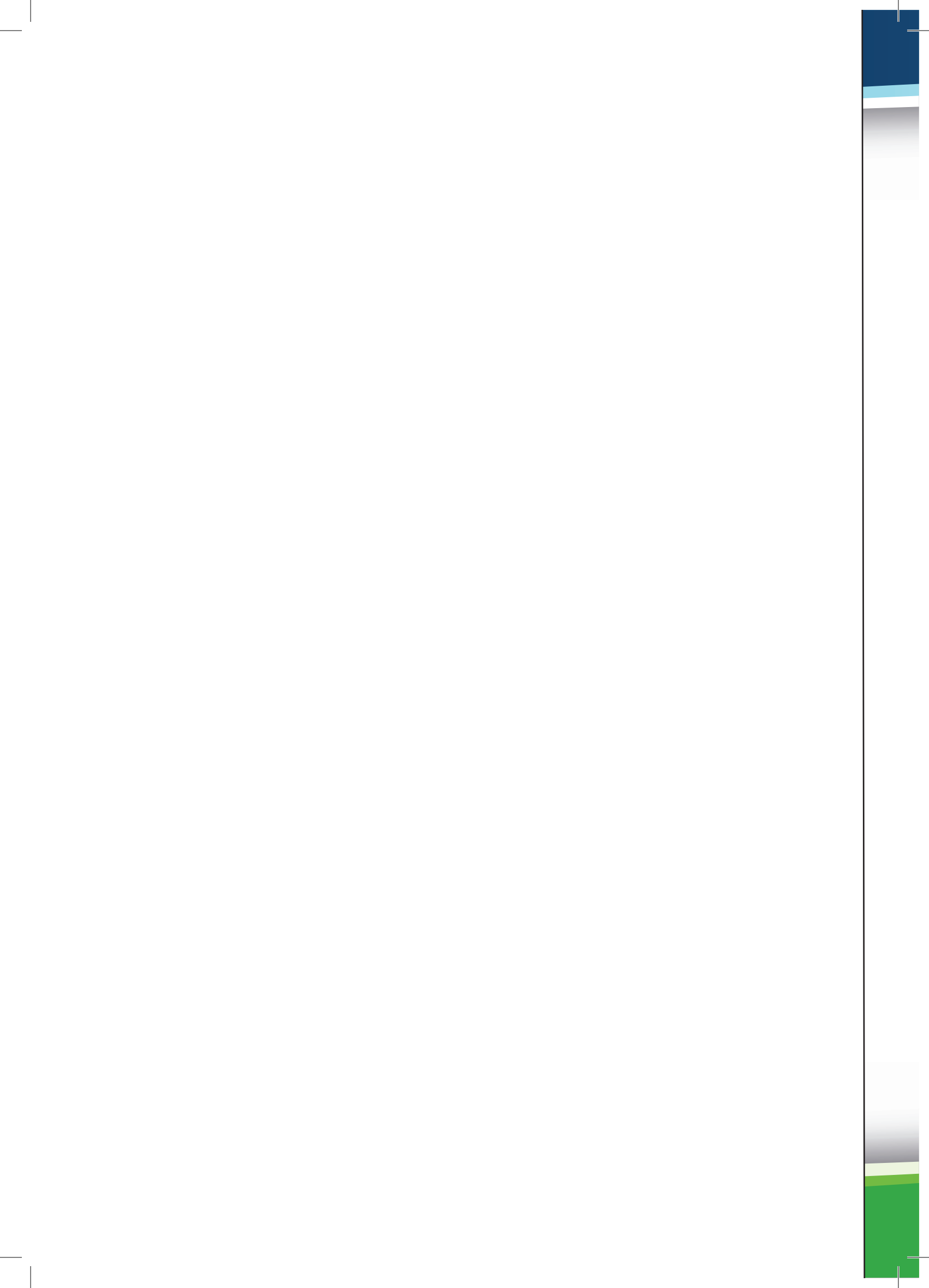


# Better Public Services

A Unite Toolkit for Insourcing  
in Local Government





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### Introduction

Unite the union is campaigning to insource local authority services.

Insourcing is the process of bringing public services back into public ownership. It is local authorities opting to deliver local services themselves, with directly employed staff.

That means services that are publicly owned, publicly run and democratically accountable. Services that are run in the public interest, not in the interest of wealthy investors and shareholders. It means a return to the core social values of community ownership of the services that we use and rely on. And it means better more efficient, integrated and innovative services that can respond to need without negotiating a complex web of commercial contract law.

For nearly four decades, government ministers from all major UK parties, have driven policies of expanding privatisation, marketization, competitive tendering and outsourcing of public services. Services that were previously delivered by local authorities have been forced out to the private sector, with the local authority acting as a customer, procuring services on behalf of the local community.

In recent years, however we have seen the political tide begin to turn away from outsourcing and are finally seeing a move back towards public ownership. Major failures and scandals such as Carillion's collapse, rip off train fares or G4S's 2012 Olympic failures have all dented the narrative that the private sector can deliver public services.

Outsourcing relies on bogus arguments about the value of competition as the driver of efficiency, quality improvement and innovation. This ideological theory is overlaid with a short-term cost-cutting agenda whereby companies undercut each other, reducing service quality, while shedding staff and slashing their pay and terms. In other words, outsourcing is viewed as a magic formula for saving money. The problem with these theories is that they are simply not true.

There is now a significant level of evidence to show that outsourcing has not delivered on its promises. Organisations such as the Association for Public Service Excellence (APSE), the Institute for Government, New Economics Foundation (NEF), We Own It, PSIRU, TNI and Public Services International (PSI) and the European Public Service Union (EPSU) have collated significant levels of empirical data and case studies on outsourcing (see Links and Resources). Their conclusions show that outsourcing generally leads to increased costs, poorer performance and loss of accountability in public services.

In contrast insourced services make sense. That's because bringing services in-house means, less risk, lower costs, better quality, public support and accountability, more flexibility and better jobs.

This short guide has been developed to help union reps, councillors and local activists to win the campaign to bring their services back in-house.

## Legislation – history of outsourcing in local authorities

The outsourcing of public services is not something that has happened organically. It has been driven by governments in Westminster, through a carefully planned and enforced ideological policy of undermining public services and attacking the power and influence of working people and their trade unions.

Starting in the late 1970s, the Thatcherite outsourcing project (part of a policy known as New Public Management) began in earnest with the introduction of 'compulsory competitive tendering' in local government through several acts of Parliament in the 1980s and 1990s.

During the Labour Government from 1997-2010 outsourcing policy was partially reformed but continued, ready to be ratcheted up again by the 2010 Coalition and subsequent Conservative Governments.

Over this four decade period a raft of new legislation and policy has been introduced, continuing to expand outsourcing and make it harder for local authorities to insource services.

Despite this, local authorities have continued to find ways to keep services in-house as the best way to deliver for their communities.

## Timeline for Local Authority outsourcing

Local Government Act 1972	Sets out a series of functions for Local Government including education, refuse collection and social services.
Local Government Planning and Land Act 1980	Introduced 'compulsory competitive tendering' that led to outsourcing of construction and maintenance work.
Local Government Act 1988	<p>Drove outsourcing in 8 'defined activities':</p> <ul style="list-style-type: none"> <li>■ Refuse collection</li> <li>■ Building cleaning</li> <li>■ Other cleaning</li> <li>■ School and welfare catering</li> <li>■ Other catering</li> <li>■ Ground maintenance</li> <li>■ Vehicle repair and maintenance</li> </ul> <p>Gave the Secretary of State the right to add to the list without primary legislation.</p>
1990	<p>The Secretary of State added:</p> <ul style="list-style-type: none"> <li>■ Sports and leisure services</li> <li>■ Grounds maintenance outsourcing was ratcheted up by 20 per cent per year between 1990 and 1994.</li> </ul>

Conservatives

<p>1992 White Paper - Competing for Quality: Competition in the Provision of Local Services</p>	<p>Set out plans to extend outsourcing to:</p> <ul style="list-style-type: none"> <li>■ Computing</li> <li>■ Corporate and administrative services</li> <li>■ Engineering</li> <li>■ Finance</li> <li>■ Legal services</li> <li>■ Personnel</li> <li>■ Property and architectural management.</li> </ul>
<p>Deregulation and Contracting Out Act 1994</p>	<p>Added further powers to ministers to require contracting out.</p>
<p>Local Government Act 1999</p>	<p>Introduced a 'best value' framework to council services, repealing aspects of 'compulsory competitive tendering' but continued to authorise outsourcing.</p>
<p>Local Government Act 2000</p>	<p>Did not remove obligations to outsource, but allowed councils to use procurement to promote economic, social and environmental wellbeing.</p>
<p>Local Government Act 2003</p>	<p>Allowed councils to borrow within limits.</p>
<p>Code of Practice on Workforce Matters in local authority service contracts (Two-Tier Code) 2003</p>	<p>Applied TUPE legislation to outsourcing contracts to protect workers' terms and conditions and prevent outsourcing based on a race to the bottom.</p>
<p>Open Public Services White Paper and Localism Act 2011</p>	<p>Made it easier for councils to contract out services and put more pressure on them to do so through the "community right to challenge" how a service was delivered under the guise of increased choice and personalisation.</p>
<p>Public Services (Social Value) Act 2012</p>	<p>The government scrapped the Two-Tier Code and removed national social value guidance.</p>
<p>Public Contracts Regulation 2015</p>	<p>Changed the language of 'public value' and aimed to encourage more spending on Social Enterprises and not for profit organisations.</p>
<p>Public Contracts Regulation 2015</p>	<p>Brought the EU Public Contracts Directive into UK law. This placed conditions on how tendering should take place and criteria on how contracts should be awarded.</p> <p>The UK's weak implementation meant that in many cases this drove outsourcing based on lowest cost, despite clauses within the Directive to allow governments to avoid this.</p>

Conservatives
Labour
Coalition
Conservatives

## Winning the argument – the case for insourcing

Ending outsourcing makes sense. That's because bringing services in-house means:

- Less risk
- Lower costs
- Better quality
- Public support and accountability
- More flexibility
- Better jobs, terms and conditions

Here are some key arguments to help you to convince people to support insourcing:

### ■ Lower costs

Running a service in-house is cheaper than outsourcing, because it removes the costs of managing the contract, and the dividends paid to shareholders.

Paying shareholders isn't just wasteful – it's financially irresponsible if you're not making enough profit. Public service provider Carillion collapsed in January 2018, partly because it had continued to pay shareholders huge sums while racking up years of debt.

A growing number of councils of all political persuasions have brought services back in-house in order to save money. Through three major studies covering the last decade APSE have shown that hundreds of councils have been insourcing their services. The main reasons given were to improve efficiency and reduce service costs. Ironically it is the policy of austerity driven by central government that has accelerated this trend. Councils have understood that it is cheaper to deliver services themselves without the legal cost of outsourcing, wasteful spending on corporate profit and dividends or the fragmentation of services that results.

### ■ Better quality

The most common reason councils give for insourcing services is the poor performance of private providers. Private providers can mislead councils or underestimate how much it will cost them to provide a service and end up cutting back on quality after the contract has been signed. In other words we don't get what we pay for. Councils, on the other hand, often have experience of providing in-house services and meeting people's needs.

Many public services are already very efficient, and it is often very hard to cut costs without damaging the services themselves. Again, many councils say that service quality is a critical reason to insource services. Outsourced companies often cut costs by de-professionalising roles and cut contact time with service users. This becomes even more serious when funding gets tighter and quality takes a secondary role to cost when services are commissioned. The fragmented nature of outsourced services mean that contract law separates various local services leading to less joined up working and collaboration.

### ■ Better jobs, pay, terms and conditions

Most companies that bid to run services at a lower cost than the statutory services, can only do this by either cutting service quality or cuts to staff terms and conditions. This is especially true when you factor in the need to make profits on these contracts.

Staff who are transferred out of local government terms and conditions often find themselves fending off cuts to pay, changes to terms and conditions and the loss of their public sector pension.

Empirical research by NEF and the TUC (see Links and Resources) shows that workers who are employed to deliver public services by private sector contractors enjoy fewer protections and decent working conditions than their public sector equivalents. This in turn impacts on their commitment, motivation and therefore service quality.

Unite members in companies delivering public service contracts tell us that they would much prefer to be insourced, not least because they see the bad practice in their own employers. This includes multiple tiers of pay and terms; inequality and unfairness; insecure work like zero hours contracts; no training and development; poor pension provision and low pay. In the worst cases trade unionist are victimised or blacklisted for speaking out.

Local authority workers, in contrast, are covered by national collective agreements, with recognised trade unions and a decent pension. Insourcing is a no-brainer for staff.

### ■ Risk

Outsourcing is risky! The collapse of Carillion shows the huge risks of relying on private profit-making companies to run our public services. And they're not the only company to fail to deliver on their promises. Unite members across the country report failures in building and road maintenance, library services, leisure, youth services, children's services and refuse to name a few.

Organisations like We Own It, APSE, the Smith Institute and the Institute for Government have produced a catalogue of examples where privatisation has failed to deliver (see Links and Resources).

### ■ Public support and accountability

Services run in-house are overwhelmingly more accountable to their users and staff. Local councils are democratic organisations – we elect councillors to serve, and they are obliged to answer to us at town hall meetings. We can have more of a say about what our communities look like.

Outsourcing raises serious concerns around governance, transparency and accountability. By outsourcing services, local councils are putting statutory services beyond the scope of freedom of information legislation, public scrutiny boards and other democratic accountability processes.

In practice this means that poor performance, cherry-picking and manipulation of statistics can happen behind a shroud of corporate confidentiality. Contract renewal means that service providers have little incentive to be honest about their failings. The only accountability mechanism for on outsourced contracts is therefore through contract compliance, but public bodies have often failed to adequately understand contract law or monitor those contracts in place. In the worst examples this can mean service failure is locked into the contract, for example in Sheffield where local street maintenance contracts created incentives to remove the city's trees.

Polling for We Own It shows that insourcing is popular too. 61 per cent of the public think that local and central government should try to run services in-house first – before outsourcing, while 64 per cent said that they distrusted outsourcing companies.

### ■ **More flexibility**

Every change to an outsourced service can mean spending money and time on changing the contract. Private providers often charge extortionate fees for providing out-of-contract services.

When council services are insourced, they can be integrated with other services provided by the same council. Resources and staff can be transferred between services as and when they are needed.

### ■ **Evidence**

There is a large array of theoretical and political literature on outsourcing but very little robust evidence of its real impacts. The benefits of outsourcing are often blithely asserted without proof, especially the extent to which it does or does not achieve efficiency or quality improvements. On the contrary studies by the Institute for Government, APSE, Smith Institute and NEF and others have all provided data and case studies that point to the opposite conclusion (see Links and Resources). Their conclusions show that outsourcing can lead to increased costs, poorer performance and loss of accountability in public services. In fact, many local authorities across the political spectrum have decided to bring services back in-house for purely pragmatic rather than ideological reasons. By far the most common reason given is the need to make savings due to funding cuts from central government.

### ■ **Market failure**

Public services were often set up specifically to counter 'market failure', i.e. where markets do not deliver a desirable outcome.

Market failure happens where there is an unequal power relationship within the market, such as between a landlord and tenant; where services should be universal and equal as a public good, such as education; or where the need for a service is unequally distributed based on bad luck or bad choices such as ill health. In many of these cases the services are therefore natural monopolies and difficult to open to markets.

Ironically this is widely understood by outsourcing authorities too. Commissioners have tended to grant contracts to private sector companies on a whole service basis for long periods of over 10 years as a result. Such competition to take control of a monopoly service has very little benefit to the service users and negates any potential innovation that could result from competition, just look at the poor performance of UK train and water companies.

### What should insourcing councils do?

Despite decades of top-down imposed outsourcing, there are still many things that councils can do to drive insourcing now.

While current legislation introduces some obstacles to ending contracts and insourcing, with some forward planning those obstacles can be successfully avoided.

The following recommendations are founded upon accounts and experiences of councillors across the country. They will help you to develop an insourcing strategy within your council.

#### 1. An 'Insourcing First' policy

Councils should introduce a general policy of 'insourcing first'. This is an institutional assumption that all local authority services should be delivered in-house by the council and that all expiring contracts should result in insourcing, unless there are strong countervailing reasons not to (e.g. conflicts of interest).

##### What needs to be in the policy?

- An assumption that insourcing should be the default delivery option for all services.
- The commitment that all currently outsourced contracts should be assumed to be insourced when contracts expire with clear timelines for preparing for insourcing to be put in place and decisions about resources decided long before contract renewal decisions need to be made.
- It must define who is responsible for planning insourcing decisions, who are they accountable to, and what resources will be committed to the policy.
- It must introduce a rolling calendar review of all council contracts (see below).
- The policy should introduce strict, clearly defined criteria that limit the scenarios where outsourcing could or should be considered (e.g. legal and advice services where there could be conflicts of interest).

To make this policy formal it should be supported and passed by:

- The council executive (council leader, mayor, cabinet)
- Full council

To make this happen it is also important that support and buy-in is sought from:

- Trade unions and staff within the service
- Council officers
- The public, through consultation
- Political groupings within the councils (e.g. Labour and other parties)
- Local political group (e.g. Constituency Labour Parties) and affected community groups that use the services.

## 2. Introducing a rolling calendar review

It is crucial that councils ensure that adequate plans and arrangements have been put in place to allow insourcing to be a workable option.

Too often insourcing decisions are prevented by a lack of forward planning. Councils are forced into contract renewals, either on a short-term or longer-term basis, as they have not dedicated adequate time and resources to seriously making the case for insourced services.

In order to tackle this issue all councils should produce:

- A full list of contracts held with the council. This should include details of what the contract is for, the value of the contract and who the contract is currently held by.
- A rolling review of upcoming contract end-dates, review dates, or break clause dates.
- All key information relevant to a contract should be logged in one accessible file and be reviewed by the council on a regular basis.
- This information should be in the public domain (e.g. on the council website).
- Clear responsibilities and accountability structures for managing this information – i.e. a named officer having responsibility for oversight of all contracts and dates, reporting directly to the council leadership.

These steps would allow councils to prepare themselves for a presumption in favour of bringing services back in-house.

They would allow information to be gathered, especially in advance of a contract coming to the end of its expiry date, so that councils can ask questions about whether the same service ought to be insourced.

Such a system would also support overall oversight and accountability – and good preparation for insourcing or outsourcing ultimately enables councils to have capacity to make good decisions.

They would also place more power back in the hands of local trade unions and communities who can pressure their local councils over service quality and the need for insourcing.

## 3. Identify target areas

Council leaders can identify priority target areas for insourcing, through early meetings and discussions with council officers and local trade unions. Public consultation on service quality would also help with this.

These meetings would highlight areas of current failure and waste, as well as point to places where there would be the most support for insourcing.

Some of these areas may have a stronger case, for example due to public unhappiness with the service or the strongest potential to increase council funding through insourcing the surpluses, innovation and efficiency. Staff and trade unions on the ground will be best placed to understand this.

#### 4. Set up good management structures

Having a policy in place is all well and good, but there are many practical issues to be considered in order to make insourcing a reality.

APSE research suggests that an ideal lead-in time of 2 years is necessary to adequately plan to insource services.

Some practical steps that could help implement the insourcing policy are:

- Setting up task and finish groups to manage insourcing decisions. These should include representatives from recognised trade unions;
- Using the rolling calendar review to set out project timelines with commitments to timely funding and resource decisions;
- Consulting on the decisions long in advance of the practical steps needed. Do you have enough public buy-in to the decision? Can the public be an ally?
- Review officers' roles and resources – are the correct resources in place to enable council officers to deliver on an insourcing policy?
- In-house bids – does the council have the skills required to develop in-house bids and insourced service business models?

#### 5. Building capacity and skills to insource

A perceived lack of capacity to insource is not an insurmountable barrier. Capacity is like a muscle that can grow through exercise. While many councils have eroded their capacity and skills base through cuts and decades of outsourcing, this can be built back up over time, through experience with contracts and services.

The significant loss of capacity from outsourcing cannot, however, be underestimated. An insourcing council must map and understand the skills, tacit knowledge and relationships needed to bring a service back in-house.

Following the agreement of an 'Insourcing First' policy and rolling calendar review of contracts, councils should set in place a comprehensive review of the capacity and skills needed to favour insourcing. Some key questions to ask are:

- If additional skills are needed, where can the council source them? Do new staff need to be recruited? Can staff be seconded from a neighbouring authority?
- Does the council have enough legal support to insource contracts?
- Investigate funding options for capital resources – what loans and funding is available for upgrading council resources?
- Discuss with trade union representatives – what is the potential for training, redeployment and new skills?

APSE's research has shown that many local authorities have secured increased capacity to insource through the support of specialists such as interim managers, secondments from other councils and the returning workforce through the operation of TUPE.

## 6. What should the criteria for insourcing or outsourcing be?

The decision to insource must be defensible and based on sound assumptions and evidence. It also does not need to be made within a procurement process – it is legal to insource services without putting them out to tender.

The following questions can be used to help determine whether council services should be insourced or outsourced:

- Can the service outcomes be precisely measured and evaluated through a contract?
- Does the council have good enough contract management skills?
- Is there a good supply of high-quality service providers?
- Is there a workforce, in the public or private sector, with adequate skills and capabilities to deliver high-quality services?
- Does the service require stable, high-quality public premises?
- Is there a strategic need for public capacity and expertise to control and improve the service?
- Is there evidence of greater cost efficiency if the service is provided in-house?
- Does the service involve significant contact with at-risk groups, exercise of coercive powers or risk of infringement of people's rights?
- Is the service a de facto monopoly (a service that is generally delivered by one provider, not in competition), or one that demands exceptional investment?
- Does the service make exceptional or unacceptable demands on workers?
- Does the service require integration and joint working with other services provided by the council?

## 7. Defining and measuring risk

Opponents of insourcing often say that bringing services in-house will incur risk. But risk is always a relative question and councils should not blindly accept the notion that risk is necessarily less of a problem when a service is outsourced.

Some questions councils could ask include:

- Would outsourcing to a contractor incur more risk?
- Does the council have the contractual management capacity to manage the risk of a poor performing contractor?
- What are the risks associated with the solvency of the contractor? (i.e. could it go bust?)
- Would contracted out services provide adequate accountability?
- Would continuation of a contract present undue risks to service delivery, residents, and council finances?
- Do the contractor's staffing and employment policies create the potential risk of industrial action or poor performing staff?

- Are there any risks of discriminatory outcomes from outsourcing? (e.g. against vulnerable groups, women or minorities).

Councils should also bear in mind that:

- Outsourcing is often framed in terms of choice, but it can reduce the freedom of councils to control services;
- Insourcing can provide that freedom and control, by giving councils the opportunity to consider how services interrelate and how they can be best delivered;
- There are major risks associated with undermining local authority's capacity for future delivery options. Hollowing out core services leaves public bodies open to contract failure risks.

Every service delivery decision that a council makes includes some level of risk and a meaningful risk assessment must therefore take into account the full range of costs and benefits of insourcing – including value for money, efficiency, transparency, control, integration and sustainability.

### 8. Access to finance

Some insourcing decisions will potentially require high levels of capital expense to make them a reality. Services such as refuse and recycling, IT infrastructure or road maintenance potentially require significant investments in buildings, vehicles and equipment for the council to deliver them.

While there are budgetary restrictions on council spending, these tend to be far more stringent on spending on services. Local authorities are far freer to borrow and spend on their overall capital budget, if it increases the long-term revenue and financial health of the local authority. Councils actually have access to fairly cheap loans when it comes to expanding their asset base.

The Public Works Loan Board (PWLB) is the statutory body that issues loans to local authorities from the National Loans Fund, operating within a policy framework set by HM Treasury. At the moment interest rates on these loans are set significantly lower than the private sector, making it cheaper to deliver services that require capital investment in-house.

Since 2004, major local authorities have been able to borrow without government consent, provided they are satisfied they can afford the borrowing costs.

Assuming that the proposed investment for insourcing will generate income for the council – e.g. by reducing spending on the service and by generating additional income through service innovations – then access to these loans should be achievable.

The lower costs of borrowing faced by councils is a potent reason for services to be insourced. It's one reason why insourcing is so often cheaper.

## 9. Involving trade unions and bringing the workforce on-board

Trade union and workforce involvement in insourcing discussions are essential. APSE research has shown that trade unions are best placed on the ground to know where outsourced contracts are failing to deliver. Councillors should arrange for regular meetings with trade unions within the affected services to talk to the workers directly about how best to bring their service in-house.

Public service workers are the people who have the knowledge about how the services are delivered, where the improvements are and where the waste and savings can be made. It is also crucial to get their buy-in and support so that insourcing is a success.

Some key questions that must be asked and planned for are:

- What terms and conditions will insourced staff be employed under?
- Can insourcing be used to increase the number of jobs?
- How can job losses be prevented through insourcing?
- Can staff be transferred over from the current contract provider?
- Does TUPE legislation apply?
- Is harmonisation required to prevent a two-tier workforce?
- Will TUPEd staff have access to the Local Government Pension Scheme (LGPS)?
- Are there any workers who are not directly covered by the outsourced contract that will be affected? (e.g. sub-contracted cleaning or catering services, or freelance workers involved in the service such as fitness instructors in leisure centres).

## 10. Strong Social Value Procurement policy

There will always be some spending decisions by local authorities that require procurement from private or not for profit providers. These include:

- Goods (e.g. stationary, vehicles, toilet roll, building materials, IT equipment, furniture);
- Services that by their nature require independence from government (e.g. legal and advice centres, community advocacy and social action services).

There may also be some contracts where the local authority is unable to insource, either through lack of capacity, readiness or both.

For such circumstances, councils need to develop a 'Social Value Procurement' policy that is integrated within all contracts. Such a policy will also support the council's 'Insourcing First' policy, as it will prevent undercutting and a race to the bottom and help evidence why public sector delivery is the right decision. Again this should be agreed with trade unions within the council.

A 'Social Value Procurement' policy should include strong obligations on:

- **Raising employment standards** including requiring trade union recognition and adherence to collective agreements; banning from procurement contracts companies that exploit workers through blacklisting; banning zero hours contracts and umbrella companies; promoting direct employment as well as introducing a real living wage which would be applied to all workers employed on public sector contracts not just those employed directly by the public sector;
- **Promotion of equality** including processes to monitor, audit and address gender, race and disability pay gaps and reduce pay ratios between the highest earners and those on average wages;
- **Regional development and supporting employment** including supporting the local economy and decent manufacturing jobs by procuring goods locally and within the UK;
- **Ensuring suitable skills, training and career opportunities** are in place to facilitate the delivery of sustainable procurement;
- **Drive industry standards and impose minimum standards on contractors** that spell out the high standards expected from those assigned public contracts and be consistent with social, economic and environmental policies, aims and benefits. This process must allow for a review of a company's performance on a number of key indicators including health and safety, employment practices, skills and training, equality, ethical and human rights and environmental and social responsibility;
- **Ethical and responsible trading standards** such as by the procurement of food and drink, staff uniforms and other manufactured goods, used within the public sector to consider the local and global ethical supply chain, and exclude companies found to be complicit with human and labour rights abuses, or breaches in international law.

### 11. Contract management skills and contract compliance

Councils should improve their ability to manage contracts and control the behaviour of outsourcing companies.

Much of the money that outsourced contractors make from public services is the result of poor contract management skills from councils. By using strong conditions in their Social Value Procurement policy within outsourced contracts councils can deliver fair wage clauses, gender pay audits, local supply chain support, community benefit provision and monitoring.

Importantly councils must act consistently within the Public Contracts Regulations and relevant EU legislation. As long as these elements of the contract are flagged in specifications, and councils continue to base their decision on the criteria set out in the Public Contracts Regulations, these broader considerations can be taken into account. They can also ensure they use the exclusion provisions of the Public Contracts Regulations to prohibit certain tenderers from participating.

Adopting this framework could improve standards, result in more transparent decision-making and encourage outsourcing companies to lift their conduct where outsourcing is still appropriate.

Councils should therefore:

- Invest in their contract management skills in order to hold contractors fully to their contractual undertakings;
- Make use of existing in-house legal advice and consult with other councils for support;
- Make sure that contractors are continually held to the obligations that they signed up to in the contract;
- Ensure that warranties and representations made at the outset of a contract remain true; if they are no longer accurate, this can be the basis for termination (see below);
- Make sure that officers and councillors understand the circumstances under which they can lawfully terminate the contract (including through break clauses or when there is a default), and the processes that should be followed in these circumstances;
- Include this information within their publically available rolling calendar review.

## 12. Using the law to terminate contracts

The law may be able to help councils get out of contracts if a contractor is failing to meet their contract demands. While this does not require legally trained or legally qualified people to understand, it is good practice to seek legal advice if a contract is to be terminated or renegotiated.

These are some suggestions for avenues councillors can explore to terminate contracts:

- Councillors can review "warranties" and "representations" (commitments) at the start of a contract, and evaluate whether these remain true;
- Councillors can make lists of the obligations imposed on outsourcing companies, and discuss whether these obligations have been fulfilled;
- Councillors can also highlight break clauses, and consult on whether 'force majeure' events – such as contract failure due to natural and unavoidable catastrophes that interrupt the contract – or other activities justifying termination have occurred;
- Sometimes step-in clauses can be invoked, as well as councils' 'best value duties', to justify early termination where contractors are at risk of financial collapse (causing harm to public finances as well as local residents and service users);
- Sometimes contracts claim that the law governing the relationship between a council and a contractor is governed entirely by the words of the contract, this is known in law as an 'entire agreement clause'. These do not always have absolute effect. In other words, sometimes discussions around the time that a contract is signed can be 'incorporated' into the contract even if the contract has a clause that says that the contract covers all the terms of a relationship;
- Local authorities should also be aware of when they might be able to invoke 'frustration' (a doctrine that says that certain unforeseen events can release parties from their obligations under a contract);
- In some circumstances, illegal conduct can also 'taint' a contract, and release one side of their obligations, though this will not apply in every case. The courts will consider the nature and centrality of the illegality, and the intentions of the parties.

### Building an insourcing movement in local government

Collaboration within and between councils, can strengthen the bargaining power of councils, and lift levels of knowledge and nous. Progressive councillors and trade union reps can share lessons learned from past insourcing and outsourcing experiences, tactics from negotiations and contract drafting and understandings of various markets and providers.

The Labour Party's Community Wealth-Building (CWB) unit and Unite's councillors network can play this role in coordinating councillors, including through providing a structured space for councillors to discuss strategy and techniques, and to build relationships. The CWB unit is currently organising regional-level forums for knowledge-sharing and peer-to-peer support.

Three different groups can benefit from knowledge transfer:

- Council leaders can feel empowered to lead campaigns to insource;
- Council officers can feel better equipped with evidence and tools to manage contracts and rethink service delivery;
- And external actors – such as unions, service users and citizens – can support the accountability of outsourced providers and contribute ideas about how insourcing can be improved.

Councillors and trade unions can also collaborate to produce a database with a record of particular contractors' performance. This is relevant background information for local authorities.

Moreover, a register of this kind could support the purposes of the Public Contracts Regulations 2015, and EU law.

Regulation 57(8)(g) allows a council to exclude a contractor where the contractor "has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity ...which led to early termination of that prior contract, damages or other comparable sanctions."

There is currently no database that would allow a council easily to discover information of this kind. An Insourcing Forum, or looser network of relationships between councillors, could help to create this database.

## What Union reps can do to support insourcing?

Union reps and community activists do not have to sit back and wait for councillors to introduce insourcing policies. There are many things that union reps can do to oppose outsourcing and build a campaign to insource services.

### ■ Organise

To support insourcing and oppose outsourcing it is important to have a strong united workforce. While it is better if this already exists, a campaign can help to focus people's minds about getting involved in the union. Unite's regional officer can help.

Make sure there are enough reps. Building a good team is vital to build a sustainable campaign.

Communicating with members and non-members is also key; it stops unsettling rumours spreading, can win supporters and gets the message out.

Be creative, use a variety of methods and always think about the audience (e.g. emails, newsletters, wear stickers, social media and face to face).

Arrange meetings and clearly explain what is being proposed highlighting the potential impacts on their services, pay, terms and conditions or job losses.

Work with other local government unions on a joint campaign.

### ■ Support legal challenges

Local authorities have legal responsibilities to their workforce as employers and also have legal duties towards their communities, particularly around core statutory services.

These include obligations to provide certain services, responsibilities to consult and about the equality impacts of changes to services, rules about the transfer of staff, redundancies and also strict procedures they have to follow when putting services out to tender. These laws can be useful when challenging outsourcing.

Seek a legal opinion on what is happening. You can get support for this from your Unite Regional Officer.

### ■ Industrial action

Make outsourcing more difficult for the council by taking industrial action to disrupt the decision.

For this to happen a consultative ballot and a full ballot for industrial action will need to be conducted to go ahead. It is best to start preparing for this as soon as possible as it can be a time-consuming process. Organising is crucial for this to be a success.

Your regional office will be able to help you.

### ■ Research and leverage

If services are already outsourced you can also look to influence the tendering process and bids by researching the proposed companies.

Find out who owns them? Do they pay tax? What is their record like in other services? Do they have any links to abuses in other countries? Are there any links between the council and the company? Can you try to organise an in-house bid?

Again the Union can help you with this.

### ■ Politics

Remember that your industrial workplace is also political and that is a potential asset.

Unite has a councillor and MPs network. Does Unite have a contact on your council? Will your MP help?

If your local politicians are not supportive can you use the issue to make them worried about re-election?

Lobby politicians through face to face meetings and written briefings explaining what the proposed changes will mean for the people affected and the future of local services.

Organise demonstrations at local council meetings, outside council premises highlighting what outsourcing will mean to local services.

### ■ Public campaigns and community groups

You are not alone. Outsourcing is likely to have a major impact on service users too and they can support union campaigns.

These can include local community groups, churches, campaign groups, local support networks and organisations that may rely on your services.

Explain what is happening through social media, leaflets, stalls and public meetings

You can see if there is a Unite Community branch in your area by checking [www.unitetheunion.org/community](http://www.unitetheunion.org/community)

### Get help

If your council is starting moves to outsource services let Unite know soon.

Your union can help advise you on action you can take, help you access resources and link you up with others in the same situation.

### Regional contact

[www.unitetheunion.org/contact-us](http://www.unitetheunion.org/contact-us)

## Links and Resources

### ■ Labour Party – community wealth building unit

Insourcing is a key plank in Labour's strategy to raise worker rights, improve the power of local government, and advance the ambitious agenda of community wealth building. Labour has recently released – 'Democratising Public Services: A Plan for Twenty-First Century Insourcing' – which commits to bringing about an insourcing revolution. For more details visit: <https://www.communitywealthbuilding.org.uk/resources/insourcing/>

### ■ We Own It

We Own It is a national campaign for publicly owned and run democratic public services. It campaigns across a series of sectors including local authorities. There are many good case studies and resources on their website: <https://weownit.org.uk/>

### ■ Association for Public Service Excellence (APSE)

APSE have carried out three studies over 10 years mapping the trend of insourcing throughout local authorities. The APSE guides provide detailed analysis of both the challenges and opportunities from insourcing including detailed case studies to consider: <https://tinyurl.com/sql6lks>

### ■ Trade Union Congress – public services to be proud of

The TUC has a dedicated campaign page on the future of public services that includes useful reports and studies on the failings of outsourcing and public sector austerity: [www.tuc.org.uk/campaigns/public-services-be-proud](http://www.tuc.org.uk/campaigns/public-services-be-proud)

### ■ New Economics Foundation (NEF)

The economic think tank has conducted several studies on the impact of privatisation on public services and produced the following toolkit for contract compliance for local authorities: <https://tinyurl.com/vjlgghu>

### ■ Public Services International Research Unit (PSIRU)

Hosted by the University of Greenwich, PSIRU researches the privatisation and restructuring of public services around the world. It produces reports and maintains an extensive database on the multinational companies involved on behalf of Public Services International (PSI), the global confederation of public service trade unions: [www.psiru.org](http://www.psiru.org)

### ■ Trans National Institute (TNI) – Reclaiming public services

This report is vital reading for anyone interested in the future of local, democratic services like energy, water and health care: <https://tinyurl.com/yd4lk5xw>

### ■ **Institute for Government**

The Institute for Government is undertaking a programme of work looking at the record of outsourcing in the UK and provide an evidence base on the impact of UK outsourcing policy.

<https://tinyurl.com/svemrry>

### ■ **Smith Institute – out of contract: time to move on from the 'love in' with outsourcing and PFI**

A report from the Smith's Institute that examines outsourcing and provides evidence and examples of where, how and why contracts have failed and sets out the case for change.

<https://tinyurl.com/rd2n9dv>

### ■ **Information commissioner report – outsourcing oversight?**

This report sets out the case for reforming access to information law to include privatised and outsourced public service providers. <https://tinyurl.com/qm8ltcx>

## Appendix A: Insourcing Motion

### This Council notes:

- The Labour Party has published a report entitled “Democratising Local Public Services: A Plan for Twenty-First Century Insourcing” setting out its radical blueprint to support and rebuild public services under a future Labour Government.
- Councils across the country spend hundreds of millions of pounds buying in essential goods, services and expertise from the private and third sectors each year.
- The Public Services (Social Value) Act was introduced in 2012. It provides a legal basis for public authorities to look for wider social, economic and environmental benefits when undertaking procurement exercises.
- Evidence shows that insourcing public services can deliver lower costs, more efficiency, a public sector ethos, economies of scale and an enhanced level of democratic accountability to local residents.

### This Council believes:

- That residents are more likely to trust local councillors to take decisions on their behalf over and above private companies.
- That while residents support their local councils to run services and redistribute wealth, Local Government still requires the financial resources to catalyse new social contracts and make public services local.
- That public service workers and their trade unions support the insourcing of public services.
- That investing in strengthening the council’s capacity, skills and ability to deliver services in-house will make the council more sustainable, innovative and effective for the long term.

### This Councils resolves to call on Cabinet:

- To develop and introduce an ‘Insourcing First’ policy that makes an institutional assumption that all local authority services should be delivered in-house by the council as default and that all expiring contracts should result in insourcing, unless there are strong countervailing reasons not to (e.g. the need for independence to prevent a conflict of interest).
- To develop and introduce strong standards for tendering, bid evaluation and contract management for any contracts that are made with the council.
- To develop and introduce a Social Value and Ethical Procurement Policy setting out how this council can ensure that our local community is central to the way we purchase goods, setting out how our small changes can have big impacts across the local economy.
- To develop and introduce a rolling calendar review programme for all contracts and purchasing decisions carried out by the council. This should include key dates, contract values, provider names and services covered.

## Appendix B: Draft Freedom of Information Letter/Email

Dear Freedom of Information officer

Please can you provide me with the following information:

- A full list of all contracts held for services delivered on behalf of the council.
- The name of the current provider.
- The value of those contracts.
- The expiry date for the contracts, and the date that any decision would need to be made regarding renewal.
- Dates of any break clauses within the contracts.
- A named contact for the responsible officer and councillor for that service.

I understand that under the Freedom of Information Act 2000 I should be entitled to a response within 20 working days. I would be grateful if you could confirm in writing that you have received this request.

I look forward to hearing from you.

Yours sincerely

[Your name]

## Appendix C: Examples of insourcing happening

Councils up and down the country are taking services in-house, away from under-performing and over-expensive private contractors. These include:

**Islington insourcing council:** The London Borough of Islington has led the way with a conscious 'Insourcing First' policy of for all council funded services. Since 2010 Islington has insourced cleaning staff (2010); Education services (2010); its housing arm's length management organisation (ALMO) (2012); its housing repairs and maintenance service (2014); waste, recycling, street cleaning and grounds maintenance services (2013).

**Halton leisure services:** Following the financial crash in 2008 the council concluded that leisure services would be cheaper if delivered in-house. Following a decision in 2015 the service was taken over leading to refurbishments, improved customer satisfaction, new well-being services, real living wage for all staff as well as annual savings of £750,000.

**Stoke on Trent:** Housing and maintenance services were brought back in-house through joint working with trade unions and staff in 2018. The new services is generating a surplus for the council, has improved service quality, innovative IT systems were introduced and productivity rose, while staff were given improved terms and conditions and access to the Local Government Pension Scheme.

**Sevenoaks:** This district council doesn't outsource at all (despite being Conservative run). The council is fully financially self-sufficient due to the savings and improved efficiency of joined-up in-house council services.

**Liverpool recycling:** The council insourced waste collection services in 2016 in order to save £1 million a year and meet a target of 55 per cent recycling rate by 2020. As a result city centre apartment blocks have been given recycling facilities for the first time.

**Somerset ICT services:** These services were brought in-house after IBM, as a partner in the Southwest One public private ICT partnership, failed to deliver even a third of the savings they promised. The system was costly, complex and ineffective and the company even threatened to sue Somerset council for £25 million for missed payments.

**Cumbria flood protection:** Cumbria County Council ended a 10 year contract with Capita in 2011 and a seven year contract with Amey in 2015 to improve flood defences as the companies were demanding large sums for extra services. The council has saved an estimated £1.8 million and was able to deploy staff immediately to respond to flooding.

## Appendix D: Regional contacts







[www.unitetneunion.org](http://www.unitetneunion.org)

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