Submission to Parliamentary Review of Health and Social Care Wales

SUBMISSION BY AIZLEWOOD GROUP

FRIDAY 21 APRIL 2017

SUBMISSION BY THE AIZLEWOOD GROUP TO PARLIAMENTARY REVIEW OF HEALTH AND SOCIAL CARE

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EXECUTIVE SUMMARY

Most Government policies for public service delivery make little distinction between cooperatives, mutuals, social enterprises and third sector structures. The UK Conservative Government has admitted that mutuals may be preferable to conventional outsourcing. Irrespective of their original or founding purposes, these have been reinsitutionalised as deliverers of low cost public services.

Since the advent of New Labour in 1997, there have been successive attempts to dilute democratic control and accountability, especially with the introduction of Community Interest Companies (CICs). The fastest growing CICs are from Companies Limited by Shares - private companies which register as CICs for wider social acceptability.

The final section highlights the competitive procurement and commissioning environment in which third sector structures now operate. This Section also advocates a return to the original purpose of cooperatives – the creation and protection of jobs and enhancing support for local communities. There are also details of the Italian Marcora Law to assist worker buyouts.

This submission includes details about Care Cooperatives for Older People, Cooperatives, Self Employment and the Precariat and Funding and Finance for Cooperatives.

ABOUT THE AIZLEWOOD GROUP

The Aizlewood Group takes its name from the Aizlewood Mill Business Centre, Nursery Street, in Sheffield, where the Group normally meets. Aizlewood Mill operates as a cooperative.

The Group was formed to contribute to debate around public services mutuals and resist privatisation within the public sector specifically in local government

The Group supports cooperation and convergence between the trade union movement and cooperatives along with mutuals

The Aizlewood Group is supported by UNISON, the biggest public sector trade union in the UK, and works with academics, cooperatives, and like minded organisations which share the principles of public sector provision.

INTRODUCTION

Though this submission concerns cooperatives and other third sector structures, it also concerns the economic context and environment in which they are located. Most Government policy does not distinguish between these structures. Francis Maude, when Minister in the UK Cabinet Office, was open about the Government's true intentions: (Neville, 2014)

> *"Mr Maude indicated, as the government looked at whether it was best placed to deliver public services in-house…. However, the alternative may not always be conventional outsourcing, as in the past, he said, pointing to other models such as joint ventures and mutuals."*

Alongside more visible Conservative Government attempts at further privatisation, the wider Labour movement is not always conscious of the true motives for setting up “pathfinder” and “public service mutuals”. Irrespective of their original or founding purpose and driven by central and local government funding reductions, cooperatives, mutuals, social enterprises and third sector organisations are now re institutionalised as deliverers of low cost pubic services. Under the UK interpretation of the 2014 EU Procurement Directives, local councils, including those in the Labour led Cooperative Councils’ Innovation Network, are using cooperatives, mutuals and third sector organisations as interim stages before these face full private sector competition. With Government funding, the national organisations representing these cooperatives and third sector structures have encouraged the proliferation of this new role.

Within this new role, external delivery of public services is now dominated by payment by results, often based on irrelevant, meaningless or “easiest to measure” outputs.

This submission believes that cooperatives, mutuals, social enterprises and third sector organisations, including those which deliver health and social care, should return to their original role of employment provision and generation, community support and self defence. To these roles should now be added others including some care and support services where these no longer exist, all within locally, democratically controlled structures.

Cooperatives and third sector organisations now exist in a highly competitive outsourcing market. Though they may receive interim or partial protection from the private sector under the EU Procurement Directive’s Article 77 and the 2015 UK Government Public Contract Regulations, cooperatives and other third sector deliverers of public services face full private sector competition in three years’ time when services must be retendered. This means that increasing numbers of cooperatives will not succeed unless the context in which they operate is fundamentally reformed.

Comparisons which are frequently made with cooperatives in other EU countries are often misplaced. While France, Spain, Italy and other EU countries have created legal forms to preserve and augment cooperative, collectivist and alternative structures, legislation is not as favourable in the UK. Community Interest Company (CIC) legislation in 2004 was designed to move away from democratic and collective control. The fastest growing segment of CICs are now Companies Limited by Shares, frequently controlled by two or three directors.

Finally, because of time constraints, this is more a general submission on public service outsourcing and procurement rather than specifically on health and social care. Nevertheless, it advances the case that unless there is reform in procurement processes for delivery of outsourced services, including the Work Programme, participation in competitive bidding for public services will not be prioritised for cooperatives, mutuals and genuine third sector organisations. Though the Wales Assembly Government have favoured different processes, there are issues arising from the EU Procurement Directive which are still relevant in Wales. The Labour movement has a successful history of creating cooperatives to create and protect jobs, to defend and support communities and their regeneration. Serious consideration should now be given to a return to this previous role.

COOPERATIVES AND THIRD SECTOR STRUCTURES AND LEGAL FORMS

The following are cooperative and third sector structures relevant for health and social care:

COOPERATIVES (GENERAL)

Though different cooperatives started as grassroots organisations in Western Europe, North America and Japan in the middle of the nineteenth century, the Rochdale Pioneers are regarded as the prototype of the modern co-operative society and founders of the Co-operative Movement in 1844. 28 workers in cotton mills in Rochdale established the first modern co-operative business, the Rochdale Equitable Pioneers Society. The weavers faced miserable working conditions and low wages, and could not afford the high prices of food and household goods. They decided that by pooling scarce resources and working together they could access basic goods at a lower price. Initially, there were only four items for sale: flour, oatmeal, sugar and butter.

A co-operative is essentially an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. Co-operatives are based on the values of self-help, self responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

WORKER COOPERATIVES

In the UK there is no special co-operative legislation, so that worker co-operatives can use any legal form, including companies, societies and partnerships. Worker co-operatives are trading enterprises, owned and run by the people who work in them, who have an equal say in what the business does, and an equitable share in the wealth created from the products and services they provide. As well as benefiting their members, all co-operatives share internationally agreed principles, and act together to 'build a better world through co-operation'. The International Cooperative Alliance and Institutional Organisation of Industrial and Service Companies issued the following summary:

> *"Worker co-operatives have the objective of creating and maintaining sustainable jobs and generating wealth, in order to improve the quality of life of the worker-members, dignify human work, allow workers' democratic self-management and promote community and local development. (CICOPA/ICA, 2005.)"*

Though there are around 500 worker cooperative organisations in the UK, some of these are employee owned and have different constitutions.

MUTUALS

Though technically set up as mutuals, many previous local authority and arm's length organisations now conduct their affairs like private corporate structures. As an example, Greenwich Leisure Ltd has used a £5m bond issue to open London 2012 Olympic venues to the public. Triodos Bank worked with GLL to raise £5m through a five-year bond paying 5% fixed gross interest per year and GLL is developing its Olympics legacy strategy, including the Copperbox, launched in July 2013, and the Aquatic Centre which reopened to the public in 2014.

Public Service Mutuals

In 2010, the Cabinet Office defined a new variant - 'Public Service Mutuals' – as "organisations that have left the public sector but continue delivering public services. Employee control plays a significant role in their operation". This does not mean that these are controlled by former public sector employees. The best example of a Public Service Mutual "spin out" is MyCSP, part of the Civil Service Pensions Department. A report on "Progress towards MyCSP as a Public Service Mutual" was delivered by the National Audit Office (Comptroller and Auditor General & National Audit Office, 2013). Its introduction says: "The transaction was complex, and the Department had to fulfil several different roles, for example being vendor and owner of MyCSP's shares, as well as purchaser of MyCSP's services for scheme members".

Since MyCSP is now effectively privatised, a private company now controls administration of Whitehall Civil Service, MPs, MEPs and Judicial Pensions: (Neville & Plimmer, 2014)

> *"A private company has taken a controlling stake in the organisation that administers the UK civil service pension scheme, as the government presses ahead with its ambition to spin off parts of Whitehall.*
>
> *"MyCSP was established in 2012 as a "mutual joint venture" in which Equiniti Group owned 40%, the government 35%; and employees 25%.*
>
> *"The government will announce on Thursday that it is to sell 11% of its stake, handing majority ownership to Equiniti Group, which will own 51% of the joint venture".*

To ensure security and privacy, the Judiciary, MPs and MEPs are not permitted to file HMRC tax returns online. Equiniti styles itself as "intelligent provider of sophisticated technology, administration, processing and payments services, delivered by over 3,500 employees across 28 locations. Apart from providing significant back office financial operations for the NHS, central and local government, Equiniti is a main share registration administrator and nominee for a portfolio of private companies. There is no information on its internal controls and procedures.

The Cabinet Office continues to promote Public Service Mutuals, with support from the Labour led Cooperative Councils' Innovation Network. Cooperatives UK and Social Enterprise UK are members of the Government's Mutuals' Information Service. The Cooperative Group has set up a Public Service Mutuals Support Group. The TUC and Cooperatives UK in September 2013 published "Best Practice Guidance" on setting up Public Service Mutuals, (Cooperatives UK & Trades Union Congress, 2013) but little has been done to promote this.

The Coalition and Cameron Conservative Government's agenda for Public Service Mutuals has always been clear. Under "Clarifying the future size and shape of the Civil Service", the Civil Service Beta site shows (Civil Service Beta Site, 2013)

> *"By the end of March 2015 approximately 500 bodies will be reformed and the total number reduced by over 250. The Government estimate that public bodies will deliver administrative savings of £2.6bn over the spending review period. All remaining NDPBs are now subject to review every three years, which will seek to identify innovations and new models for delivery, such as mutualisation, joint venture partnerships and transferring to the voluntary or private sectors, and strengthen accountability and governance arrangements for NDPBs that remain".*

In practice this means that, as with MyCSP and other Public Service Mutuals, alongside other controlling interests, employee representation is minimised through a trust. There are many examples of legal advice and documentation, funded by the Cabinet Office, which show that for employees' operation and administration is difficult, if not impossible, without continuing legal and financial advice being provided.

COMMUNITY BUSINESSES

These examples of different community businesses are relevant for health and social care:

- **Community enterprise** – a trading organisation set up, owned and controlled by a geographical community or community of interest. They generally trade for a social purpose.

- **Co-operative** – an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise which conforms to the 7 co-operative principles shown above.

- **Development Trust** – a community-owned and led organisation, which develops community assets and community enterprise.

- **Social Enterprise** – a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. Social enterprises tackle a wide range of social and environmental issues and operate in all parts of the economy. However, the Government is now content to recognise more organisations which proclaim a social purpose as 'social enterprises'

Irrespective of the legal form or organisational type for a community enterprise, it will generally have a governing body and a wider membership. Once an organisation has a membership greater than 12-15, it becomes harder for its membership to be directly involved in governance. It also becomes harder for all members to attend meetings and the decision-making becomes challenging for a larger group. It is common in this situation for the membership to elect a smaller committee (the governing body) and delegate some of its powers to it. This committee can meet more easily and make decisions between general meetings of the entire membership.

COMMUNITY INTEREST COMPANIES (CICs)

This submission includes detailed notes on CICs since these are used by private Companies Limited by Shares to assume a 'community role'. CICs were introduced by New Labour and have diluted democratic control and accountability

Community Interest Companies started in 2005 from New Labour's Companies (Audit, Investigations and Community Enterprise) Act 2004, designed for organisations seeking to use profits and assets for the public good. CICs are easy to set up, with the flexibility and certainty of a company form, but with special features to ensure they should be working for the benefit of the community. It was argued that charities (including charitable IPSs) were not suited to social entrepreneurs who wished both to control an organisation and receive a salary from it. (Lloyd, 2010). They have proved popular and more than 10,000 have been registered in the first 10 years. CICs are loosely regulated with a part time regulator and small staff.

Their fastest growing component is CICs based on Companies Limited by Shares, which has led to fear that these are private limited companies using a CIC "wrapper" to augment their public acceptability. Many of these new CICs Limited by Shares are controlled by two or three directors. The principal feature of a CIC is that it contains a lock on its assets, which prevents profits being distributed to members or shareholders other than in certain circumstances. A CIC is obliged to pursue the community interest and must report on how it does this to the CIC Regulator.

A Company Limited by Guarantee with an asset lock allows the CIC to demonstrate to funders its not for profit status. But there have been some concerns about the asset lock since it may place restrictions on the organisation's ability to raise external finance. In some cases, some stakeholders believe that CIC status might deter potential investors.

The CIC was developed in order to address the lack of a legal vehicle for non-charitable social enterprises. Both non-charitable Industrial and Provident Societies (see below) and existing company forms were seen as insufficient, since they did not allow for a 'lock' on their community assets – although since April 2006 this has changed for IPSs which are non-charitable Community Benefit Societies.

CICs thus represent a "wrapper" for different types of company. They may be Companies Limited by Shares, Limited by Guarantee or may be PLCs. Certain structures are excluded from being CICs, including political parties, those controlled by political parties or engaged in political activities. The rules regarding what are political activities and the extent to which a CIC may engage in such activities are similar to the rules regarding charities and political activities. Charitable companies cannot also be CICs.

CICs operate in a broadly similar way to normal companies, except in certain aspects described above. Like ordinary Companies Limited by Shares and Companies Limited by Guarantee, a CIC's constitution is its Memorandum and Articles of Association. In addition, CIC legislation requires that the Memorandum and Articles of Association of a CIC must contain certain protections.

CICs register with Companies House in the same way as a normal company. However, there is one additional form to complete, which contains:

a) statement that the CIC is pursuing the community interest (including a description of the community and how its interest is pursued)

b) declaration that the company is not an excluded company.

Companies House passes applications to the CIC Regulator who assesses whether the 'community interest test' has been passed. If it has, the CIC Regulator returns the application to Companies House, which then incorporates the company. A normal CLS or CLG can be converted to a CIC. It would need to amend its constitution appropriately and then submit the required forms to Companies House.

Though CICs are regulated by the CIC Regulator, it was always intended that regulation should be 'light touch'. A CIC is required to file a community interest report each year. This report must include details of the remuneration of directors, dividends paid on shares and interest paid on certain types of loans. It must explain how it has pursued the community interest and how it has involved stakeholders. However, many observers have commented on the Regulator's inadequate staffing for all this.

A CIC Limited by Shares or Guarantee may apply for grants and take out secured and unsecured loans in the same way as a normal company. Interest rates on CIC borrowing must be at normal commercial rates, and performance-related interest is restricted. A CIC Limited by Shares may obtain equity finance. There are caps on interest and dividends to limit the amount of assets which can be transferred out of the CIC. For the cap on the amount of performance related interest that a CIC can pay on a loan, from October 2014 the cap is 20% of the average amount of a CIC's debt during the 12 months immediately preceding the date on which the interest is due to be paid. There is a cap for dividends:

a) Though shareholder dividends were restricted to 20% as a percentage of nominal value, this was removed in the Community Interest Company (Amendment) Regulations 2014

b) The profit distributed in dividends by the CIC must not be greater than 35% of its total distributable profit.

c) If the shares are bought back by the CIC from the investor they can only be bought back at the nominal value of the share stated in the articles

CURRENT POLICIES AND FRAMEWORKS FOR OPERATION OF COOPERATIVES AND THIRD SECTOR ORGANISATIONS

POLITICS AND DEMOCRACY INTERFERE WITH DELIVERY OF SERVICES

There is a continuing shift into public service delivery by private and so called 'third sector' providers, which since the 1980s and 1990s represents much more than basic marketisation or outsourcing. Colin Crouch describes the competition between 'public service brands' (Crouch, 2003)

> *"Extreme though this might seem, it is only an extension of a process with which we have become so familiar that we no longer even notice it: the approximation of the democratic electoral process highest expression of citizenship rights, to a marketing campaign based quite openly on the manipulative techniques used to sell products"*

Apart from a role as client or consumer without choice, ordinary citizens have no direct link with the provision of services. Freedland draws attention to a triangular relationship: government, citizen, privatised supplier of services – which represents a bigger shift than that from public to private or from local authorities into outsourcing. This fundamental shift is a large scale removal of service delivery from the political process so that democracy and the political process are increasingly seen as disruptive to the utopian models being established (Freedland, 2001):

> *"The citizen has a link, through the electoral and political system, to government (national or local). Government has a link, through the law of contract, with the privatised supplier. But the citizen has no link, neither of market nor of citizenship, to the supplier; as we have noted, service users are not technically customers. And following privatisation they can no longer raise questions of service delivery with government, because it has contracted such delivery away. Henceforth government is responsible only for policy, not for operations".*

The platform for much of this was erected and maintained by New Labour and represents much more than can be corrected or re engineered through Parliamentary or local elections. As long ago as 1965, Easton (Easton, 1965) defined input into the political system as consisting of citizens' demands and support, conferred through elections, citizen identity and a sense of system legitimacy, and defined output as government decisions and actions, leaving what went on within the political system itself largely blank.

Scharpf (Scharpf, 1999) shows differences between processes of inputting and outputs. His input legitimacy refers to the participatory quality of a process leading to laws and rules as ensured by the 'majoritarian' institutions of electoral representation. Output legitimacy is concerned with the problem-solving quality of laws and rules, and has a range of institutional mechanisms to ensure it.

But the practical reality is that under local government cabinet systems, with fulltime portfolio holders overseeing contracted services, individual councillors are unable to represent their interests and complaints about services can only be handled through contractual processes shrouded in commercial confidentiality. Many NHS and local government procurement processes now require 10% to 15% service cost reductions. With further outsourcing and subcontracting, contract retention rather than adherence is now a major issue. The "race to the bottom," especially in health and social care, means that more contracts are not completed since private or third sector delivers are unable to hire and retain staff.

The Business Services Association represents private providers of outsourced services. Its "State of the Union 2016" Report said (Business Services Association & Ernst and Young, 2016, p. 5):

> *"Customer contracting decisions are increasingly being left to procurement departments, (which can be less flexible with contract terms, show less interest in past relationships, and be overly price-conscious at the expense of more subjective, innovative or long-term assessments of value)".*

Many larger social enterprises, mutuals and third sector structures must now be accommodated within processes fashioned by what is contractually possible rather than by what might be politically desirable or acceptable. The biggest casualties have been voluntary and community organisations, since by their very nature they find it difficult to participate in what remains of the political process and within commissioning and procurement procedures. Since political input or "input legitimacy" is now largely removed from the mainstream political process, the politics of delivery are dominated by contractual possibilities determined by procurement departments. Crouch accurate describes the processes: (Crouch, 2003)

> *"This process becomes self-fulfilling. As government contracts out an increasing range of its activities, its employees really do lose competence in the areas being covered by the contractors, areas within which public servants have until now had unrivalled expertise. As they become mere brokers between public principals and private agents, so professional and technical knowledge pass to the latter. Before long it will become an argument in favour of private contractors that only they have the relevant expertise."*

PRIVATE DELIVERY OF PUBLIC SERVICES

Forces for the redistribution of wealth drive the outsourcing of public service delivery, with services refashioned and remoulded to fit the new context. The private sector is becoming a significant deliverer of public services. In her Department of Industry Public Services Industry Review 2008, Deanne Julius (previously a Director of Serco) wrote: (Julius, 2008)

> *“The PSI (Public Services Industry) in the UK is the most developed in the world and is second in size only to that of the US. In 2007/8 its revenues totalled £79bn, generating £45bn in value added and employing over 1.2mn people.” ...In terms of value added the PSI is significantly larger than ‘Food, beverages and tobacco’ (£23bn in 2006), ‘Communication’ (£28bn), ‘Electricity, gas and water supply’ (£32bn) and ‘Hotels and restaurants’ (£36bn)”.*

In "Open Access" for the CBI in September 2012, Oxford Economics wrote: (Oxford Economics, 2012)

> *“not just in the un-open proportion of the markets researched but in the unopened proportion of the estimated £278bn of public services spending which could practicably be more opened up to independent provision”.*

Future projections are worrying. In March 2013 "Briefing Notes", from the Business Services Association, the outsourcers' representative, reported that:

> *"Over 2010-11 and 2011-12, local authorities made savings of 16%. A further 18% of savings are required by 2014/15.*
>
> *“Increasing service delivery in partnership with the private sector has helped achieve these savings, accounting for 26% of local government spend on services in 2012, up 6% on 2011.*
>
> *“Looking to the future, the majority (82%) of local authorities see outsourcing as crucial to meeting their coming savings challenges".*

In 2015, Oxford Economics further reported: (Oxford Economics & Business Services Association, 2015, p. 9)

> *“In January 2015, Oxford Economics reported for the Business Services Association that Outsourced Frontline Public Services totalled £80mn, including £32mn for local government. For local government, this represented £18mn gross value added”*

In sectors including Adult Health and Care, Foster Care, Children's Homes and Waste Management major inroads have been made into public service provision, with private equity seeking to extract maximum shareholder value. Lain and Buisson's 2013 Healthcare Market Review says: (Laing and Buisson, 2013):

"Published today, the 2012-2013 edition of Laing's Healthcare Market Review calculates that revenues generated by a wide range of providers delivering services such as elderly care homes, education in special schools and colleges, homecare and private hospitals stood at £39.9bn in 2011 (the last period that figures are available for).

"The independent sector's dominant share in care homes for the elderly makes this area by far the largest single segment of the independent health and care services market with an annualised value of £13.4bn. This is followed by private acute medical care (£6.4bn) and homecare (£6.2bn).

The Laing and Buisson detailed report shows that private equity has a 5% to 25% share of various sectors within this market. 2013 figures communicated from the Audit Commission showed that private equity has 25% of the market share of Foster Care provision. In waste management, with major private providers like Veolia, Pennon, Sita and FCC Environment, the UK now follows France and Spain in being dominated by two or three major private providers, often part of the same equity portfolio.

All of this means not only a fundamental refashioning of public service delivery, but a recasting of all potential providers, including larger organisations from the Third Sector, to fit within this. In 2009 in "From Expectations to Aspirations: State Modernisation, Urban Policy, and the Existential Politics of Welfare in the UK, Mike Raco wrote: (Raco, 2009)

"The Keynesian social contract in which citizens could expect to be supported in times of adversity has given way to an individualist politics of aspiration-building in which individuals are to be liberated to pursue their innate and natural aspirations. The latter, it is argued, equates with changing social realities in which individuals are no longer prepared to rely on monolithic welfare services and the bureaucracies that sustain them. Instead, citizens aspire to be nondependent, middle-class citizens, for whom welfare should be provided by private sector actors or a thoroughly modernised and privatised public sector".

While it is not the purpose of this Briefing Note to outline proposals for resisting outsourcing to the private sector, these projections above underline major difficulties for cooperatives, mutuals and third sector structures becoming involved in the Government's strategy for outsourcing to so-called third sector structures under the March 2015 Procurement Regulations.

COOPERATIVES, THIRD SECTOR ORGANISATIONS AND PROCUREMENT

Despite representations from UNISON and public sector unions, the UK Government has introduced 2014 EU Procurement Directives into UK Public Contract Regulations 2015 in ways favourable to the private sector. Article 77, though supposedly designed to favour the third sector, requires:

- the tender needs to be in pursuit a public service mission linked with contracts. It does not appear though that they are precluded from bidding for other reserved contracts.
- profits and surpluses need to be reinvested in a social objective and "any distribution of profits is based on participatory considerations", which are not specified. Bids are possible from for profit companies if they comply with the "participatory considerations"

- management and ownership structures need to be "based on employee ownership or participatory principles" or as an alternative "require the active participation of employees, users or stakeholders". Though might be adaptable in Germany where employees of companies tend to have a say in management, this is not the case in the UK

- the contract will last for three years

Unions expressed strong opposition since this could mean for profit organisations spawning non profit subsidiaries. This was expressed by a union submission to the Scottish Government (GMB Scotland, 2015, p. 5):

> *"the wording contained in Article 77 was not introduced to benefit and help promote genuine co-operatives, mutual and not-for-profit employee ownership, but rather to effectively open a route to further privatisation of public services, allowing commercial private sector operators to "morph" their characteristics to suit the contracting criteria".*

Similar reservations were expressed by the TUC (Dykes, Matt & TUC Touchstone, 2015):

> *"Article 77 of the Directive, promoted by the UK government, aims to reserve contracts for mutuals and co-operatives without the need for open competition for periods of up to 3 years. However, far from reserving contracts for tightly defined co-operatives, mutuals or social enterprises, the wording is so ambiguous that it would allow a contracting authority to reserve a contract for a wide variety of hybrid and private sector organisations who could arguably qualify".*

Though the purpose of this EU Directive is restriction of tendering to third sector organisations, there will be significant potential problems for cooperatives and third sector providers of public services, not only through competition they face, but for fully open re tendering in three years.

COOPERATIVES, THIRD SECTOR ORGANISATIONS AND PROCUREMENT IN PRACTICE

National Cooperatives and Third Sector Infrastructure Organisations

a) Cooperatives UK, Social Enterprise UK, National Council for Voluntary Organisations, the Association of Chief Executives of Voluntary Organisations and other third sector national infrastructure organisations encourage and proclaim the advantages of their members and subscribers delivering public services more cheaply and with additional social value.

b) Each new phase of public service competitive tendering, whether through private sector prime contractors, mechanisms for payment by results, social investment and impact measurement, under both New Labour and Conservatives has never been opposed by these organisations, despite consequential deterioration in service standards for clients.

c) Under the 2014 EU Procurement Directive, without full open private sector tendering, where a cooperative or third sector organisation may be awarded a contract on a restricted basis, they have failed to warn their members that these contracts must be opened to a fully competitive tendering procedure after three years.

d) Since this future full competition will attract private bidders who will undercut to gain market share, these national third sector organisations have thus supported a process whereby cooperative and a third sector organisations thus become an interim staging post towards full privatisation.

e) Where public authorities operate Self Directed Support mechanisms with allocated individual "expenditure pots", using private sector software to reduce administration costs, third sector organisations should be wary about forming cooperatives for SDS recipients. Those with statutory responsibility for public services offload responsibility, risks and costs to a range of small external contractors, often in fragile markets to the detriment of socially excluded users.

The Myth of Cooperatives and Third Sector Organisations

a) Despite their usually generous motivation and governance arrangements, most cooperatives and third sector providers hold no privileged position for delivery with additional social value unless they are contractually rewarded for this. National third sector organisations have promoted a myth that because of their structures they are able to deliver public services at less cost, with dedicated professionalism and with additional social value. However, within a competitive bidding competition against the private sector, they are not usually able to include adequate costs to fund delivery of additional social value or they will not win the contract.

b) Major private sector bidders employ fulltime professional teams of bid writers who often do not tell the truth, especially where a "self-cleansing" process is permitted. This process permits concealment of past contractual failings.

c) Though there may be occasional and exceptional circumstances where cooperatives and third sector organisations rely on volunteers or can deliver additional social value through external philanthropic or charitable contributions, some of these may not be able to be used for public service delivery.

Commissioning, Tendering and Procurement

a) As shown above, central and local government and NHS procurement departments do not procure service delivery from external providers within a stable funding environment. Each round of procurement usually requires savings – often of 10%, 15% of even 20%. Especially in labour intensive service delivery in health and care, reduced wages, terms and conditions are the only way these cost reductions can be achieved.

b) Any encouragement of participation of cooperatives in this bidding process against private providers is thus misleading, since these examples of cost reductions are rarely achieved in cooperative organisations which are fully democratically accountable.

Payment by Results and Impact Measurement

a) Under many existing bidding competitions, especially under Payment by Results mechanisms led by private sector prime contractors, as in the Work Programme or in Transforming Rehabilitation, cooperatives and third sector providers often eke out a meagre existence since services in which they were tendering partners are given to cheaper smaller private providers for actual delivery. They are thus used as “bid fodder” or “bid candy”. The national third sector organisations above have failed to protect their members against this.

b) Many studies now show that Performance Measurement, Payment by Results and Impact Measurement focus on those outputs and outcomes which can be more easily measured and monetised. Measurement systems are moving in a direction where those outputs and outcomes which cannot be measured and monetised – which is often the case with complex social problems – will not get funded or delivered.

c) National Audit Office reports on Payment by Results since 2012 have been very clear that Government Departments have no viable systems to measure these processes:

> *“If PbR can deliver the benefits its supporters claim – such as innovative solutions to intractable problems – then the increased cost and risk may be justified, but this requires credible evidence. Without such evidence, commissioners may be using PbR in circumstances to which it is ill-suited, with a consequent negative impact on value for money”.* (National Audit Office, 2015, p. 8)

> *“Despite central government’s support for PbR, neither the Cabinet Office nor HM Treasury currently maintains an inventory of PbR schemes across the public sector. They were unable to tell us how many PbR schemes are in operation or how much money departments have allocated to such schemes, without requesting this information from departments”* (National Audit Office, 2015, p. 13)

Except where the purchasing process enables democratic input of both providers and service users are involved, cooperatives should be wary of involvement in procurement or commissioning.

ITALIAN MARCORA LAW FOR WORKER COOP BUYOUTS

To assist the setting up of Worker Cooperatives, a possible Welsh version of the Italian Marcora Law, which provides funds for worker buyouts, might be examined. In Italy since the 1980s, worker-controlled enterprises have emerged from various types of worker buyouts (WBO), saving or creating around 9,300 jobs and 257 known labour managed firms. Almost all are transformed into worker cooperatives under employee management and ownership. A detailed paper from the European Research Institute on Cooperative and Social Enterprises provides a good briefing on this. (Vieta, Marcelo, 2015)

> *“Employees in Italy can begin to consider a WBO project as soon as they: (a) anticipate the closing of a firm or (b) if part of or all of a firm is offered to employees by its owners, (c) if a group of employees have been or will be laid off due to the closing of a business, and (d) after at least nine workers from the closing target company form a newco”.* (Vieta, Marcelo, 2015, p. 8)

> *"Once employees form into a worker cooperative they can begin the process of purchasing part or all of the target company via share capital purchases financed by their personal savings, or advances of up to three years of their cash transfer-based and employer"* (Vieta, Marcelo, 2015, p. 8)

Institutional investors are assisted by additional Government funding and invest in these structures on a 50/50 basis with workers initial start up or capital investments. Under the Marcora Law, members of the newco (new company) can access technical assistance and know-how, and secure share capital or debt capital financing, through the co-operative movement's fondo mutualistico (Vieta, Marcelo, 2015, p. 10):

> *"Workers can also pursue debt capital financing from either the cooperative sector or an institutional financier. If they do so, the funds can be secured by projections on future revenues of the worker cooperative and/or by the collateral offered from the acquired assets of the target company. The minimum contribution per worker to the start-up capital of the WBO can be no less than €4,000. Moreover, most WBOs in Italy under the Legge Marcora provisions are limited liability worker cooperatives, thus protecting participating workers form risking personal assets should the cooperative venture fail".*

CARE COOPERATIVES FOR OLDER PEOPLE

Provision of adult health and social care is typified by inadequate funding and poor support. Health and care is people-centred and labour intensive but involves little capital outlay. There have even been examples of road haulage companies widening their provision to offer social care, since these might earn local authority and personal payments for services!

A range of proposals have emerged for promoting more health and social care cooperatives. Some proposals seek funding for cooperatives and mutuals' involvement in care delivery within commissioning and procurement by local authorities. Others seeks to bring together those receiving Supported Living or Personal Independence Payments. But within the competitive procurement and tendering environment described above, whether in private or third sectors, those with lower wages and worse terms of employment will ultimate win more contracts.

Promotion of health and social care cooperatives within existing framework are therefore not recommended. As a more appropriate proposal, a return might be considered to the 'Better Government for Older People' (BGOP) programme (Younger-Ross, 1998, p. 237), funded by New Labour in 1998 to oversee 28 research projects for engagement of older people in a variety of services.

This led to an Older People's Advisory Group to influence national and local policy and service provision for older people. This national action research initiative was steered by a consortium of six partners: Service First Unit in the Cabinet Office (Office of Public Service), Age Concern, Anchor Trust, Carnegie Third Age Programme, Help the Aged and Warwick University Local Authorities' Research Consortium. As an example, the Programme in Devon included work on:

- engaging older people in the Exeter City best value programme and the Mid Devon locality GP commissioning group national pilot
- employment prospects for the over-50s in a rural area
- engaging elders in planning and community profiling initiatives

- working with older volunteers as peer researchers looking at users' views of a community re-ablement service
- the authority's own position as an employer of older people
- lifelong learning opportunities
- social services care management arrangements to enable older people to take more control of the services they require.

Within the BGOP Programme, arising from this, an original concept of Fair Care was developed by the Change Agents , a Charitable Community Benefit Society (ChangeAgents, 2015), following deliberative events and conversations with older people and partner organisations, within and outside the Co-operative Commonwealth, with an intention of exploring a just and fair co-operative solution to care provision across the UK.

Fair Care is for all people engaged in the business of giving and receiving care including workers, informal carers and importantly the people traditionally labelled 'service users'.

- Fair Care achieves this by developing clusters of micro-co-operative enterprises, of mutual owners, to deliver care, supported by secondary co-ops, for legal and administrative functions.
- Fair Care co-ops maintain or develop, a person's Circle of Support: the group of family, friends, neighbours and supportive workers who come together to give and receive, care and support.
- Circles are an established and successful way of achieving person centred support.
- The things that a Fair Care co-op will help with, depends on a person's situation and circumstances, together with the mutual agreement of other cooperative members
- This "circle of mutual care and support", within the coop, enables all members (paid and unpaid) to have their needs met and to achieve their aspirations.

Fair Care Cooperatives would consist of:

- People seeking care, who want to have ownership and control of their own care, in a mutual setting, where they also share responsibility for the wellbeing of all other members of the coop, including workers and unpaid carers
- People wanting to work in a cooperative that ensures workers' rights, while enabling and supporting the wellbeing and aspirations of all other members and co-owners
- Friends, family and unpaid carers, who would like to be co-owners and members, with their loved ones and care workers or a cooperative that respects and sustains their relationships.

All this means that cooperative and supportive adult health models might be developed outside the marketised commissioning and procurement system.

COOPERATIVES, SELF EMPLOYMENT AND THE PRECARIAT

Cooperatives are sometimes advanced as a solution to combating the problems of isolation, low pay, irregular income and poor working conditions in many self employed and poorly paid jobs, including health and social care.

“Going it Alone” (O’Leary, 2014), “Second Age of Small” (Dellott, Benedict, 2015) and “Not Alone” (Conaty, Pat, Bird, Alex, & Ross, Philip, 2016) all describe the growth of self employment and the precariat. The latter seems to include a wide range of structures which include “cooperative” in their title. Though the policies of trade unions like Equity, BECTU, the Musicians’ Union and others to promote and develop cooperatives for members is worthy of further investigation and support, while this this wide ranging survey of cooperatives forms interesting background reading, it also includes some puzzling recommendations: (Conaty, Pat et al., 2016, p. 83)

> *“The Department for Business, Innovation and Skills (BIS) should identify how to create a voice for self-employed workers at the heart of government, learning from the way in which wider small business has successfully become recognized over time, in business policy, regulatory interventions and commissioning design”.*

(Conaty, Pat et al., 2016, p. 136) also suggests:

> *“However, it is feasible for precarious self-employed workers to develop effective strategies in a number of service sectors and industries to establish worker cooperatives - and they can also do this effectively with an alliance with trade unions”.*

This submission believes that this document suffers from basic misunderstandings, for example about Italian Social Cooperatives (Conaty, Pat et al., 2016, p. 136), for which legal reforms were introduced in 1991 for health and social care and work placements so that Italian central and municipal governments might more effectively deliver these services.

FUNDING AND FINANCE FOR COOPERATIVES

External Financing for Cooperatives

There are difficulties for cooperatives in raising capital from their own members. Raising and rewarding capital from external investors which are non members poses problems.

Co-operative capital needs to offer ‘a financial proposition which provides a return, but without destroying co-operative identity; and which enables people to access their funds when they need them. It also means exploring wider options for access to capital outside traditional membership, but without compromising on member control’. (Hayes, Mark, 2013, p. 4).

There have been several reports on this issue, most of which involve further amendments to basic legislation of tax relief:

- The Financing and Taxation of Co-operatives in the United Kingdom (Plunkett Foundation, 1996) presented a comprehensive review covering the five main co-operative sectors in considerable detail.

- Co-operative Capital (Brown, Jim, 2004) broke new ground in several areas, including its clear analysis of the issues surrounding capital finance, the connection with initiatives outside the movement in the area of ethical investment, and its proposals for institutional design.
- Cook and Taylor (2007) reported on a change in the regulator's attitude towards external capital investment in industrial and provident societies, partly prompted by the risk of regulatory arbitrage (e.g. the proposals in Brown (2004) assumed incorporation as a company).
- Rodgers (2009) outlines a new approach to the capital finance of housing co-operatives, involving two key elements, the Community Land Trust (CLT) and the Mutual Home Ownership Society (MHOS).
- Murray (2010) calls for a new model for financing the growth and integration of the movement, along the lines of the Mondragon bank during its formative era. It does not directly address capital finance but recognises the potentially powerful role of financial intermediaries in institutional development.
- The ICA Blueprint for a Co-operative Decade (Mills and Davies, 2012) contains two key sentences which summarise the challenge. Co-operative capital needs to offer 'a financial proposition which provides a return, but without destroying co-operative identity; and which enables people to access their funds when they need them.

Cooperative and Community Finance

An approach based on Mondragon in Spain, or Cooperative and Community Finance (Co-operative and Community Finance (formerly Industrial Common Ownership Finance or CCOF) in the UK might be further explored. Under these options, all borrowers automatically become members. CCOF encourages local economic regeneration by enabling people to create, own and democratically control the businesses in which they work, or which operate in their local community. Its funds are available to enterprises which practise or support principles of co-operation, common ownership, employee, community or social ownership, equal opportunity and workplace democracy, and sustainable development. It prioritises organisations where the management is representative of and relevant to the community, with directors elected on a rotational basis. Cooperative and Community Finance actively supports businesses which benefit employees, communities and environment. In particular, it actively supports the following (Co-operative and Community Finance, 2016, sec. Ethical Policy)):

- Co-operatives and community-owned enterprises
- Development and promotion co-operatives, community-owned enterprises, credit unions and charities with trading subsidiaries.
- Promotion of co-operative values and principles: Cooperative & Community Finance endorses and abides by the internationally recognised co-operative values and principles and expects that borrowers adhere to them as appropriate.
- Social responsibility: Fair trade organisations and products.
- Companies promoting sound employment practices.
- Companies with policies and procedures that encourage good principles of business behaviour and ethics.

- Environment: Companies which provide solutions to climate change through the development, promotion and/or use of renewable energy and energy efficiency.
- Companies which promote recycling and sustainable waste management.
- Companies which operate good environmental practice.

With added Government funding, as under Labour's 1976 Industrial Common Ownership Act, an augmented structure based on Community and Cooperative Finance, might be considered.

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