

## 11-36 Open Public Services White Paper

To all APSE main contacts in England , Wales, Scotland and Northern Ireland

### Key issues;

- The Coalition Government from the start of its administration promised a white paper on reform of public services
- The promised white paper was subject to several delays but has now been released
- The scope of the paper is listed as UK wide however the paper reflects that the application of the proposed reforms will be very much dependent upon how it is applied across devolved administrations, by the relevant government bodies

### 1. Introduction

White papers are issued from time to time by the government to set out policy, or proposed action, and are also occasionally used as a means by which to consult on policy and include the presentation of evidence, in support of a proposed policy.

The Open Public Services white paper runs to some 55 pages but does not contain any specific reference to legislative proposals. The paper does however explain Government's thinking on the future of public services and sets out a number of principles for reform.

The white paper follows on from earlier indications of the Government's intention to reform public services. In an interview with the Daily Telegraph on the 20 February 2011, the Prime Minister, David Cameron, said'.... *The grip of state control will be released and power will be placed in people's hands. Professionals will see their discretion restored. There will be more freedom, more choice and more local control*' and he also said '.....*the state will have to justify why it should ever operate a monopoly*'.

Many of the themes identified in that interview are found within the white paper.

### 2. The five key principles

The White Paper sets out five principles for modernising public services which are each described below. Many are recurring themes from previous Governments and are replicated below from the white paper:-

**Choice:** Wherever possible we will increase choice

**Decentralisation:** Power should be decentralised to the lowest appropriate level

**Diversity:** Public services should be open to a range of providers (public sector, voluntary or community sector, or private sector)

**Fairness:** We will ensure fair access to public services

**Accountability:** Public services should be accountable to users and taxpayers

It is noted that some of the language is used with a different meaning to previous government policy statements. For example 'diversity' is not related to equality issues, such as the ethnic or wealth diversity of service users or the workforce, but diversity in the context of the white paper is used to describe plurality of provision. Choice is underpinned with the concept of competition as a means to 'ensure that any competition is free and fair'.

### **3. Service types**

The white paper recognises that it cannot prescribe a 'one size fits all' approach to reform but has categorised public services by three broad types.

- **Individual Services**

These are personal services such as education, housing and adult social care, childcare, housing support and individual healthcare – used by people on an individual basis.

The white paper sets out a series of intentions which would allow money to follow individual service users. This, says the Government, will shift billions of pounds of funding to individuals. This concept has already been tested by Government in areas such as individualised social care budgets whereby those in need of support can use their budget to purchase from 'any provider' the service that they so choose. However such approaches have not been without problems. For example market capacity to deliver meaningful 'choice' is often under-developed and often support to individuals who wish to exercise choice is needed. Equally the marketisation aspect of this approach works on a two-way basis. Providers in the market place may elect to provide only certain types of services. They may wish to withdraw from the market but public services will nevertheless need to be delivered. The white paper recognises some of these problems and as such suggests that these can be addressed by a number of measures such as:-

- The availability of key data about public services including data on user satisfaction, spending, performance and equality
- Providers meet basic quality requirements, enforced by appropriate regulators or inspectors, and are licensed or regulated providers appropriate to each sector, for example the Care Quality Commission.
- Selection criteria should only apply where they will positively advantage the disadvantaged.
- A means of redress where choice is not available or the services are not good enough

- **Neighbourhood Services**

These are services that are very locally delivered and on a collective basis rather than an individual basis such as maintenance of the local public realm, leisure and recreation services and community safety.

The white paper references some existing Government proposals contained within the Localism Bill currently making its way through Parliament. These measures include; the 'community right to challenge (to provide local services) the 'community right to buy' local assets, 'community right to build' and Neighbourhood Community Budgets. Many of the suggested alternative ways of service delivery rely upon concepts of the 'big society' with community based groups, charities, third sector and cooperatives and mutuals taking on service delivery roles. APSE has already explored some of the issues relating to this approach following a detailed survey with its members and more information can be found in [APSE briefing 11-21](#).

- **Commissioned Services**

These are services that cannot be devolved to individuals or communities such as tax collection, prisons, emergency healthcare or welfare to work programmes.

The white paper recognises that for some services it would not be appropriate to expect individuals to exercise choice about providers but states that as part of the commissioning approach that **'...the principles of open public services will switch the default from one where the state provides the service itself to one where the state commissions the service from a range of diverse providers'**.

The white paper also advocates a '*purchaser / provider split*' suggesting that this is a way to encourage innovation and possibly introduce payment by results and disaggregation of contracts into specialist functions.

APSE has some serious concerns about these proposals. The public sector in many ways already acts as a 'commissioner' driven by outcome based approaches to service delivery, however the language within the white paper fuses commissioning into procurement. APSE's work with local authorities, spanning over three decades, supports procurement or a 'make or buy' decision coming into the frame **after** not as **part of** a commissioning approach.

The second issue is that of a '*purchaser / provider split*' as being the preferred route to service provision. During compulsory competitive tendering (CCT) this approach was often favoured by certain management consultancy companies who took an exaggerated, and in APSE's view an incorrect interpretation, of statutory guidance relating to 'anti-competitive behaviour'. In reality the unnecessary '*purchaser / provider split*' added needless cost layers to service delivery, led to a lack of cohesiveness in policy responses and service development planning and fettered innovation. It is therefore worrying that these mistakes could be replicated, despite local government having improved its services immeasurably, delivered greater efficiencies and innovation than any other area of the public sector. Many local councils have abandoned the use of a '*purchaser*

*/provider split'* favouring a more collaborative, reasoned and innovative approach to holistic service delivery models.

The white paper provides a strong intimation of a return to some form of CCT, stating that **'We will introduce an open commissioning policy in a number of specific services'** and goes on to say ***'In those areas commissioners should: consult on and be challenged by potential providers from all sectors on the future shape of services; seek and fully consider a minimum of three providers, from whichever sector, when they contract for services and transparently link payment by results'***. This statement is a cause for concern since this would appear to be a more centralist direction on local authorities and this runs against the stated intention of a more localist agenda. Furthermore at a time of restrictive budgets any future requirements for multiple contractors could impact upon more efficient models of service delivery and add cost increases, through the operation of procurement programmes, which would not necessarily produce better outcomes for service users. 'Payments by results' style arrangements are also likely to hinder the involvement of providers who may lack upfront-capital, in particular third sector providers, but could in fact favour the private sector, over alternative providers, as an unintended consequence of the policy direction.

The white paper states that in terms of local authorities it will consult on further opening up services in:

- Customer contact
- Planning
- Property and facilities management
- Back-office / transactional services
- Family support and support for looked after children
- Trading standards and environmental services and
- Housing management

#### **4. Data transparency and accountability**

A key component of the white paper is the concept that greater accountability will be driven by greater transparency in data about how services perform, what they cost and how well those services are regarded by service users.

The Government has already taken measures to introduce data transparency with a requirement on local councils to publish spending over £500 online. The white paper goes further in suggesting that existing data sets from central government, and other sources, should automatically be available to assist the public in making choices about which public services to access, and which provider, and to hold service providers to account.

Crucially the white paper references the need for data to be available in plain English and to be easily navigable. APSE's response to the recent DCLG select committee enquiry on the future of audit and inspection of local authorities ( see [APSE briefing 11-01](#)) references the need for a 'dashboard' of indicators to ensure that data is easy to understand. APSE also promoted the idea that councils ought not to be forced into new data collection processes but should broadly be allowed to rely upon existing sources of data. The white paper sensibly recognises this approach by suggesting that existing data sources may be simply made more open and available.

Whilst APSE supports transparency in public sector spending and data the intention is to make some of this data also available to potential service providers. This could be problematic as there is still, quite rightly, a statutory duty on local authorities to provide 'Best Value'. Ironically if too much data on costs is in the general domain then this could undermine Best Value by potential providers submitting bids, not at the best possible price, but at the price that the market knows the public sector would stand, even if savings could otherwise be made. This 'market knowledge' element was one of the problems exposed in the recent cases of price-fixing cartels on public service contracts highlighted by the Office of Fair Trading (OFT) and it would be a concern to APSE member authorities if good intentions on data transparency ultimately undermined drivers to Best Value.

## **5. APSE commentary**

Many commentators have described the white paper as a damp squib citing that much of the stated intentions are well known or rehashed policy statements. Whilst to an extent this is the case, and the white paper does not provide any firm legislative proposals, there are some clear signals of a step change in policy.

The 'open commissioning' proposals coupled with the 'community right to challenge' proposed under the Localism Bill do have some similarities to the elements of compunction applied during CCT. In particular the references to purchaser/ provider splits, which are widely acknowledged as a poor substitute for effective service delivery management and service improvement planning, are worrying. Applying failed market mechanisms to public services belies the reality of public service delivery which is inevitably provided on a rationed basis. Local councils are likely to regard the language (and possibly intent) as regressive given councils have been at the forefront of service improvement planning and transformation. Councils have already delivered widespread innovation and efficiencies in service design and delivery.

The spectre of 'defined services', a major element of the CCT regime, is also evidenced by the presentation of a list of what services might be subject to being further 'opened up' as part of locally commissioned services ( e.g. customer contact, property and facilities management, trading standards and environmental services).

A recognition of performance data, as being critical to both accountability and transparency, is welcomed. However APSE would not wish new data requirements to create a further burden on local councils. APSE's own performance benchmarking service ( [APSE performance networks](#)) is in its 13<sup>th</sup> year of data collection and is used by over 200 local authorities throughout the UK. It is important for local councils to consider now how they would best prepare themselves for a more open process of

data transparency . The white paper makes specific reference to a new 'Right to Data' and this is supported in the white paper by proposals to enforce data transparency through a process of fines or other forms of financial penalties. Councils may now wish to consider what types of performance information or data they could present in an understandable format to local council tax payers.

There will undoubtedly be a degree of trepidation about the white paper and its various proposals or stated intentions. Plurality of provision, choice and voice for consumers of public services have been recurring themes through successive governments. The white paper attempts to evidence the mood of public service users by citing references to 'failure' or public desire to be involved in service delivery but a closer analysis of this evidence reveals a degree of embellishment of the 'evidence' supporting the assumptions. For example the white paper cites that **'85 per cent [of people] want more control over how services are provided locally'** but a closer look at the Mori survey from which this figure is pulled reveals that when individuals were asked how strongly they agreed with the statement **'I should get more' involved'** [in public services] this falls to just **28%** strongly agreeing. Understanding what the public want from public services is a markedly different starting point to assuming that the public want to take responsibility for public services, or choose different providers, or methods of paying for or accessing services.

Ultimately the vision behind the white paper may well mean that service providers, including in-house or direct service providers, will be in some way asked to demonstrate their competitiveness. It is quite possible that Government will see a need to legislate to force data transparency to a new level and to bring about a demonstration of competition in 'commissioning' or 'purchasing' service providers. This could prove unpopular across all local authorities since local councils, of all political persuasions, have valued the ability to determine what works best for their services at a local level. For example APSE's own research into insourcing has found there is no political control bias in decisions to bring services back in-house after contract failure or contracts being naturally determined. Equally councils have successfully operated shared services across different political boundaries based on local needs. Undeniably there will be little support for central intervention on local matters of service delivery, where councils are ultimately held to account at the ballot box, for service delivery issues, whoever is the provider.

It is also worth noting that recent changes in workforce issues could further complicate 'open commissioning' proposals and lead to problems with industrial relations. Government has announced revocation of **'Guidance on workforce matters ODPM circular 03/2003.'** This guidance is in two parts and includes (a) *The Code of Practice on Workforce Matters in Local Authority Contracts* and (b) *Handling of Workforce Matters in Contracting*. Francis Maude also announced the Cabinet Office *'Code of Practice on Workforce Matters'* (as applied across the public sector) has also been revoked. The Hutton report also speculated about the prospect of access to the LGPS ( the Local Government Pension Scheme) for 'admitted bodies' such as those private contractors providing public services, being withdrawn, leaving open the question of pensions being lost (for future earnings) for those public sector workers transferred under 'open commissioning' arrangements.

In the context of Best Value it should also be noted from a local authority perspective that Government has announced that it revokes the Statutory Guidance '**Creating Strong, Safe and Prosperous Communities**' as well as repealing the '**Duty to Involve**' and is also repealing the '**Duty to prepare a sustainable community strategy**'. Repealing the '**Duty to Involve**' in advance of a white paper that in effect acknowledges the importance of user involvement in service delivery could be viewed as both premature and nonsensical.

The white paper acknowledges that the way in which public services are currently delivered can lead to unfairness in outcomes, and, that user choice and involvement in delivery, can help to ameliorate unfair outcomes. However this assumption is not evidenced within white paper. APSE remains concerned that those least able to operate effective choices could end up with worse not better public services. Where a market based mechanism exists, in terms of delivery, certain services may be deemed to be not commercially attractive to operators and thus could undermine access issues to services. The white paper attempts to explain how this could be balanced in terms of the mix of providers and various options to incentivize delivery, including payment by results. However the evidence so far has not been favourable in terms of applying market mechanisms to service delivery but then attempting to prevent unwanted outcomes.

An often cited example of choice and user involvement in service delivery is the Swedish Schools model, however many subsequent studies have found some very negative outcomes. As the 'bottom line' of school budgets is squeezed pupils with special educational needs appear to have found access to certain schools more difficult. Similarly the studies on educational attainment in Sweden do not support any core improvements in terms of mathematics, literacy etc leading to the system to now be fundamentally reviewed. Similarly differences in outcomes were also noted in the pilot stages of UK based individualised budgets for social care. Assistance, to help people make the right choices about their future care, was critical to any form of success. Increasing support to make choices, whilst it may be accepted as a necessary part of service reform, will carry a cost. At a time of budget reductions this will prove problematic. Assumptions cannot therefore be made that simply providing a multiplicity of providers, or increasing 'choice' will of itself improve public services. Lessons from other reform programmes indicate that access and fairness can be weakened, not enhanced, and fragmentation can lead to a loss of democratic accountability.

APSE will be responding to the issues raised in the white paper on open government and we would welcome the views of APSE members to further inform our response. Email [mbaines@apse.org.uk](mailto:mbaines@apse.org.uk)

Mo Baines

Principal Advisor