



# s u m m a r y

## **BUILDING BETTER PARTNERSHIPS** **the final Report from the Commission on Public Private** **Partnerships**

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### **PRINCIPLES**

#### **Chapter 1: the new partnership agenda**

This Report argues that getting public private partnerships (PPPs) right is vital if the quality of the UK's public services is to meet the expectations of the British public over the next decade. Delivering this will require significant changes in the direction of policy as many PPPs have performed poorly over recent years.

Our starting point is that this should be a golden age for the champions of public service. For the first time in several decades we have a Government that has asked to be judged by its ability to improve the quality of collectively funded services. This provides an opportunity that has to be seized. If in five years time, after a sustained period of increased funding, citizens feel that those services are still failing to deliver there could be a major political backlash. Those opposed to the principle of collective provision would find it easier to argue that public services are an anachronism; blunt, inefficient, restrictive of choice. If the case for universal public services cannot be won now it could soon be lost forever.

To date there have been few even-handed studies into the contribution that partnerships between public, private and voluntary sectors can make to our public services: prejudice and anecdote have tended to dominate analysis and evidence. We aim to cut through the arguments on the rights and wrongs of PPPs and set out a reform programme aimed at ensuring that in the future PPPs are used at the right times and to maximum effect.

Being open minded about the contribution that partnerships could make to public services means challenging two intransigent perspectives on public-private relations. On the one hand we totally reject the privatisers' vision of public services: their aim is always and everywhere to increase the role of the private sector in the provision and funding of public services. Their desired outcome is smaller government and residualised public services. On the other, we distance ourselves from a public monopoly perspective which holds that as a matter of principle public services should always and everywhere be provided by the public sector.

Both approaches view PPPs as a form of privatisation by stealth. We take a different view. For too long there has been a lack of diversity in the way in which public services are provided and projects are procured. Government has tended to rely on too limited a pool of service providers and too restrictive an approach towards undertaking large capital projects. This has resulted in public services missing out on the skills, creativity, and areas of expertise that reside in a wide range of private and voluntary organisations. This means less choice for public authorities, less innovation than would otherwise be the case, and less scope for learning within public service organisations.

The real challenge we face is to manage a diverse public service sector effectively so that it enhances social equity by improving the quality of, and commitment to, publicly funded services. Our approach can be summed up in four steps.

- Reassert the case for publicly funded universal services. The reason we are interested in PPPs is because we want to explore all possible avenues for increasing the quality and responsiveness of publicly funded services. Services that are universal and free at the point of use form a central part of our commitment to social justice, economic efficiency and democratic accountability.
- Distinguish clearly between the funding and provision of public services. It is helpful to distinguish between public authorities responsible for commissioning services and those organisations which deliver them. We need to examine where and when it makes sense to allow purchasers to work with providers who come from the private or voluntary sectors.
- Be open minded about public authorities entering into partnerships. Weak arguments are sometimes used for imposing blanket restrictions on the types of services that public authorities can deliver through partnership. These need to be reassessed. As the practice of partnership becomes more widespread we will see the emergence of a growing public service sector made up of a mixture of public, private and voluntary sector organisations. If this development is properly managed it should be seen as an opportunity not a threat.
- Have clear criteria for assessing whether PPPs are the right approach. Our first criterion is guaranteeing social equity and ensuring that public services respond to the needs of all citizens. The second is that partnerships offer value-for-money in the delivery of efficient, high quality and responsive services – if the quality of a service deteriorates then a partnership has failed. The third criterion is that clear forms of accountability and redress should apply across the public service sector. If ppps do not meet these criteria they should not be adopted.

### **Foundations for partnership**

One of the reasons why debates on PPPs tend to generate more heat than light is because there is little agreement as to what constitutes a partnership or the types of problem that they might help solve. Public managers do not have a clear account of how partnerships can help to improve the quality of services. We argue that PPPs are a risk-sharing relationship based upon an agreed aspiration between the public and private(including voluntary) sectors to bring about a desired public policy outcome. More often than not this takes the form of a long-term and flexible relationship, usually under-pinned by contract, for the delivery of a publicly funded service. Greater freedom to enter into PPPs should run alongside the

decentralisation of decision-making authorities to public managers.

There are several rationales for considering the use of this type of arrangement:

- improving service quality through greater diversity and contestability
- focusing on outcomes
- getting more from public assets over their life cycle
- accessing private sector management skills and expertise
- engaging citizens and civic groups in the planning, governance, and monitoring

Making a success of partnerships is difficult. We argue that if PPPs are to make a significant improvement to the quality of public services over the medium term then a number of conditions need to be in place:

- adequate funding for public services
- a consistent rationale for using PPPs
- a strong public sector partner
- responsible private and third-sector providers willing to embrace high standards of transparency and accountability
- legitimacy among the general public and workforce. If partnerships are to endure, citizens and employees need to feel they have a stake in them
- an evidence-based approach to policy. A commitment is necessary to pilot, monitor, and systematically evaluate a spectrum of partnership arrangements.

## **ECONOMICS**

### **How significant are PPPs?**

Keeping a sense of perspective on discussions of partnership requires an awareness of the significance of PPP arrangements within today's public services. The overall picture is one of the continuing dominance of services that are publicly funded and publicly provided. The Private Finance Initiative still plays a fairly modest role in relation to overall levels of investment, accounting for nine per cent of total publicly sponsored gross capital spending between 1997 and 2000. It is also important to distinguish between the types of role that government asks the private and voluntary sector to play. A spectrum of different approaches exist:

- *Public Sector Default.* The public sector provides all services.
- *Private Sector Rescue.* The public sector provides all services, except if public providers are seen as under-performing in which case the private sector acts as provider of last resort.
- *Level Playing Field.* There is equal treatment between different organisations seeking to deliver public services – the decision as to who provides the service is taken solely on a judgement of which provider will provide the best service.
- *Public Sector Rescue.* The private sector provides all services, except if private providers are seen as failing when the public sector would act as provider of last resort.

- *Private Sector Default.* The private sector provides all services on contract to public purchasers/commissioners.

In prisons there appears to be a 'private sector default' position in relation to the building and operation of new prisons. In social services there appears to be a 'level playing field' between different types of provider. In clinical health services there is almost a 'public sector default' position. It remains unclear why one approach applies in one sector but not in another.

### The lessons of the Private Finance Initiative

The economic arguments for PPP and in particular for PFI have been confused from the start. Two rationales have been offered: one serious, one spurious. The potentially serious argument is that in the right circumstances PPPs can offer significant value-for-money gains and generate improvements in service quality. At the moment the evidence on value-for-money is variable across sectors, PFI seems to be offering significant gains in roads and prisons but not in hospitals and schools. The spurious argument is that using private finance to pay for capital investment allows government to undertake more projects than would otherwise be the case. All PFI projects are publicly funded and incur future liabilities for the exchequer.

We see the lessons of PFI as follows:

- The framework for public finances should be revised so that privately financed public investment is taken into account in deciding the 'sustainability' of the public finances.
- Government departments should be set an overall capital spending budget that encompasses both traditionally financed public spending and the capital value of PFI spending.
- Public authorities need to have a clear policy planning framework which integrates all forms of investment and service provision.
- PFI projects should not go ahead because a public authority believes there is no alternative. The accounting treatment of a PPP/PFI project should be settled after a decision to go ahead on value-for-money grounds has been made.
- All PPP/PFI proposals need to be subjected to a sensitivity analysis to see whether different assumptions, for example, about different forms of risk allocation, would significantly alter the value-for-money assessment.
- Government should experiment with a range of procurement models for capital projects. A new monoculture of procurement based on the current PFI model should be avoided.
- Contracts should have explicit provisions for sharing super-profits arising from re-financing deals.

### PPPs and public enterprise

Over recent years the most contentious debates on PPPs have concerned government proposals for revenue-

generating public enterprises such as London Underground and National Air Traffic Systems (NATS). The arguments over the use of the proposed PPP models resemble those for the use of the PFI approach in public services. The extra costs of private finance have to be outweighed by the benefits resulting from the skills and risk-transfer that comes from working in partnership with the private sector.

There are significant problems with the proposed PPPs for these two public enterprises, though some of the criticisms made of them are wide of the mark. The key issue in relation to London Underground is ensuring the integration of investment and maintenance with operations rather than whether or not bonds are used to finance investment. In relation to NATS, other more attractive structures were available but not considered.

In general there should be a wider diversity of models of public enterprise. In some instances there are arguments in favour of transferring the ownership of public enterprise to a not-for-profit trust, particularly where there is a natural monopoly and where safety is a key feature. Such a trust should still be able to raise private capital and contract for private management.

The financial framework for public enterprises also needs to be reformed to ensure that PPPs are used as a way of securing value-for-money rather than evading financial controls.

- Public enterprises that demonstrate they could fund investment through revenue streams should have direct access to capital markets outside normal Treasury financial controls.
- The option of some public enterprises 'opting out' of Treasury financial controls also needs to be considered. This would require an effective form of 'public sector bankruptcy' to be introduced so long as failing management teams could be replaced without threatening continuity of provision.

### PRACTICE: Where is partnership appropriate?

If partnership is to make a significant contribution to improving public services then new models of partnership need to be developed. Currently, PPPs often provide what are called 'ancillary' rather than 'core' elements of a service. Distinguishing between core and ancillary services is highly problematic: it can lead to fragmentation, awkward interfaces within an organisation, reduced innovation, and undermine those employees classified as 'ancillary'. In some instances the private sector is allowed to provide core services if, and only if, public sector agencies are found to have seriously under-performed. We argue that there needs to be a new approach to identifying the types of services that can be included within PPPs.

- Broad categorisations such as 'core' and 'ancillary' should not be used to distinguish between services which can and cannot be provided through partnerships.
- The private/voluntary sector should not be restricted to

providing services only after a public sector agency is deemed to have 'failed'.

- Successful public authorities should not be excluded from bidding to help improve (or takeover) a service from an under-performing public sector authority.

We also favour a flexible approach which allows public purchasers to make a case-by-case assessment of the package of services that they want to incorporate within a PPP. In making these decisions the assumption should be that public purchasers will involve citizens and service users in the process of selecting providers. On this basis, public authorities should enter into partnerships with public service providers (regardless of whether they come from the public, private or voluntary sector) who are best placed to deliver publicly agreed outcomes.

### PPPs and key public services

There is scope for policy-makers to encourage greater diversity in provision across the health, education and local government sectors. In some areas, there are solid grounds for moving to a position where all purchasers select the most appropriate provider regardless of whether they are based in the public, private or voluntary sector. In other areas, such as clinical services in health, a more cautious approach is necessary as the arguments are less clear cut and the evidence is more contested. In all areas, an evidence-based approach needs to be adopted. If evaluations show that PPPs are not performing satisfactorily then policy must be revised accordingly.

### Health

The relationship between private and public sectors in health has often been restrictive, relying on short-term contracting and the provision of buildings through the PFI. The challenge is to create genuine partnerships with opportunities for innovation.

- As Primary Care Groups/Trusts become more established and Care Trusts emerge, consideration needs to be given to the application of the Best Value regime to primary health and community services. Advice and expertise on procurement strategies should be contracted separately from the direct provision of the primary care infrastructure and primary care services.
- In relation to intermediate care a number of pilot sites should be used to establish long-term partnering arrangements between public, private and voluntary sectors.
- New medical units (for example Diagnostic and Treatment Centres) should be procured and operated using a range of partnering approaches – including PFI and non-PFI models. These partnerships should be designed to allow for a degree of contestability in the provision of core services.
- Restrictions on the inclusion of clinical and support-

clinical services within PFI hospital projects should be removed. Purchasing authorities should consider whether the inclusion of these services would improve service quality and value-for-money. Such a move should not be imposed by central government.

### Local government

In many local government services the use of different types of service provider is already firmly established. The challenge here is to make a reality of diversity and to avoid a new mono-culture of provision from emerging.

- All Best Value authorities should publish an annual 'diversity statement' that would specify the volume of services provided in-house, externally, and through partnership arrangements. Local authorities that systematically under-perform, for example by failing their inspections, could be set a 'diversity target' by the Audit Commission.
- The rise of large-scale partnership agreements with a single provider – or 'one-company towns' – sits uneasily with the principle of diversity. Authorities (together with DETR) need to establish how large partnering agreements can accommodate sub-contracting to smaller local firms and social enterprises.
- A prudential framework for local authority capital spending should be instituted as a matter of priority. PFI projects and joint venture companies should be treated in the same way as conventionally financed projects.
- Authorities who have performed well in their Best Value inspections should be allowed greater freedom to trade, within prudential limits, with other public bodies.

### Education

Diversity has been introduced with some success in relation to the provision of LEA services but has not been widely applied in relation to school management. LEAs are good examples of where an effective relationship exists between a purchaser and service provider. The complex relationship between governing bodies, senior school managers and LEAs is more problematic and represents an obstacle to greater diversity in school management.

- Partnerships for the delivery of LEA core services should not be seen as an emergency measure, but as a part of the wider Best Value process. All LEAs should consider the role that partnerships might play in increasing educational attainment. Restrictions on the use of partnerships with LEAs except in cases of under-performance should be removed.
- The Government should make it clear that partnerships for LEA services in no way alters an LEA's statutory responsibilities.
- Greater diversity in school management would be facilitated by a clarification of the relationship between LEAs, school governing bodies and school managers.
- The model of enabling independent providers to establish

Voluntary or Foundation Schools under contract with an LEA compromises the independent role of the governing body and is not the way forward for involving private and voluntary providers in school management. Instead, where they consider this to be in the interests of the school, governing bodies should be provided with the support and resources necessary to enter into partnerships with private or voluntary sector educational providers.

### **Making the public sector a better partner**

If partnership is to play a major role in the modernisation of public services then government needs to become a more effective partner. At the moment it suffers from a severe shortage of skills and those it has are often under-utilised. It finds it hard to learn from past mistakes, it is poor at picking quality partners, and it is fiendishly difficult to get different bits of the public sector to work together to purchase services. Change is needed on all these fronts.

- Across the public sector the status and career structures of procurement officers need to be enhanced.
- Public agencies should be able to bid to become accredited commissioning experts.
- Flexibility needs to be built into PPP contracts if they are to promote continuous improvement and value-for-money over time.
- Outcome-based contracting should become a regular feature of PPPs, linking an element of contractual payments to the tangible benefits brought to service users.
- User satisfaction should be used regularly to determine a portion of the payment made to providers.
- Gain-sharing provisions should always be a feature of partnerships where achieving revenue-generation or cost reduction relies on active co-operation from the public sector and/or there is a high degree of uncertainty about the quality of the information available.
- The Government Offices for the Regions should be provided with a pump-priming fund to reward joint commissioning by groups of local authorities.

In addition to this government must play a pivotal role in promoting good employment practices across the public service sector: public money should not support poor employers. A motivated workforce is critical in delivering high quality services to the public.

- Public authorities need to be aware that they are under no duty to select least-cost bidders – indeed this may fail to achieve best value.
- Purchasers should always be allowed to make issues such as health and safety, equality, and training a feature of PPP contracts if they so wish. There should

be a greater willingness to select providers with good track records on employment issues.

- Revised TUPE regulations should be implemented by autumn 2001.
- The evidence base on the impact of PPPs on the workforce needs to be improved.
- If the evidence demonstrates that PPPs have an adverse impact on the pay and conditions of new employees then there should be moves to strengthen the regulatory framework through a voluntary code and/or legislation.

### **Communities and partnership**

Public service providers should be accountable and responsive to local citizens and communities. Policy-makers and local public managers need to explore new and innovative ways of engaging local people in the design and governance of their public services and spaces. There are several ways in which policy and practice need to be reformed to ensure that partnerships are based on community consent.

- The Cabinet Office and the Office of Government Commerce should provide joint guidance on how to conduct community consultation on PPP contracts.
- In areas of service delivery which impinge directly on citizen's everyday lives (for example, housing or school management), particular effort should be made to involve users substantively in the selection of service providers.
- Pilots for neighbourhood level 'community trusts' should be established which allow local people to take a strategic view of the fit between existing public sector assets and neighbourhood needs.
- There should be a moratorium on new funding streams for local partnership initiatives for at least three years in order to allow for evaluation of current schemes.
- There should always be clarity about what it is that the private sector is expected to contribute to local partnerships. Generally the role of the private sector will focus on management and commercial skills rather than the provision of funding.

For too long proposals for enhancing community involvement in public services have lacked bite. If PPPs are really to transform public service delivery it is essential that the vision of communities as the agents of partnership moves from lofty aspiration to concrete reality.

### **Making partnerships accountable**

The traditional model of accountability assumed that public services were delivered through the public sector. PPPs stretch this traditional approach in a number of ways but

they also offer a device through which clarity can be brought to the role of purchasers and providers, transparency can be ensured, and the responsiveness of service providers to users enhanced. The involvement of private and voluntary providers in public services need not and should not lead to a dilution of public accountability. Ensuring that this is the case necessitates a range of reforms.

- Performance data on services provided through partnerships should always be made publicly available.
- The mandatory framework for disclosing information that currently exists in the NHS should be extended to all PFI projects.
- The National Audit Office should have statutory powers to access information on private providers relating to public contracts above a certain size.
- The responsibility held by different bodies in a partnership should always be made explicit in the contract. Public authorities should remain responsible for ensuring that citizens will not suffer as a result of contractual deficiencies.
- The status and areas of competence of decision-making bodies set up within PPP contracts (such as 'partnership boards') should always be made explicit.
- Contracts need to set out clearly the actions that public purchasers can take to enforce agreed terms – this is particularly relevant when there is more than one public body involved in purchasing services.
- The public body that will be held to account legally and politically for managing a contract should always be the body that establishes that contract in the first place.
- The application of judicial review to service providers

who are not in the public sector needs to be clarified. The test for whether public law should be applied should be the nature of the function being performed by a public service organisation rather than its legal structure.

- All PPP contracts should clearly set out the grievance procedures through which individual citizens have redress.

Thus the shift towards pluralism in provision which PPPs represent can go hand in hand with more diverse and effective forms of accountability.

## CONCLUSION

### Partnership 2010

If PPPs are to be a significant feature of the public service landscape in 2010 then much has to change. The association between private or voluntary provision of public services and cost-cutting will have ended. Partnerships will no longer be seen as privatisation by stealth. Public managers will have the experience and confidence to allow more innovative partnership models to emerge and will be able to work alongside a diverse menu of leading edge public, private and voluntary organisations. Employees will be confident about how they will be treated by private providers and citizens will see partnership as an opportunity rather than an obstacle to participation in decision-making.

Is this destination ever likely to be reached? Many would say not. It will require a commitment to sustainable increases in public funding, a political desire to make the case for partnership, a willingness to admit the flaws of some recent models of PPPs and a determination to make

a reality of the rhetoric of evidence based policy. It will also require action to be taken now. High quality and popular universal public services need to be a defining feature of Britain in 2010: the sooner we get partnerships right, the more likely this is to be the case.

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