of contracting out services and competitive tendering. But on a large scale this may create difficulties, especially in relation to accountability, where traditional means are not well suited to government by contract.

The White Paper is remarkably thin on detail about mechanisms of accountability in a system of 'open public services'

The White Paper points to increased accountability in the future, for example, through 'mutually reinforcing choice, voice and transparency mechanisms'. But it lacks detailed discussion of what these arrangements might actually look like. Some examples will make clearer the danger of accountability gaps.



## Transparency and accountability

It is now universally accepted that transparency in government is an essential prerequisite for accountability. Indeed, access to reliable information is especially important where public services are provided on a basis of choice, both by commissioning bodies and by individual users.

The White Paper lays great stress on the importance of the publication of data about user satisfaction and performance of public services; indeed, a new statutory right to data is envisaged. Similarly, access will be provided to public sector contract and procurement data, and publication of government contracts through the 'contracts finder' website will be developed further.

But past experience suggests that these sorts of data will often be difficult to digest and partial. Although standard formats for data provision are mentioned, such data, however useful, remain essentially under the control of government, which can decide on the format and what is to be released.

By contrast, the White Paper is almost totally silent on the difficulties that might be caused by government by contract for the individual right of access to information under the Freedom of Information Act 2000. It is highly unlikely that the Act will be extended to cover all the private providers, so access to information would depend on whether the terms of the contract with the provider require it. This is already a controversial issue in the NHS, and the White Paper nowhere makes a commitment to such continued access, except in the particular case of academies.

## Human rights, judicial review and ombudsmen

A second issue is the application of the Human Rights Act to private providers. Although the Act has proved controversial in some quarters, key rights that it makes enforceable (relating, for example, to the right to a private life) are of considerable potential importance in challenging poor quality social care and other services.

The Act applies to 'public authorities', and in a major decision relating to a Southern Cross care home in Birmingham, the House of Lords held that this did not include the provision of social care contracted out to a private provider by a local authority, although the Act would apply where the authority provided the care itself. In this particular situation of private provision of social care under contract with a local authority, the Act has now been made applicable by statute. But serious problems remain about its use to challenge decisions by other types of private provider.

A related issue is that judicial review – the standard procedure for challenging unlawful decisions by public bodies for abuse of power – has in the past been difficult to use in relation to decisions by private providers. The current position is that judicial review will be available where there is some 'public law element' distinguishing the situation from an ordinary contract. But it has proved difficult to define this with any precision and it certainly does not imply that all

government contracting can be challenged by judicial review. Once more, the White Paper does not deal with this potentially important issue.

## The legal rights of users and commissioning bodies to choose providers will not themselves provide accountability without institutional support

The White Paper does discuss the role of public sector ombudsmen, whom it sees as an important source of redress for individuals where choice is not available. Indeed, it is suggested that failure to provide a choice to which an individual has a right will by definition amount to maladministration, which an ombudsman will be able to investigate.

Currently, the parliamentary ombudsman, who investigates complaints of maladministration against central government, is precluded from investigating actions taken in matters relating to contractual or other commercial transactions. This exclusion has been widely criticised and is highly anomalous, particularly as the health service ombudsman (the parliamentary ombudsman wearing a different hat), though subject to a similar exclusion, is able to investigate health services provided under contract by the private sector and matters arising from contracts between health authorities. The equivalent restriction on local government ombudsmen was abolished in 2007.

The White Paper promises a review of how the ombudsmen can play a greater role in supporting the ability of individuals to exercise choice in specific services, and it is hoped that this issue will be clarified. The review will also provide an opportunity to re-examine other constraints on the powers of the parliamentary ombudsman, notably the 'MP filter' preventing her from receiving complaints directly from members of the public.

### Fairness in commissioning

Turning from the position of individual service users, the question also arises of how to secure fairness in the commissioning process. The major means of regulating contracting by public authorities has been the role of the European Union's public procurement rules in opening up contracting to scrutiny and requiring fair procedures as between different bidders. But these rules have some major limitations.

First, the detailed rules on the procurement process do not apply to a number of important public services, including education, health and social services, where only more limited requirements apply. These include transparency, non-discrimination and advertising of the opportunity to bid.

Second, the rules are essentially about supporting a competitive process between different bidders for a contract, and do not incorporate other goals. Indeed, there is currently considerable controversy about the extent to which social goals are compatible with the full application of the EU rules.

One issue of considerable importance is the role of social enterprises in bidding for contracts. The White Paper points to the provision of a 'right to provide' for public sector workers who want to form mutuals or co-operatives. In a competitive market this does not, of course, mean a right to be given a contract but merely to bid for it.

The potential pitfalls were vividly illustrated recently in the case of Central Surrey Health, a non-profit body already holding an NHS contract, which had been praised by the government as a flagship social enterprise. The organisation was beaten as preferred bidder for a five-year contract by a company 75% owned by Virgin, largely because of the latter's easier access to financial backing.

The White Paper envisages a right to appeal to an independent body where a provider feels unfairly excluded from the bidding process. But in a competitive market this would not permit the positive promotion of social enterprises as a means of service provision.

## Left to individual providers, the means of achieving accountability for public services are likely to be patchy and incoherent

### Conclusions

It could be objected that concentration on these institutional means of accountability reflects an old-fashioned view redolent of the 'old, centralised approach to public service delivery' criticised in the White Paper. Instead, a wide range of less formal mechanisms could be developed, based on assisting choice in the marketplace both by individual consumers and by commissioning bodies.

But the White Paper is remarkably thin on detail of such mechanisms, and there is a danger that, if they are left to individual service providers, the means of achieving accountability for services will be patchy and incoherent. Worst of all would be to assume that formal legal rights to choose providers, either by commissioning bodies or by individual service users, will themselves provide accountability without the need for institutional support.

**Tony Prosser** is a Professor of Public Law at the University of Bristol.

# The challenges of 'turning Britain's pyramid of power on its head'



**The White Paper calls for Britain's public services to become accountable to the local people they serve and their elected representatives. Kate Blatchford of the Institute for Government outlines the practical difficulties of decentralising power away from Westminster.**

When the Conservatives were in opposition, David Cameron spoke about decentralising power away from Westminster to individuals and communities – what he called 'turning Britain's pyramid of power on its head'. The White Paper develops this vision by suggesting that rather than being primarily accountable to central government, public services should be accountable to the people they serve and their elected representatives at the local level.

It is not unusual for governments to come to power promising to give power away. Indeed, Tony Blair's government, seen by many to have been the most centralising in recent history, had a programme of decentralising policies in its 1997 manifesto. In addition to devolution to Scotland and Wales, this included piloting executive mayors in cities and referenda on directly elected regional assemblies.

Yet over the course of a government's life, promises to decentralise power and strengthen local accountability tend to lose momentum. Much like Tantalus' grapes, the promise of more power locally is often dangled in front of us by politicians seeking to generate support at the ballot box, but is seemingly forever beyond our reach.

So why does decentralisation seem to evade our political parties once they get into a position of power? Particular events and setbacks can throw a decentralisation agenda off course. The

Blair government, for example, was badly burned by the 78% of voters who rejected the North East assembly referendum in 2004.

But events are often symptomatic of deeply entrenched traditions that reinforce the centralisation of power in Westminster. If Mr Cameron is to succeed in turning the pyramid of power on its head, he will need to address these traditions. To do so, he will need to change expectations that ministers are accountable for all operational decisions, ensure that new, locally accountable institutions are seen as a legitimate alternative to Westminster and test whether local routes of accountability are coherent and comprehensive from the perspective of citizens and service users.

## Decentralising power requires changing public expectations that ministers are accountable for all operational decisions

### **The tradition of ministerial accountability**

The first challenge facing any government with decentralising ambitions is overcoming media and public pressure to act when things go wrong. Ministers experience this pressure even when there is a locally elected representative or body who in theory should take the hit. For example, it was Eric Pickles, the secretary of state for communities and local government, who was held responsible for the decision taken by many councils to move to fortnightly bin collections, rather than the councils themselves who commission and sometimes directly provide refuse collection.

It would take a very brave – and perhaps politically suicidal – minister to stand up in parliament and say ‘while the public is understandably outraged, it has got nothing to do with me’. So it is not that surprising that in the case of bins, central government has resorted to providing financial incentives for weekly bin collections. Cash-strapped local governments are unlikely to reject the extra £250 million on offer if they guarantee weekly bin collections for five years, yet this does not feel like the freedom to prioritise local spending that they were promised.

The pressure Eric Pickles felt to intervene in the debate over bin collection highlights that, just as turkeys are unlikely to vote for Christmas, so a secretary of state is unlikely to give power away for fear that in the event of a crisis he or she will be unable to act. But by directly intervening in local policy, politicians are in danger of reinforcing the perception that locally elected institutions are accountable primarily to central government, rather than their own electorates.

So what can be done about politicians’ fear of appearing to flounder in the face of public pressure? Change could come from within the institutions that embed the tradition of ministerial responsibility. Our recent report (Moyes et al, 2011) takes up this suggestion.

The report recommends that the Ministerial Code and existing House of Commons resolutions should be amended to recognise formally that ministerial accountability for the acts and omissions of departments should not incorporate operational decisions made by frontline service providers, independent regulators or commissioners, provided there are other routes of accountability to parliament. Changing ministerial accountability to reflect the realities of a more decentralised state may help to change the existing expectation that ministers should intervene in all matters.

#### **Embedding new democratically accountable institutions**

The second challenge facing any government with decentralising ambitions is to provide alternatives to the traditional route of ministerial accountability that are seen as legitimate by local people.

The coalition government is planning a suite of new democratic alternatives to Westminster – such as elected mayors, police and crime commissioners and health and wellbeing boards – to provide a check on centripetal forces in British politics. For these new democratic institutions to gain legitimacy, it will help if they represent geographical areas with which local people already identify.

The creation of new parliaments in Scotland and Wales and the mayoral authority in London was a logical development of existing political geographies, which goes some way to explaining why they have successfully become part of our political landscape. But without a pre-existing local identity, attempts to install new locally accountable institutions from policies created in Westminster are likely to meet the same local resistance as the regional assembly in the North East.

New institutions may appear to have been ‘foisted’ on the local people and will consequentially lack legitimacy.

This leaves politicians in a tricky situation. Building legitimacy for new local political geographies is dependent on a whole host of cultural and economic factors beyond politicians’ control. Furthermore, developing local political geographies takes time, which is in increasingly short supply as the parliamentary cycle gets underway. Thus, if politicians decentralise too soon, they will be derailed by public perceptions that new institutions are being foisted on them. But act too slowly and they will reach the end of the parliamentary term without having turned the pyramid of power on its head.

To some extent the coalition has already learned these lessons. Confirmatory referenda for elected mayors (which would have installed mayors for a period after which a city’s residents would vote) were considered for a short period, before being rejected in favour of full referenda for fear that elected mayors would seem imposed by Westminster. If the mayoral referenda pass a ‘yes’ vote, there is a fair chance that these mayors will be seen as accountable for the fate of their cities, which already have a strong sense of identity.

More questions hang over police and crime commissioners, which will represent 43 police authorities whose geographical remit does not map onto local authority boundaries. Encouraging people within police authority boundaries to identify with police and crime commissioners and hold them to account may prove challenging.

Each public service needs an ‘accountability map’ setting out specific powers retained by ministers, where other powers lie and what mechanisms will keep them accountable

#### **Coherent and comprehensive accountability**

The third challenge facing a decentralising government is to ensure that local accountability mechanisms make sense to local people. This is important, as without ensuring that local forms of redress are coherent and comprehensive, locally accountable institutions will probably be bypassed in favour of the secretary of state.

This is a particular challenge for the coalition as they envisage a web of different forms of accountability operating at a local level. Direct forms of accountability – such as choice, transparency and voice – will operate within a broader democratic framework provided by locally elected representatives. If you are unhappy with the service you are

receiving, then you complain (voice), use another provider (choice) or vote out the elected representatives that are accountable for the service.

Faced with an array of different accountability mechanisms, there is a danger that service users will not know which form of accountability best suits their needs. For example, if I visit a hospital that is unclean, should I voice my concerns about the particular cleaning company contracted to the hospital, choose a different hospital or vote out the government for introducing a market for hospital cleanliness?

## New, locally accountable institutions must be seen as a legitimate alternative to Westminster

This confusion is strengthened when the division of responsibility between different forms of accountability is unclear. If enough of my neighbours choose a different hospital, my local hospital may close. But this may be against the wishes of a local democratically elected figurehead who want the hospital to stay open.

In this situation, it is unclear who has the authority to act in the interests of the community. A lack of clarity about how different routes of redress operate alongside one another may mean that service users ultimately pursue a form of redress that proves unsuitable to the particular problem they face.

To help address this challenge, for each service in which significant decentralisation is proposed, policy-makers should publish an 'accountability map' setting out specific powers retained by ministers, where other powers lie and what mechanisms will allow the public to hold the holders of these powers to account. This would help to bring some clarity to the new accountability landscape, which may help to keep accountability local.

### Conclusions

The White Paper suggests that public services will become primarily accountable to local citizens and their elected representatives. This would be no mean feat. But it depends on three things: changing the expectation that ministers are accountable for all operational decisions; ensuring that new democratic forms of accountability are seen as legitimate by local people; and making different routes of local accountability coherent and comprehensive.

**Kate Blatchford** is a Research Analyst at the Institute for Government.

### Further reading

William Moyes et al (2011) *Nothing to do with me: modernising ministerial accountability for decentralised public services*, Institute for Government



# CMPO Viewpoint Blog

December 5 2011

## Is the Chancellor right to relax pay regulation in the public sector?

**Carol Propper**

In a recent surprise announcement to the House of Commons the Chancellor announced that he wants to scrap national pay deals for public sector workers. Labour unions across the land are hitting back, arguing that this will damage public services. In fact, the evidence we have on the effect of national pay regulation suggests exactly the opposite.

National pay awards tend to overpay public sector workers in low cost areas of the country and underpay those in high cost areas. Recent research shows the size of these differentials. For example, the Institute for Fiscal Studies suggests that women working in the public sector in the West Midlands are paid upto 14 percent more than their private sector counterparts. What has received much less attention is that these pay differentials may have an important impact on the quality of public services provided in different parts of the country.

National pay arrangements effectively impose a pay ceiling for workers in high cost areas. Simple economics suggests this should impact on the ability of the public sector to deliver services in these areas. The lower wages offered to public sector workers relative to their private sector counterparts in high cost areas will mean, all other things equal, that the public sector will struggle to recruit and retain the best quality workers. This in turn will mean problems in producing services.

Recent work undertaken at the CMPO and the London School of Economics confirms this intuition in a very stark setting. Analysis of the impact of national pay regulation of the wages of over half a million nurses in the NHS showed that hospitals in high wage areas had higher death rates for patients who were admitted following a heart attack. Furthermore, the output of hospitals in low cost areas such as the North East did not appear to compensate for the lower quality output of their counterparts in the high cost South East. Our research suggested that deregulating pay to reduce the gap between nurses pay and that of their counterparts in the private sector would both save lives and cut costs. So in this case both economic intuition and the Chancellor's instincts are right: deregulating public sector wages will improve the quality of public services.

### Further reading

Propper, C and Van Reenen J (2010). *Can Pay Regulation Kill? Panel Data Evidence on the Effects of Labour Markets on Hospital Performance*. *Journal of Political Economy* 118(2): 222-273.

### Tags

Chancellor, CMPO, House of Commons, pay regulation, public sector pay

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