

How 'ethical commissioning' could curb the worst effects of outsourcing



While inadequate budgets, supervision, and regulation are often blamed for the spectacular failures of public sector outsourcing, the absence of ethical standards in the commissioning and procurement process remains an overlooked issue, writes [Bob Hudson](#). He explains how ethical commissioning would work in practice, if outsourcing is to be made fit for purpose.

The outsourcing of public services to non-statutory providers, especially the private sector, has been the delivery model of choice in the UK for around 30 years. The budget devoted to such contracts is reckoned to be in excess of £100bn, equivalent to about 8% of GDP. A number of high-profile problems and outright failures have brought this model into prominent view. The most spectacular has been the recent collapse of the outsourcing giant Carillion, which managed services across education, the NHS, prison services and transport. Other failing outsourced public services include the probation service, the prison service, forensic science service, Learn Direct, court translation services, housing for asylum seekers, welfare benefit assessment, free schools and academies, social care and the NHS. Indeed, evidence of successful outsourcing is remarkably thin on the ground.

All of this adds up to a daunting charge list that requires explanation. Weak contracting, inadequate budgets, weak supervision, insufficient regulation and overweening providers have all been identified as contributing factors. The fundamental issue, however, could be much simpler – ethical failure. This certainly seems to have been central to the collapse of Carillion, with a Commons report recounting a story of '[recklessness, hubris and greed](#)'.

Given the way outsourcing has moved beyond back-office functions into front-line service delivery, the notion of an 'ethics of care' rooted in the ways in which human beings treat each other should be seen as mission critical. However, although there is a long tradition of ethical obligations in professions like medicine, nursing and social work, little attention has been paid to the ethics of decision-making amongst public services commissioners.

A [report from the TUC](#) on lessons to be learned from the collapse of Carillion argues for a new approach to public services commissioning, procurement and delivery, one that 'puts public interest and the public service ethos at the heart of decision-making'. But how can this best be achieved? One route is for commissioners to give priority to those providers able to demonstrate an explicit and verifiable ethical mission. Such an 'ethical commissioning' strategy could cover a range of requirements.

1. Ethical Employment

Commissioners need to be able to distinguish between the workforce practices of different providers and prioritise those acting as 'ethical employers'. This might have several components such as prioritising those providers that are: accredited by the Living Wage Foundation; have effective training, development and supervision; sign up to an ethical care charter; outlaw false self-employment and zero hours contracts; and encourage staff to participate in collective bargaining.

2. Ethical Tax Compliance

The ownership of all companies providing public services under contract to the public sector should be available on the public record. At the same time, a taxation test could require private companies in receipt of public services contracts to demonstrate that they are domiciled in the UK and subject to UK taxation law. Many of the largest private companies providing health and social care, for example, [have set up corporate structures](#) that allow the avoidance of tax on millions of pounds of profits by making use of corporate entities elsewhere.

3. Ethical Transparency

An ethical 'transparency test' could stipulate that where a public body has a legal contract with a private provider, that contract must ensure full openness and transparency with no recourse to the cover of 'commercial confidentiality'. The Institute for Government, for example, [argues](#) that all providers of public services should – at a minimum – publish details of the funding they receive, performance against contractual obligations, the suppliers to whom they subcontract services, the value of these contracts and their performance and user satisfaction levels. A [Private Members Bill](#) to require companies engaged in public services contracts subject to Freedom of Information requests is currently under consideration, though with little prospect of success.

4. Ethical Localism

A focus on smaller and more local commissioning is needed – a challenge for public services commissioners who generally favour larger, less complicated organisations. Smaller organisations hold vast expertise about the precise issues affecting people locally, can serve very small or isolated communities or very specific communities of interest. Complementary to this is the concept of [Local Wealth Building](#), a growing movement in Europe and the USA based on the principle that 'places' hold significant financial, physical and social assets of local institutions and people. The key is local 'anchor' institutions (public, social, academic, commercial) and their procurement role in supporting the local supply chain. This will include opening markets up to local small and medium enterprises rather than looking to national and international chains.

Ethical Vision

The outsourcing model that has emerged from New Public Management seeks to fix discrete problems with no bigger developmental purpose in mind. But, as Hilary Cottam [points out](#), to create change we need a guiding vision, one rooted in ethical considerations of promoting good lives well lived, and protecting the wider economic, social and environmental wellbeing of a local area. Procurement legislation in Scotland seeks to promote just such a vision but it has no real equivalent in England.

Changing attitudes

Fine words, however, butter no parsnips. So, if ethical commissioning is to have practical effect the skills, attitudes and behaviours of public services commissioners will need to change accordingly. Training programmes for commissioners are at best patchy. The Cabinet Office and its partners have developed the [Commissioning Academy](#) for senior leaders from all parts of the public sector and a handful of higher education institutions offer training courses of varying lengths, but these barely scratch the surface. There is much to be done here to develop and spread accredited qualifications embedded in a culture of ethical commissioning.

More broadly, the cultivation of ethical commissioning should be simply part of a wider strategy for developing ethical standards across every aspect of public life. It is now almost a quarter of a century since the then Prime Minister, John Major, established the Committee on Standards in Public Life which led to the seven 'Nolan Principles' of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In 2013 the Committee's terms of reference were clarified to allow it to examine issues relating to the ethical standards of the delivery of public services by private and voluntary sector organisations. A subsequent review of the issues by the Committee in 2014 [concluded](#) that:

- the public want common ethical standards regardless of sector, supported by a code of conduct;
- 'how' the service is delivered is as important to the public as 'what' is delivered;
- public and stakeholder views of what should constitute ethical standards are broadly in line with the Nolan principles;
- commissioners expect providers to conform to ethical standards but rarely explicitly articulate this;
- commissioners want guidance and professional training on how to embed ethical standards in the commissioning and procurement process.

The Committee has recently produced a [further report](#) that makes three important recommendations:

- all public service providers must, at the point of commissioning, agree to a Statement of Intent on the ethical behaviour expected of the board, employees and sub-contractors in the delivery of any contract;
- publish a corollary 'Statement of Providers Intent', showing their plan for embedding a culture of high ethical standards in their service delivery;

- those managing contracts should receive additional ethical training in relation to service delivery – principles and codes of practice are insufficient.

Putting these proposals into practice might at least do something to curb the worst effects of outsourcing and at best might help restore ethical considerations into the heart of public life. In its [new inquiry into outsourcing](#) in the aftermath of the collapse of Carillion, the House of Commons Administration and Constitutional Affairs Committee notes a 'depressing inability to learn from repeated mistakes' and calls for 'a verified atmosphere of trust and collaboration based on the values, attitudes and behaviour which the public expects to be demonstrated in the delivery of public services'. This warning desperately needs to be heeded. The outsourcing model really is drinking in the last chance saloon and doing nothing is not an option.

About the Author



Bob Hudson is Professor in the Centre for Health Services Studies at the University of Kent.

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