

**Fighting
privatisation
a branch activists'
guide**

This guide has been published by the UCU Campaigns Department to support the National Organising Plan and UCU's campaign to challenge the market in education.

In preparing this guide we have worked closely with Professor Dexter Whitfield from the European Services Strategy Unit. Professor Whitfield has worked for years in the academic analysis of marketisation and privatisation and he has also advised many unions on how to challenge these processes. You can access a wealth of material on marketisation and privatisation at the European Services Strategy Unit's website:

www.european-services-strategy.org.uk

Introduction: What's happening and why?

Tertiary education is under threat from privatisation. Colleges and universities are developing an ever more complex web of relationships with private sector providers. As our earlier reports on Challenging the Market in Education have shown, private sector providers are grabbing more funding in Further education and adult learning. They are also forming a range of partnerships with tertiary education institutions whereby they take control of or extend existing provision. This can be done in a number of ways, through straightforward outsourcing, subcontracting or franchising to a range of more complex forms of public-private partnerships, from relatively simple three year contracts to the formation of complex and expensive Joint Ventures.

What's driving this process? For years, government policy toward the provision of public services has been shaped by a neoliberal political philosophy which asserted that the market was a more efficient provider of resources than the public sector, driving down costs. As we showed in 'Challenging the Market in Education', this has produced a process of 'marketisation' in public services, including education.

The effects of marketisation policies are, in essence to reshape public services into competing units and to open them up to a 'diverse provider base'. This is code for private sector providers. The logic of marketisation, therefore, drives inexorably toward privatisation. And as private providers compete, there is a logical pressure on tertiary education institutions to consider forms of partnership that will supposedly insulate them from the damaging effects of competition. You can download 'Challenging the Market in Education' by accessing this web page: www.ucu.org.uk/stopprivatisation or email Campaigns@ucu.org.uk to order hard copies.

The government encourages this process by urging institutions to think of themselves as 'commissioning bodies'. Rather than providing services, institutions are encouraged to strive for a narrowly conceived 'best value' through a mixed economy' and to regularly and rigorously review to ensure that they achieve this. The logic of this can be seen in Offender Learning, where contracts for prison education are put out to tender every three years. The key point is that colleges and universities are encouraged, by government, through the funding Councils, to review their 'commissioning' and to ensure that they get 'best value' through effective 'procurement' of goods and services.

If this is allowed to continue, the culture of contracting that has overcome so many parts of the public sector will become embedded in tertiary education and the private sector will penetrate ever deeper into the heart of educational provision.

It is vital that UCU resists this process and that we begin to pose effective alternatives. Why is this?

Why it is important to oppose the contract culture

The European Services Strategy Unit, (ESSU) which has a wealth of expertise in analysing the effects of privatisation and marketisation suggests that the effects of the 'contract culture' can be summarised as follows:

- Reduced focus on in-house improvement plans, in-house options and the submission of in-house bids leads to increased outsourcing and PPP projects – thus creating a vicious circle.
- Erosion of public service principles and values as business practice and commercial values increasingly dominate service delivery.
- Public service language is being replaced by a language of the marketplace – contestability, brokers, soft market test, the offer – which are intended to change attitudes, priorities and imbed marketisation in the public sector.
- The growth of arms length companies, trusts and Joint Venture Companies will lead to further corporatisation and fragmentation of democratic accountability and transparency.
- Public sector resources are diverted into 'making markets' by shaping contracts to suit business, consulting business interests and designing business-friendly regulatory frameworks. The notion of creating a 'mixed economy' and 'level playing field' are simplistic and ignore the economic realities of private sector cherry picking, cross subsidising contracts and using loss leader strategies, exploiting labour, the use of gaming tactics to take advantage of market forces and regulatory regimes, and achieving economies of scale not available to the public sector.
- A client-contractor split is imposed on service delivery followed by the transfer of in-house service delivery units to arms length trading organisations or companies and their eventual privatisation through trade sales or 'partnerships'.
- Staff will be more regularly transferred between employers with consequences for the continuity of terms and conditions, pensions, training and career development.
- Job security is dependent on TUPE, TUPE Plus and secondment but they have weaknesses and require local authorities to monitor the employment practices of contractors. There is little evidence that this is being done now so there can be little trust that it will happen in a contract friendly culture.
- A contract culture and procurement processes will increasingly dominate JCC and industrial relations machinery.
- Reduces the scope of public management because an increasing proportion of staff are engaged in commissioning, procurement and contract management. The planning, management and operational skills required to deliver public services are increasingly taken over by private contractors.

- Wider use of management consultants, legal and technical advisers as contracts get larger and more complex. This is not only costly but reduces the capability of in-house services and ultimately leads to more privatisation.
- There have already been attempts to outsource commissioning itself, which is the logical next step if the commissioning and contestability policy is accepted. This will involve private consultants and contractors assessing needs and services, writing specifications, selecting outputs and outcomes, carrying out options appraisals, managing the procurement process, evaluating bids from other private contractors and monitoring their performance.
- More and more shared services projects will bypass in-house provision and are likely to consider only outsourcing options.
- A greater share of public spending will be absorbed by transaction costs – the cost of management consultants, lawyers, managing the procurement process, managing and monitoring contracts. Procurement is expensive – SSP procurement costs alone are about £3m – which can divert resources from frontline services.
- Increases reliance on contract monitoring, which has rarely been rigorous and comprehensive, as it is often the target of budget pressures and ‘efficiency’ savings.
- Financial savings from competitive tendering are exaggerated. They were claimed to be 25% but government funded research proved conclusively that savings ranged from a maximum 8% to a -16% cost (Whitfield, 2001).

European Services Strategy Unit, 2009

What is UCU policy?

UCU has policy that commits us to campaigning against marketisation and privatisation.

In 2008, for example, our Congress unanimously passed a motion committing the union to defending public education and opposing privatisation:

“Congress re-iterates its full support for a publicly funded post-16 education system and its opposition to the creeping privatisation that has been taking place as well as to the wholesale privatisation of areas such as Prison Education. Congress instructs UCU officers to mount a campaign celebrating the successes of the post-16 system and highlighting the problems of privatisation.”

The union has developed a National Anti-Privatisation Strategy to begin to counter the private sector’s onslaught. The strategic objective is, fundamentally, to ensure that tertiary education becomes a less hospitable and less attractive hunting ground for the private sector, and to begin to win greater support for public alternatives.

Part of this strategy is a series of focused campaigns against those providers identified as representing the greatest threats, such as INTO University Partnerships in higher education, A4E in prison education and companies providing agency workers, such as Protocol National in FE. You can see much more about this campaign at the privatisation campaign page: <http://www.ucu.org.uk/stopprivatisation>

How this guide is organised:

Part 1: What to do if you find out about plans to privatise educational services

This first section aims to help branches to develop effective reactive campaigns. Wherever we find out that the private sector is showing an interest, we need to be able to respond rapidly and effectively to mobilise members against any proposals and to identify bargaining objectives that support these campaigns. This section lays out the various ways in which ‘procurement’ of educational services are currently pursued and illustrates the contracting process in each case. This is important, because it gives a clear sense of the importance of early information. Where we are in the process when we find out about it also shapes the kind of campaign strategies we develop. The guide then provides advice on developing a branch strategy, on mobilising members, targeting decision-making bodies and on negotiating effectively to support campaign objectives.

Part 2: What to do if privatisation goes ahead

In the second section, we look at what branches should be doing once a contract is in place. Obviously, where members have been transferred into the private sector, as in the cases of some staff at INTO joint ventures or A4E prison educators, we have a responsibility to defend those members as much as any other group. However, many private sector partnerships are established using new staff on company contracts with inferior pay and inferior terms and conditions. Why should we concern ourselves with this?

The fact is that everywhere that the private sector becomes embedded, they introduce a two-tier workforce. Private sector pay is lower, terms and conditions are worse and pension provision is worse. Casualisation is also more rife in the private sector.

If we allow this to become acceptable practice, it will become a benchmark for colleges and universities who will look enviously at the cuts in costs that the private sector can achieve through their abuse of a hire and fire workforce. That’s why even when a contract has been signed, the campaign continues.

If our campaign objective is to deter the private sector, we need to make it clear that the signing of a contract is not the end of the affair. We need to make it clear that the union will recruit and organise those staff and press for the establishment of comparable pay and terms and conditions. We need to make it clear that the union will be monitoring performance against the contract and against the highest public sector academic standards. We also need to be clear that we will press the institution to monitor performance. This section provides some advice for branches in beginning to organise among private sector workers and in monitoring contracts.

Part 3: A model agreement for campaigning against privatisation in your workplace

The final section helps you to developing a proactive campaigning agenda, taking the fight to the institutions. There is a tendency to think that if there is no direct threat of privatisation, then branches cannot participate in the campaign. Nothing could be further from the truth.

The fact is that at present, tertiary education is an unregulated sector and represents relatively easy pickings to interested private sector companies. Many decisions to set up partnerships or to establish franchising relationships take place without any reference to the union until the deal is almost done. Why is this?

Colleges and Universities insist that they are private bodies but as recipients of large quantities of public funding for which they are accountable to public funding bodies, their status and their responsibilities are contestable. However, at present, the 'quasi-public' status of universities and colleges means that they do not see themselves as accountable to unions in relation to the entire field of 'procurement' decisions. In Local Government, Health and the Civil Service, for example, there are agreements between the unions and the employers that establish rights to information and to collective bargaining over outsourcing and procurement, as well as laying down standards of employment for staff transferred between employers.

In tertiary education, partly because privatisation is a relatively new issue for us, there are no such agreements. Currently, we are confined to campaigning and lobbying the select few people who are involved in procurement decisions and arguing within our existing bargaining machinery to establish the relevance of this issue to our members.

In the longer term, unless we begin to challenge this unregulated character of our sector, we will exhaust ourselves in reactive campaigns and in monitoring an ever denser mesh of contracts.

That's why this guide lays out a comprehensive model agreement, containing a set of bargaining objectives that will help us to assert greater control over university and college decision-making in procurement. Branches can adapt this agreement, and can pursue the essential content of this agreement as a whole or in parts. But unless we start to contest institutions' assertion of a quasi 'divine right' to make decisions about procurement without reference to the wider educational community, we will be forced to spend an ever greater amount of time and resources fire fighting on the private sector's terrain.

Part 1: What to do if you find out about plans to privatise educational services

1. The commissioning process

The commissioning process

There is no legal requirement for universities or colleges to open services up to competition. As we've seen the pressure is all from the way in which the government and funding bodies encourage colleges and universities to engage in commissioning and 'procurement' as a way of establishing 'best value'.

There are broadly two phases of the process of commissioning services.

1. Service review and options appraisal

2. The procurement process

In tertiary education, both phases of this process are largely unregulated by either law or unions. This means that institutions have, until now, had a free hand.

1. Service review and options appraisal

This is the real beginning of the commissioning process. Best practice in the public sector has established protocols for how service review and the options appraisal process should work. However, because of the unregulated nature of tertiary education, institutions can adopt a range of practices with varying degrees of lack of transparency.

Typically, what happens is that a university or college decides or is persuaded by a company that an aspect of its service needs to be reviewed to establish whether its performance can be improved. At this point, a small group of senior managers will usually form a strategy group to draw up an options paper. This may be prior to any contact with a private company, but it may very well be following contact with a company representative.

This is the critical phase of the process. It is at this point that management can establish that a service area is 'failing' or needs improving and that one of the options should be outsourcing to a private provider or some form of public-private partnership. Typically, there is absolutely no union involvement in this process and indeed, in many cases, this entire phase passes without the union even knowing.

At the end of this phase, a paper may be put before the Senate or Academic bodies, if they exist, or before Heads of School, emphasising that this is the only way forward, and then it will pass to the governing body for approval. Sometimes these proposals never even pass before Senates. It is at this point that unions tend to be approached, before the procurement process has begun properly, but at the end of the critical decision-making phase.

2. The procurement process

More substantial contracts tend to be established through one or other form of competitive tendering process. The contracts for the delivery of prison education are a notable example. Another is the establishment of the Joint Ventures with the company INTO University Partnerships. This latter example is revealing because the contracts involve large scale commitment of resources like lease of temporary teaching and accommodation facilities and the development of university estate.

If an institution goes down the route of competitive tendering, there are rules governing how this must be done, established by the European Union. Because the rules are there to encourage competition, they are, naturally, not particularly helpful for unions trying to defend public provision. However, they do require a level of transparency.

The bigger problem for UCU is that many colleges and universities don't pursue the route of competitive tendering at all. The majority of university 'partnerships' and college franchising or subcontracting arrangements do not seem to involve competitive tendering. The reason for this, apart from the obvious convenience, seems to be that universities and colleges are exploiting their ambiguous status as private bodies with public funding. It may be that many of these contract values fall below the thresholds above which the EU procurement regulations kick in. However, as the advice that commercial lawyers circulate is that even if this is the case, institutions should advertise on the Official Journal of the European Union (OJEU). It seems likely therefore that institutions are packaging their partnerships as commercial agreements between private entities.

The status of these partnerships in law is uncertain as it is the case that if the private sector has equity share capital in an arms-length college or university company, no matter how small it is, it must follow the public procurement process.

Two examples of commissioning timetables:

KAPLAN and Sheffield University: (no public procurement process)

- March 2005, initial report to Senior Management Group, detailing initial conversations with KAPLAN
- 11 November 2005, report to Senior Management Group of Options Appraisal, recommending proceeding with KAPLAN
- 18 November 2005, Board of Collegiate Studies at university hears report that contract has now been signed with KAPLAN
- 22 March 2006, first reference in minutes to Senate hearing a report of contract signature.

INTO University Partnerships and Glasgow Caledonian university: (open competitive tendering process)

- 6 November 2007: Glasgow Caledonian University place notice of intention to contract on OJEU, at end of period of negotiations with INTO.
- 3 December 2007: tenders received.
- 27 March 2008: University makes public announcement that deal with INTO is nearly agreed and has been through Senate and Governing Council
- 28 May 2008: Deal is signed.

Implications for branch strategy:

i. The importance of intervening in the process at the earliest possible stage.

If our strategic objective is to make the case for public provision in such a way as to make any procurement process unnecessary, then we need to be involved in the review of service provision and the appraisal of options, arguing for in-house provision, ensuring that in-house options are given a fair hearing and ensuring that the criteria for assessing any future bids or options are not just the narrow business case.

UCU in action

There was a case of good practice recently when SOAS managers published a green paper outlining four possible options for the future of the International Foundation Courses and English Language Studies centre, one of which included outsourcing. The branch immediately alerted the Regional Office and the National Campaigns Team and there was a swift response outlining the union's opposition to privatisation and asking for this option to be removed from the paper. It was subsequently removed and no campaign became necessary.

ii. The importance of establishing which form of procurement will be used.

It is vital to establish as early as possible what form of procurement will be used. If it is to be competitive tendering, then what form? If not, why not and what is the timetable? If we are to intervene in the process in an effective way, we need to know what the process is, how long we've got and where the best pressure points are.

iii. The need to argue for competitive tendering should it become necessary

This looks paradoxical, but if a university or college cannot be persuaded out of looking for a private partner, then the competitive tendering process gives some transparency and some mechanism for supporting an in-house bid. Unions can press for involvement in drawing up the invitation to tender and including criteria that will be easier for an in-house provider to meet than a private company. The greater danger lies in a secretive, behind-the-scenes deal between two parties.

We cannot do any of these things however, without good information.

2. Getting information

Why is this important?

As we have noted, too often our branches are informed about contracting decisions at a stage which is entirely of management's choosing. It is very difficult to campaign effectively against something or even fight to influence decision-making if you know little about what's being proposed. And naturally, it's impossible to campaign at all if you don't know anything is being discussed.

Case study: the importance of early warning

6 November 2007: Glasgow Caledonian University place notice of intention to contract on OJEU, at end of period of negotiations with INTO. Notice declares that the period for tenders to be received will be 3 December 2007; one month after the notice is posted. Notice states that 'no candidate has already been selected' and that a minimum of three candidates is expected.

3 December 2007: tenders received.

20 March 2008: branch discovers that negotiations with INTO are nearly complete by accident.

27 March 2008: University makes public announcement that deal with INTO is nearly agreed. Branch launches vigorous campaign to stop deal. University states that draft plan has been through Senate and Council under cover of 'commercial confidentiality agreement'.

28 May 2008: Deal is signed.

By contrast, where early warning was received, either through official or unofficial channels, it has been possible to launch far more effective campaigns, even where branches have been weaker. For example, at Newcastle, Oxford Brookes and Essex universities, West Nottinghamshire College and Goldsmiths, campaigning has had a major impact on the contracting or transfer processes, won significant concessions or defeated the ventures altogether.

As this case study shows, the importance of getting early information cannot be understated. Whatever terms you are on with your employer in the normal course of your industrial relations, this will probably be a very different situation. Universities or colleges

considering outsourcing, or some form of public private partnership frequently try to keep their discussions quiet for as long as possible. Unless there is the possibility of a transfer of staff, it will not necessarily feel itself bound by the normal legislation governing disclosure of information to trade unions for the purposes of collective bargaining. Like Glasgow Caledonian University, some institutions will consider that the ideal will be telling the unions at the same time that they sign a contract.

This means that branches will have to be proactive in getting information and will have to be imaginative and resourceful in how they obtain it.

The importance of using informal channels

If you are in a situation where you have no intelligence that anything is happening, one really good way to get early warning is to make sure all members know to be vigilant and report anything they hear to the union.

The best way to get information is through contacts among your members in the departments likely to be affected, but other members may hear about discussions in their capacities serving on committees, for example. In our experience, this is one of the most common ways in which we find out about discussions with private companies.

You have several sources of informal information

- The members - You can write to your members, informing them of what you know and asking if anyone knows more. It is often worth being proactive at this stage as it frequently has the effect of prompting management to issue a statement on the matter, perhaps giving you more information than you had.
- If you meet resistance or stonewalling, you could try calling an urgent meeting of members with the title 'privatisation at x college/university'. This may have the effect of eliciting more information from management. At the very least, you can put the arguments against privatisation to members and win support for a policy position that gives you a great platform for campaigning.

What do we need to know?

If you do receive some information that discussions are taking place, it is vitally important to act quickly to find out as much as possible.

- The most important information we need to get are the scale and scope of the project being discussed and, most crucially of all, the timescale for discussions and the plans for involving the unions in discussion. It is very likely that the parties will want to wrap up discussions as soon as possible and to involve the unions at the latest possible stage, whatever they say to the contrary.
- You should aim to ask as many questions as possible of management so that you get as much information as possible. You can find a checklist of possible questions to ask at the end of this section.

Asking management for information

The best source of information for effective campaigning is, unfortunately, management. For the reasons we noted above, managers are likely to be highly resistant to granting access to information until they are comfortable that the deal is nearly done. That means that we need to campaign and bargain for our right to information from management.

What arguments and resources can we use?

Public sector best practice

Best practice in the public sector establishes that staff and trade union representatives should be involved in the planning and delivery of services, and that means, of course, having access to information about the future delivery of those services.

The case for staff and trade union involvement has been made in a number of public sector studies. For example:

Department for Communities and Local Government (2007) *The Role of Frontline Staff in Service Innovation and Improvement: Local authorities and their Engagement in the Beacon Scheme*, November, London. www.communities.gov.uk

DCLG, Cabinet Office, LGA and IDeA (2007) *Engaging the Workforce in Service Transformation, Front Office Shared Services*, May, London. www.idea.gov.uk

Improvement and Development Agency (2001) *Working Together for Best Value*, with the Employers Organisation, LGIU, APSE, UCU, TGWU, and GMB, London.

Improvement and Development Agency (2007) *Shared Services and the Workforce*, London www.idea.gov.uk

Local government National Process Improvement Project (2007) *Building Capacity to Improve Local Services*, London www.bip.rcoe.gov.uk/rce/core/page.do?pagelId=1

In addition, the Best Value Code of Practice on Workforce Matters in Local/Police Authority Service Contracts in England, contains a duty to consult trade unions. It states that “when contracting out services and transferring staff to a new employer, councils/police authorities must consult trade unions”.

Why is this important?

It's worth stressing that it's irrelevant how deep felt our opposition to privatisation and public private partnerships is – unless we are part of a process whereby we can ensure that we receive early warning and meaningful consultation, we will be fighting blind. As these studies show, in the rest of the public sector, trade unions have fought for, and won some recognition of their right to information and consultation. UCU is beginning to campaign against privatisation and we are winning some notable and high-profile successes. But if we are to truly fight effectively to defend the public sector nature of tertiary education, we must begin to claim the same rights. These studies are a basis on which to make this argument.

TUPE:

In the specific case of staff being transferred, the case for consultation of staff is even stronger. TUPE, the Transfer of Undertakings (Protection of Employment) Regulations 2006, is designed to facilitate the easy transfer of staff between enterprises and employers. In essence, therefore it is a tool to make privatisation easier, not harder. However, there are certain protections and rights built into TUPE that are helpful.

For example, TUPE requires that unions have the right to be informed about a transfer before it takes place, at the earliest opportunity. No other form of employee consultation can take the place of consultation with the recognised trade union. The regulations stipulate that the minimum data that must be supplied should be:

- The fact that there is to be a transfer and the reason why
- The date of the proposed transfer
- The likely legal, economic and social consequences for affected employees
- Any measures that are likely to be taken in relation to affected employees.

TULRCA:

If we can establish that a privatisation plan entails collective bargaining, we can claim a right based on statute. Section 181 of the Trade Union and Labour Relations (Consolidation) Act 1992 states that:

“An employer who recognises an independent trade union shall, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, disclose to representative of the union, on request, the information required by this section”.

The information that can be requested is “all information relating to the employers’ undertaking which is in his possession, or that of an associated employer, and is information

- a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining with him, and
- b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining”.

However, it should be noted that the employer is not under a duty to disclose information which has been communicated to him in confidence, or the disclosure of which would cause substantial injury to his undertaking for reasons other than its effect on collective bargaining.

Commercial confidentiality

Many universities and colleges shroud their negotiations with ‘commercial confidentiality’ clauses. For example, Senates and governing councils have been required to sign ‘commercial confidentiality agreements’, preventing them disclosing details of negotiations with companies or even detailed plans being submitted for approval.

There are good reasons for having confidentiality agreements. For example, a degree of confidentiality is in the public interest when information could be disclosed that might be used to exploit the value of public assets. Private companies want the details of their bids, proposals, plans and practices confidential, for obvious reasons.

But currently, commercial confidentiality is being used in a blanket manner to prevent democratic governance and accountability and to undermine effective industrial relations.

There are ways of unions working with confidentiality agreements. For example, an agreement could be sought whereby a designated union representative from the branch can sign a confidentiality agreement to make an assessment of the plans and then submit a report to UCU members which has been vetted by the institution’s solicitors.

This must clearly be done with care, as signing a confidentiality agreement will seriously restrict what the designated officer can share with members, but it may be the case that there will be more to be gained from some information about plans being disclosed than from allowing claims about ‘commercial confidentiality’ to completely obscure the process.

Checklist for commercial confidentiality:

1. Ask management to justify the use of commercial confidentiality: best practice in the public sector is for management to provide a reason and to consider alternatives that strike a balance between legitimate commercial interests and the rights of unions to be consulted.
2. Consider approaching potential contractors directly to find out what information they have been given. They may have and may disclose more information on the ‘business need’ that has been established or the procedure that is being used.
3. Consider deputing someone to sign a commercial confidentiality agreement. But don’t sign anything without taking advice from full-time UCU officials.

Freedom of Information

The Freedom of Information Act 2000 provides access to recorded information held by public bodies. There are 23 exemptions under the legislation and the two most relevant of these are Section 41 which covers information that has been provided in confidence, and Section 43 covering information the release of which is likely to prejudice the commercial interests of any person, including a public body.

The commercial prejudice exemption is subject to a public interest test whereby “Authorities can only withhold commercially sensitive information where the public interest in maintaining the exemption outweighs the public interest in disclosing information (Freedom of Information Act 2000 – Annexe to Awareness Guidance No 5 – Commercial interest, www.informationcommissioner.gov.uk).

What this means is that institutions’ information officers have to be able to make this case before exempting information on the grounds of commercial prejudice and branches should hold them to this standard.

FOIA requests are best used to disclose documents that already exist and that usually means that they are most effectively deployed once decisions have been taken. They are not so useful for exposing the substance of negotiations, for example, as it’s relatively simple to claim that disclosing such information would be commercially prejudicial.

UCU in action

Freedom of Information legislation can be used to great effect at later points, however. Glasgow Caledonian UCU and EIS campaigners submitted a FOIA request to their management on student recruitment figures in the INTO Joint Venture. The information they received revealed that only 11 students had been recruited in the first term, when the target for the academic year was more than 100.

A checklist on getting information

Scenario 1: You suspect that there may be discussions between your institution and a private company but you have no concrete information

1. Have you approached members in departments or centres or other areas that could be affected?
2. Have you written to management with a direct question?
3. Have you written to all members asking them to inform the union as a matter of urgency if they become aware of any discussions?
4. Have you contacted your members on the institution's academic and governing bodies asking them to alert the union?

Scenario 2: you have received some information that discussions are taking place

1. Have you written to all members informing them that discussions are taking place and asking for further information?
2. Have you contacted your members on your institution's governing bodies informing them of the union's position and asking them to contact you?
3. Have you written to management under your collective agreement or under the terms of TULR or TUPE to ask for formal consultation with immediate effect?
4. Have you contacted your Regional Office to discuss further actions (Freedom of Information Act etc.)?

Scenario 3: institution acknowledges discussions are taking place

1. Have you written to management under your collective agreement or under the terms of TULRA and TUPE to ask for formal consultation with immediate effect?
2. Have you contacted your Regional Office and the National Campaigns Team to discuss further actions?
3. Have you contacted your members on your institution's governing bodies informing them of the union's position and asking them to contact you?

Useful questions to ask management:

Getting information on the review and options appraisal process

1. Can management confirm that discussions are taking place with COMPANY NAME
2. What review of services and appraisal of options has already taken place?
3. What documentation supporting these processes exists and when will it be disclosed to staff unions and other stakeholders?
4. When will unions and other stakeholders be consulted?
5. What other alternatives have been looked at? (expanding in-house provision?)
6. If it is established that procurement of new or extended services will take place, can you confirm that a) there will be a formal procurement process of competitive tendering and that UCU and other staff groups will be consulted on the drawing up of the invitation to tender and b) that there will be a properly resources in-house bid.
7. Will you disclose all papers relating to the process of reviewing service provision and appraising options?

Getting basic information

8. What will be the main business of the proposed outsourcing/partnership?
9. How will this provision supplement/replace existing provision?
10. What form of provision is this? Outsourcing, partnership, joint venture?
11. What are the parties to negotiations expecting to bring to the contract, in terms of academic services, marketing expertise, or assets?
12. Will it involve a transfer of any assets to a private company, arms length company, partnership or joint venture?

Quality and student welfare

1. How will the university/college assure quality control over the outsourced provision/partnership and defend standards?

2. How will the university/college defend academic freedom?
3. How will any students taken on by the outsourced provision/partnership be accommodated?
4. Will they be students of the college/university or of the venture?

Terms and conditions for staff

1. Will any staff be transferred to the new venture and what protection will they enjoy under TUPE?
2. What will be the pension arrangements for staff in the new venture?
3. Does the college/university anticipate any redundancies?
4. How many staff will be employed on the proposed new venture?
5. Will staff employed by the new provision be college/university employees and enjoy appropriate terms and conditions?
6. If not, will you make available to the unions the terms and conditions they will have as employees of the company/partnership?

Union involvement

1. What is the timetable for discussions?
2. What plans does the college/university have to arrange formal consultation with campus unions over this and other proposals regarding members terms and conditions?
3. What plans does the college/university have to involve the unions in discussions over the proposed joint venture?
4. Will UCU be recognised in the new venture?
5. What is the timetable for the university/college's compliance with the statutory duty to perform and publish impact assessments in respect of race, disability and gender?

Company presentations

It may be that members of staff are invited to company presentations on your campus, either as a result of informal invitations to members in affected departments or as a result of the union being properly involved in the process. Here is a checklist of useful questions to ask the company:

Staff pay and terms and conditions

1. Are you aware of current pay and conditions of service for staff?
2. Do you anticipate increasing/reducing current staffing levels?
3. Are there any elements of the current staff terms and conditions that you feel you cannot replicate?
4. If so, will you be producing a statement detailing what measures you intend to introduce to replace these or compensate for them, as is standard practice in these situations?

New employees

1. How are pay and terms and conditions of employees determined?
2. What perks or incentives are offered to staff?
3. What is the company's annual leave policy?
4. Does the company have a written sick leave policy?
5. Does the company offer redundancy entitlements above the statutory minimum?
6. What proportion of the workforce is on:
 - Permanent contracts
 - Temporary contracts
 - Contracts with employment agencies
 - Unwritten contracts
7. Does the company expect unpaid overtime?

Pensions

1. Does the employer currently run a pension scheme which has been assessed by the Government Actuary (GAD)?
2. What pension scheme will the employer be offering transferred staff?
3. Are the company's employees entitled to join an existing scheme?
4. Is it an occupational pension scheme, money purchase or stakeholder?
5. Does the employer's pension scheme have employee trustees?
6. Are some employees excluded from the pension scheme?
7. Do you run two schemes, one for new employees and one for transferred staff?
8. How much are employees expected to contribute?
9. How much does the employer contribute?
10. What are the arrangements for member-nominated trustees?
11. Do you practice ethical investment policies on your pension fund?

Educational experience

1. How many of your company's employees have previously worked in tertiary education?
2. How many educational institutions have you contracted with before?
3. Can you give examples of similar contracts to this one?

Union rights

1. Will you recognise UCU as the representative of academic and related staff?
2. Do you encourage your employees to join a union?
3. What are your employee representative structures? e.g. Works Councils etc

The contract

1. Do you know when the scope of the contract will be finalised?
2. Will you honour existing contracts e.g. security, catering, cleaning?
3. Will you be recruiting, internally and externally?

Equal opportunities

1. Does the company have a written equal opportunities policy?
2. Has it run an equal pay audit?
3. Does the company offer flexi-time?
4. What are the attitudes to work-life balance policies on part-time working, compressed hours, term-time working etc?
5. Does the employer offer childcare assistance?
6. Will the company honour existing child-care arrangements?
7. Does the employer offer maternity, paternity, adoption and parental leave above the statutory minimum?

Training and staff development

1. Does the company have a written policy on training?
2. Does the company conduct annual audits of employees training and development needs?
3. What is the company's policy on internal recruitment and promotions?
4. Do part-time staff have the same opportunities for training and promotion as other employees? Is this a written policy?

3. Building your campaign – mobilising the members and developing branch strategy

From the moment you find out that any privatisation might be on the agenda, it is absolutely vital that branches are active in mobilising members and actively campaigning at every stage of the process. It is generally true that campaigning and bargaining go hand in hand, but it is even more the case in relation to privatisation for the reasons highlighted earlier. Unlike much of the rest of the public sector, we are not governed by agreements between unions, employers' bodies and government. This means we have to fight a political and industrial battle to win our right to negotiate.

UCU in Action

The branch campaign against INTO at Essex university won a series of concessions from their management through bargaining in the context of a highly organised and well led campaign, including mass meetings, regular leafleting and a university-wide referendum that established a massive majority of staff in opposition to the planned joint venture with INTO. Managers offered to employ all staff on university contracts, before making the ultimate concession and announcing that all provision would be kept in-house.

Mobilising members around privatisation

The first step in your active campaigning is to build understanding of the issue. Even though we know from surveys that this issue is popular among UCU members, activists and members have many priorities and calls on their time and we need to make the case for why they should get involved in campaigning on an issue that can seem confusing and sometimes remote. The numbers of staff involved can seem quite small and in many cases management will say that no staff will be transferred at all or that those affected will be protected.

Your first step should be to write to or email all your members and to call a general meeting.

The key arguments to make are also in the section explaining why UCU is opposed to privatisation, but here is a checklist of key points to make:

Arguments for members:

1. Privatisation is bringing a two-tier workforce into tertiary education, with staff on inferior contracts, worse pay and worse access to pensions. Besides being inherently unfair, if we allow this to take hold in our colleges and universities, managers may look to export these practices more widely, looking for changes in contracts and terms and conditions to level downwards in the name of cost cutting.
2. Privatisation will affect quality – profit seeking companies must look to offer their services at low prices and must turn a profit. This leads them to cut staff pay, demoralise their workforces, use more casual contracts and in some cases, employ under qualified staff. They also have an inbuilt incentive to pass students through the system, for example, as quickly as possible and in as great a volume as possible. This could lead them to cut corners with quality control.
3. If we allow colleges and universities to sign deals with private education or training providers, we are opening a door that it will be far harder to close. Experience from privatisation in tertiary education and elsewhere in the public sector shows that private companies use ‘footholds’ to establish themselves and then look to expand their operations and the range of provision they offer at each institution.
4. Private control of educational provision will have a knock on effect across the institution – if quality is threatened in ‘pathway’ provision for international students, for example, it will mean more work for staff to support such students and defend standards
5. Private control of provision imports an unacceptable level of financial risk into institutions that are already used to using redundancy to balance their books. A failed venture may saddle colleges or universities with liabilities that would be paid for with staff jobs.

There are resources you can use in relation to specific companies on the UCU web pages on Fighting Privatisation in Tertiary Education (weblink). This includes materials on INTO, Navitas, A4E, (Kaplan and Study Group International). In addition, you can find more information in our two publications, Challenging the Market in Education and Challenging the Market in Further Education. www.ucu.org.uk/stopprivatisation

Organise a mass meeting or campaign briefing

It's really important to hold a meeting as early in the campaign as possible where you are able to discuss the issue of privatisation in some depth. You need to outline what you know about the issue, explain what UCU's policy is and, using the arguments detailed above, why it's really important that UCU members support this campaign.

You can find lots of information on privatisation in tertiary education, including reports, analysis and briefings on specific companies on the UCU website at

<http://www.ucu.org.uk/stopprivatisation>.

UCU in action

When UCU members at West Nottinghamshire College found out that their managers were considering a major public-private partnership with the big private training company Carter and Carter, they were quick to mobilise to express their opposition. They discovered that the proposal would entail the transfer of some staff into Carter and Carter's employment and organised a mass meeting. Several members who had previously worked for the firm and could testify as the inferior terms and conditions and pension provision were able to speak at the meeting and consequently, branch and Regional Officers were able to tell management that the plans faced complete opposition from staff. The college management decided not to proceed with the partnership.

It's a really good idea is to invite a speaker to your general meeting from an affected institution. This has worked very well in the past, with speakers from various institutions who have campaigned against INTO visiting other threatened branches, for example. You can contact the Campaigns Team for assistance with this at campaigns@ucu.org.uk

Make sure you use this meeting to pass a motion through your branch or local association. This is a really important way of building pressure from UCU members on management. A firm stand of opposition from a well-attended branch meeting is a crucial building block for a good campaign and sends a clear message to your managers that UCU will actively oppose privatisation at branch level. But that means working hard to build turnout.

You can contact your Regional Office and the National Campaigns Team for advice and support with this too.

Once you have passed your motion, make sure you write to the VC or Principal stating your opposition to any attempt to privatise any academic or key college or university functions and requesting a meeting if one is not already arranged.

Contact your regional office and the National Campaigns Team and make sure you inform them of any response from the college or university management.

Form an action committee:

Workloads in branches being what they are, it's often a good idea to consider setting up an Action Committee or Campaigns Committee. This allows other members, including those who might be affected, to get involved and help the campaign and it spreads the work around. Given that privatisation campaigning is a national priority for UCU, it's important though that the branch committee, regional office and national campaigns team are kept informed of your campaigns.

Build broad alliances:

The most effective opposition is that which unites an entire institution against its management. That means that you should be looking to get the support and active participation of NUS and the other campus trade unions as soon as possible.

Being able to say that you are united against an isolated and unrepresentative management gives you a big advantage. So work to build relations with the other unions. They won't all have the same concerns as you, so think about how the issue might affect their members.

UCU in action

Very early in their campaign, Goldsmiths UCU made sure that their campaign had the active support and participation of both the local Students' Union and the local UNISON branch. All their campaign materials were badged as from 'Goldsmiths United Against INTO', which was described as 'a coalition of staff and student unions on the campus'. This made it hard to isolate opposition.

Don't know who your NUS officers are? Contact the Campaigns Team at campaigns@ucu.org.uk and we can help.

Other campus unions

Any deal to privatise services may well affect other members of staff. You should look to build a common campaign with the other unions as far as possible. Make sure you meet them early.

The media and the local community

The local media and political bodies like Local Authorities can be a great source of support and pressure on management. In your campaign group, make sure one person is designated to deal with each.

Make sure you have a clear message: Try to make sure you tailor the message to what they will be interested in. In both cases, it will be tangible impact on the local community. What will the impact be on the local economy and community for example?

You can get advice on dealing with the local media from our press office and you can download lots of resources here: <http://www.ucu.org.uk/index.cfm?articleid=2294>

External organisations – learned societies, professional associations, businesses

Many departments have academic links with a range of learned societies, professional bodies, employers etc. Once you know a department has been identified, ask the members there to produce a profile of its activities, its partnerships and its links with external bodies. This should give you a list of organisations that can be approached to lobby the governing bodies of the college or university and local MPs. Where the links and partnerships are with significant or powerful bodies, these can be a really effective weapon.

Local politicians

Local politicians can be a vital source of support. Local Authorities or local MPs can be asked to take a position and to write to the college or university authorities stating their opposition and supporting your campaign plans. Given that the staff of colleges and universities are likely to be more active voters, politicians are frequently keen to be seen to engage with campus campaigns.

If you are soliciting an MPs support for your campaign, make sure that you keep them informed of how your campaign develops and that you thank them for their involvement. You can get much more information on dealing with MPs at the UCU website by accessing this page: <http://www.ucu.org.uk/index.cfm?articleid=2295>

UCU in action

Essex University UCU contacted one of their local MPs, Bob Russell, informing of their campaign, expressing their concerns about the proposed partnership with INTO University Partnerships and asking him to write to the VC with a request to halt discussions with the company. Bob Russell did write to the VC as requested and he also tabled a Parliamentary question on the issue, much to the Vice Chancellor's annoyance. The branch made sure that they wrote to Bob and thanked him for his work, keeping him informed about the campaign as it developed.

Developing your branch strategy

The key strategic objective is to make the 'terrain' of your institution as inhospitable as possible with the aim of deterring private companies.

But the exact way you develop this strategy and the precise tactics you use will be determined by what stage the procurement process has reached by the time the campaign starts.

For example, if your campaign begins at the stage where management are reviewing options, the objectives might be:

- to mobilise members for a vigorous campaign in support of in-house provision
- to get the option of outsourcing or partnership removed from the options paper
- to get members in the affected area building a case for in-house provision
- to ensure that the campaign targets the key meetings at which the options will be discussed.

If your campaign begins when options have already been discussed, and when discussions with a private provider are far advanced, your job is much harder. It is still possible to derail the process, but you should have one eye on the possibility that a contract will be signed and how you will seek to exert as much union influence over this as possible. Your objectives might be:

- To mobilise members around a campaign for a halt to discussions and a proper, transparent review and options appraisal process. This might itself derail negotiations with the company, but it would certainly give precious time to build a campaign.
- To secure comparable pay and terms and conditions as well as union recognition for any staff, whether transferred or newly employed.
- To build in as much monitoring of the quality of provision and performance as possible.

Targeting the decision-making process

The key information you need is:

- What is the timetable for reviewing the service and who is responsible for undertaking this review?
- What is the timetable for conducting an options appraisal and who is undertaking this task?
- What is the timetable for involving the unions and other university stakeholders and in what forum will this take place?
- What is the timetable for submitting reports or papers for action or approval before academic bodies?
- What is the timetable for submitting reports and papers for approval before governing bodies?

As a rule, the union's chances of having a decisive effect decrease the further through this process the proposal gets. That means that the more you can find out about the timetable for review and the appraisal of options, the better. If you can make the case for union

involvement at this stage, as the example of SOAS indicates, your task will be easier than if you find out just before a proposal comes to Senate. You will find specific advice on pressing management to involve unions at this stage later in this section, but being able to make this argument depends on knowing that it's taking place at all, which take us back to the question of good intelligence.

The more information you know about the timetable, the easier it is to sequence your campaign actions and ensure that you are building support and increasing pressure at every stage.

At the very least, you should find out the programme of governing body meetings in order to exert the maximum pressure on these and you should use your JNCs to press the case for more detailed information and a proper timetable for union consultation.

If you get information that a review of services or an options appraisal is taking place, write to management and make sure that you put the case for union involvement. You will find more on this below.

Ensure that you brief your members on governing bodies. As any contract is likely to come before the governing body of your institution at some stage, even if simply to be rubber-stamped, it is vital that you know who your members are or who might be sympathetic.

Organise meetings with them and brief them on your objections. Get the contact details of all the people on the governing body and ensure that the union writes to them with its view. You could ask that the union is able to make representations to the governing body.

Putting – and keeping - pressure on management

The exact form of the campaign will depend on the particular circumstances and the particular stage you are at in the tendering process. You should work out your campaign plan in consultation with your regional officers and the National Campaigns Team, who can provide specialist advice. Here are just some ideas:

Petitions and Polls:

These are a great way to build a tangible expression of opposition on a campus. The key to a successful petition is phrasing your opposition in such a way as to attract the broadest possible support, backing it up with good propaganda and not being afraid to push it hard. If you can make it a cross-campus, staff and student petition or poll, then so much the better.

However, the three key elements of a successful poll are turnout, turnout and turnout. If the power of a poll is that it gives democratic expression to a broad-based opposition on the campus, the danger is that you get a poor turnout and it is easy for management to ignore you. You should aim for 30% at least. This will mean hard work. You should look to email members and other staff regularly with reminders to vote and support this with posters and leaflets.

With an issue like privatisation, where you may have to build consciousness and understanding of the issues, it is important to ensure that there is a broad awareness before launching an online poll.

UCU in action:

Three UCU branches have now run highly successful online polls or referenda on the question of whether their universities should form a joint venture with the company INTO. Essex university UCU ran an online referendum in which they posed the question of whether a deal with INTO would damage the university's reputation. This was hosted on the national website. With limited access to members via email and post, they still managed to build a turnout of over 500 staff, 90% of whom said that the university's reputation would be damaged. Asked the same question, Goldsmiths achieved 94% and Queen's Belfast UCU achieved 96%. These majorities caused major difficulties for management, making it hard to argue that what they wanted to do had any support beyond the management groups. In the cases of Essex and Goldsmiths these were probably of decisive value in persuading management to change course

Protests and rallies:

A well-timed and well-attended protest can have a great effect on activist morale and on the campaign itself and it can raise awareness among staff and students in a very direct way. If it is timed for a meeting of the governing body of the institution or a key decision-making committee, this can give it focus and allow you to leaflet or lobby the meeting.

UCU in action

Activists at Oxford Brookes, Newcastle and Glasgow Caledonian universities held high profile 'themed' protests around their universities negotiations with the private company INTO. Newcastle activists handed out degrees written on toilet paper to express their frustration at what they saw as they attacks on academic standards, while Glasgow Caledonian activists staged an April Fool's rally and held a mock funeral for education at their university.

Activists at Manchester Metropolitan University targeted company presentations by the Australian education business Navitas, handing out leaflets making it clear that UCU considered any partnership with the company to be privatisation.

4. Bargaining to support your campaign

Just as it's impossible to negotiate without campaigning support, so we won't be able to influence the decision-making process unless we are prepared to bargain in support of our strategic priorities.

In the same way that our precise campaign tactics are determined by the situation when the campaign begins, so our bargaining agenda is shaped by the same situation.

In broad terms, if we get in early in the 'commissioning' process, we need to be bargaining for input and involvement into the process of review and options appraisal, and on the principle that in-house options will be considered.

If we are later in the commissioning process, we need to concentrate on our right to be consulted, on the possibility of an in-house option and on the terms and conditions of any staff involved.

4.1 Service Review and Options Appraisal

We have a major interest in ensuring that an institution's conduct of service reviews and options appraisal is transparent, rigorous and upholds the highest standards in the public sector. As we have seen, too often this phase of the commissioning process is shrouded in mystery, the key decisions taken behind the scenes by a handful of unaccountable senior managers, to be rubber stamped by bewildered Senates and compliant governing bodies alike.

A business need is established – the institution's finances show that unless three times as many international students are recruited, the university will financially implode – and a small strategy group will be tasked with establishing why the current provision can't deliver the necessary growth and drawing up an options paper which, if we're lucky, is slightly more than a report of negotiations with one company and a summary of their proposals.

So what should a proper Service Review and Options Appraisal process look like? What should our negotiators be demanding?

Service review

Any review of current service provision should pose a wide series of questions about the function of the service, its place in the institution's strategy and the future needs of service users.

The service review should ask the following questions:

Future needs

- What is the purpose of the service?
- How could the service make a greater contribution to the institution's strategic aims?
- What are the current and future needs of service users likely to be?
- What is the evidence base to support the assessment of service needs?

Performance

- Has there been a recent analysis of performance?
- Is there evidence of past improvements in service following past reviews?
- Is there capacity and cultural ability to provide an in-house solution to meeting users needs?
- How do other comparable institutions meet these needs?
- What is the track record of alternative forms of service provision?

User views

- What are the views of students and other users?
- What are the views of staff and trade unions and what is the extent of their commitment to improvement of services?
- What are the implications of various options for jobs and terms and conditions?

At the end of the review should be an assessment of how the service is performing against likely future needs.

If performance is satisfactory, we must insist that no action is necessary.

If there are weaknesses identified, then we should be arguing that the current service is retained and a service improvement plan is designed to help the service meet the needs.

If the review claims that the service does not meet current performance needs and doesn't have the expertise, culture or ability to meet future needs or to develop an improvement plan or if it fails to meet an improvement plan, then the university or college is likely to move toward procurement.

What should a proper service improvement plan look like?

It is crucially important that if a review identifies weaknesses in a service's performance, UCU should press for the design of a proper plan to improve the service. Ensuring that a proper plan is put in place is a way of defending in-house provision and preventing management pressing to begin a procurement process.

It's also a way in which management can be held to account. If a plan exists and is being monitored by unions and other users, but management do not properly resource it, for example, then it is harder for them to argue that outsourcing or other options are necessary.

A good service improvement plan should

- Establish a vision for the service and a strategy for achieving this over a given time period – three years would be a minimum.
- Identify what are the priorities for improvements to the service, in terms of the operation of the service, management practices and organisational structures
- Ensure that improvements are based on a clear understanding of the causes and effects of current weaknesses.
- Identify planned outcomes of the improvements
- Specify what actions are needed to implement each proposal
- Assess financial costs of improvements
- Identify changes in human resources needed
- Specify how trade unions and service users will be involved in monitoring the implementation of the plan

Options Appraisal

If a review of service concludes that there are weaknesses in provision and the institution wishes to push toward a formal procurement process, (even if this is simply negotiating toward an agreement with a private provider), it should conduct an options appraisal.

Options Appraisal describes the process whereby an institution sets out for its governing bodies the range of options it has for improving a service. Examples of options are maintaining in-house provision on a reduced basis, investing in improvements, full outsourcing or some form of partnership.

An options appraisal should be rigorous and transparent, drawing on a wide range of criteria to establish the best way forward. In practice, in tertiary education, they are rarely anything like this. While some institutions do conduct such processes – as the example of SOAS earlier shows, the majority fall way short of acceptable good practice. Some institutions, pressed to disclose papers relating to their options appraisal process have said that no such paperwork exists. Others have pointed to brief one-page summaries for governing bodies.

Our interest is in shaping the options appraisal process as much as possible, ensuring first of all that there is one, secondly that we are consulted and thirdly that we shape the criteria and the process of assessing options as far as possible.

Market research

In practice, the first step in the process of appraising options for many institutions is some form of market research. This can be initiated by an institution in response to a service review, or it can be initiated by a company promoting its business. During privatisation campaigning, we often find that an institution has been ‘courted’ by more than one provider on an informal basis in advance of any formal procurement process – indeed sometimes in advance of any proper review of service need!

Market research involves the institution disclosing information about its services to third parties, including private companies. UCU should be pressing for market research to be governed by protocols and to have a clear audit trail.

Market research can be done through desk research, trade advertisements, a notice in the Official Journal of the European Community, letters or questionnaires to potential providers or by workshops or briefing days for potential providers.

UCU should try to establish how the market research will be done and to ensure that there is agreement on how the union and other users and stakeholders can have input and how they will be reported to.

Our interest lies in ensuring that the market research

- Includes a wide range of providers, including an in-house option or partnerships with other tertiary education institutions or not-for-profit bodies, not just private for-profit options.
- Makes clear how each potential provider will affect employment in the service
- Establishes clear limits to what services are being offered – for example, often a private company cannot be induced to show an interest unless more attractive opportunities for growth are included, such as the potential to expand into other areas of service provision at a later time.

What are the potential options?

As noted above, our strategic interest lies in shaping the options appraisal process as much as possible, ensuring first of all that there is one, secondly that we are consulted and thirdly that we shape the criteria and the process of assessing options as far as possible.

UCU branches should seek agreement that:

- 1 UCU should be consulted on the content of a full and rigorous options appraisal***
- 2. UCU should be consulted on the criteria used to assess each option***
- 3. That there should be a full and integrated impact assessment of the options **before** any recommendations are made***

What the appraisal process should include:

We should be arguing that any options appraisal process that is to command consent must be rigorous and transparent. The process and its accompanying documentation must:

- make a clear statement identifying the objectives of the appraisal and setting out the reasons why an appraisal is being carried
- Show that service users, staff unions and other stakeholders are aware of the process
- Establish the case for change on the basis of the service review
- Assess the relevance of any market research to the specific service being appraised
- Contain a financial appraisal of each option
- Contain a detailed comparison of options on the basis of a wide range of criteria
- Contain appropriate consultation with user/community and staff/trade union representatives
- Contain an integrated impact assessment
- Contain a risk assessment on each option
- Contain recommendations

What criteria for appraising options?

There are no legal constraints on what criteria should be in an options appraisal. Institutions will tend toward a narrow focus on cost and potential financial benefits of improvement. UCU's interest lies in expanding the criteria by which each option is appraised.

The European Strategy Services Unit has recommended that Options Appraisal be based on the following twelve criteria

(www.european-services-strategy.org.uk/publications).

1. **Design and scope:** How each option meets strategic objectives, vision and aspirations, ability to meet current and future needs, user views, effect of creating/extending market mechanisms, scope for synergies and design/technical assessment.
2. **Accountability, governance and participation:** The implications of each option for enhancing democratic accountability, transparency and scrutiny and user/community and staff/trade union involvement in planning, policy and provision.
3. **Financial assessment:** Assess whole life and transaction costs, investment requirements and funding, affordability, use and allocation of savings, Best Value and risk assessment.
4. **Quality of service:** The potential impact on performance, service integration, continuous improvement and innovation, flexibility and responsiveness, accessibility and connectivity.

5. **Local/regional economy and community well being:** Assess impact on jobs, skills, labour market and local economy, contribution to regeneration and economic development strategies, community well being and cohesion.
6. **Quality of employment:** Application of employment models to each option, ability to retain terms and conditions, pensions and labour standards, impact on working practices, workplace training, access/provision of childcare and health and safety in workplace and community.
7. **Sustainable development:** Impact on local/regional production and supply chains, access to parks and recreational activities, services and facilities, environmental impacts and efficient use of resources.
8. **Ability to address social justice and inequalities:** The appraisal should identify how each option will reduce/eliminate health and other inequalities and discrimination for different equality groups. It should include a distributional analysis of the costs and benefits of each option and assess the contribution to building community capacity, power and participation.
9. **Capability, management and intellectual knowledge:** Effect of each option on retention of key skills and intellectual knowledge, ability to manage change and regulatory frameworks and transferability of skills to rest of the university/college.
10. **Organisational arrangements:** Effect on flexibility, scope for collaboration and consortia, impact of transfer to arms length bodies and trusts and capability of third sector organisations.
11. **Added value:** Proposals over and above core requirements and additional community benefits.
12. **Corporate impact on the university/college:** Assess the impact on the viability of in-house provision, service integration and the financial and employment knock-on effects on central and other services.

Impact assessment of options

Impact assessment is a method of identifying the costs, benefits and effects of policies and projects. It is designed to be used before implementation so that action can be taken to eliminate or minimise adverse effects. It can also be used in scrutiny and evaluation. Impact assessment has frequently been used to assess particular aspects, for example the economic or health impact of a project. An integrated impact assessment examines the economic, social, environmental, equality, health and sustainable development in one process.

The types of impacts to be assessed will depend on the service(s) and capital works being procured. However, the European Services Strategy Unit recommends that all procurement processes should assess the impact on the following:

- Corporate impacts – this should assess the effect of the project on the university/college as a whole and individual departments/directorates where relevant.
- Local economy – the effect of investment, supply chains and training on the local economy and labour market.
- Employment – The impact of different employment models and bidders workforce proposals. It should include assessing the consequences of the failure to implement assurances and commitments made by bidders during the procurement process.
- Equalities – The effect of changes in access to services, planning social needs, employment opportunities, and impact on equality groups.
- Social – The effect of demographic change and social structure, the effect of changes in community organisational structures.
- Offshoring – the impact of transferring work overseas on employment and service integration should be assessed. It should also assess whether this is the thin end of the wedge which could lead to further offshoring once the contract is operational.
- Job generation – Some partnership projects include proposals to generate additional employment via Regional Business Centres. They are based on the contractor winning contracts from other local authorities and public bodies and should be subjected to rigorous assessment.
- Service users, community organisations, and staff and trade unions should be fully involved in all stages of options appraisal. It is essential that the options are genuine and the assessment transparent.

As with the options appraisal criteria, our message to management must be that the more detailed and wide ranging the impact assessment, the more any decision taken on its basis will command consent.

However, it's also the case that given the narrow profit-seeking interests of the private sector, subjecting options to a wide range of criteria and assessing a wide range of impacts will reduce management's room for manoeuvre, reduce the attractiveness of the private sector option and increase the chances that an in-house options will emerge successful.

4.2 *Winning commitment to an in-house option*

Branches should seek an agreement with management that commits them to the development of in-house services. Ideally, we should be looking to get a proactive agreement that commits universities and colleges to seeking partnerships only with partners who are acceptable to UCU. This will almost always exclude the private for-profit sector. Acceptable external partners might be:

- other colleges or universities
- other public sector bodies, such as schools, hospitals etc.
- not-for-profit organisations
- community groups
- charities.

However, if this is not possible branches should seek commitment from Senior management that the institution will prepare and properly resource an in-house bid for any service that it under review, for any planned expansion or extension of services or for any service about to undergo a procurement process.

What should a properly resourced in-house bid look like?

It is important to spell out to management what a properly resourced and competitive in-house bid should look like.

Management should agree to:

- Start preparing an in-house bid as soon as approval is given to proceed with a procurement process. Indeed, the existence of a strategy and business plan could pre-empt the need to start procurement.
- Organise workshops with staff and trade union involvement to identify key issues, discuss plans to improve services and identify the scope of any proposed changes.
- Summarise the university/college's track record of improving services and innovation and the successful implementation of change.
- Demonstrate the viability of the financial proposals – this requires seeking out the actual cost of different components of the bid i.e. the bid must be supported by hard evidence rather than mere estimates.
- The in-house bid team should assess the need for and cost of external technical advice.
- The team should ensure that the bid contains:
 - Plans for service improvement and innovation.
 - Demonstration of the capability to deliver the service and maintain quality and performance standards.
 - A viable financial plan.
 - Evidence of staff and trade union support.

- Those responsible for preparing the in-house bid must be capable and committed.
- The in-house bid team need to understand the evaluation methodology and criteria and the requirements of the documentation that supports the procurement process, the Invitation to Tender, for example.
- Ensure the in-house team has full organisational support and credibility. Partial proposals will be limited in scope and compare poorly with external bids.

UCU's role in the in-house bid

UCU's role in the in-house bid should be tightly circumscribed. We should seek full consultation throughout the process of putting the bid together and we should make clear that we support the in-house option, but we should not prepare the bid itself.

To do so involves the risk of fatally compromising the union, as the production of a credible bid – i.e. one that could beat other bidders - may mean endorsing job cuts and some worsening of members' terms and conditions.

If, though, an in-house bid was prepared by management, UCU could and should participate – through full consultation at every stage - to do our best to ensure those members' interests were protected, always ensuring we do not compromise our independence and national policies.

Do's and don'ts for in-house bids

Never:

- agree that the trade union side put together the in-house bid. This is a very specialist area and needs proper professional resources. The contractors you will be competing against will probably have dedicated resources for this.
- agree to anything you do not fully understand.
- agree to sit on committees if you are not familiar with the technicalities of the process
- go ahead in the process without consulting full-time UCU officials

Always:

- Make sure management agree to resource an in-house bid
- make sure UCU is represented on all appropriate workteams
- make sure you are allowed input before decisions are made
- ensure you have informed your UCU Regional Officials and that there are clear lines of accountability about final outcomes
- ensure that you and your members have a clear understanding of your remit, to avoid compromises of union policy.

What should UCU be feeding into the process of putting together an in-house bid?

UCU's role could be:

- Promoting public service principles and values as the basis for an in-house bid.
- Examining working practices and procedures and make proposals, which improve service quality and effectiveness.
- Discussing future staffing levels, redeployment and retraining proposals.
- Working with service users to identify their needs and priorities and building support for an in-house bid where there is agreement on core principles and values.
- Discussing the approach to change management and the interface with other services.

What to do if an in-house option is refused

If a university/college refuses to make a commitment to an in-house option or bid or there is a distinct lack of progress having made such a commitment, the following action could be taken:

- Lobby the institution's academic and governing bodies explaining the advantages of in-house provision.
- Informing members that management are failing to support an in-house bid and ensuring that the consequences of this are understood.
- You could run a poll or a petition among staff explaining the issues and asking whether there is support for an in-house bid
- Urge the university/college to investigate good practice elsewhere in tertiary education and the public sector.
- Consider the advantages and disadvantages of industrial action in your particular situation.

What arguments and resources can we use?

Below is a summary of the benefits of retaining services in-house which you can use in putting the argument to management:

Improved services

- Better quality of service
- Maximising scope for improvement
- Coordination and integration of services and functions
- Continuity and security
- Improving coordination and leadership in service delivery
- Coordinating and integrating purchaser and provider functions
- Working to needs, not contracts and profits
- Retaining and enhancing a public service ethos and values

Corporate

- Retaining intellectual capital in the public sector
- Enhancing public sector capacity and skills
- Ownership of public assets
- Private sector ability to deliver public services is often overstated.

Democratic accountability

- Direct democratic control & accountability of service delivery
- Safeguarding the public interest

Financial advantages

- Lower overall cost when wider economic, social and environmental impact taken into account.
- Economies of scale
- Cost transparency
- Improved sustainable development
- Implementation of corporate policies, objectives and priorities

Employment

- Sustaining good quality employment
- Maintaining and developing local/ regional supply chains and support for small and medium-sized businesses and social enterprises

European Services Strategy Unit (ESSU), 2006

4.3 Protecting staff

One of three things can happen to staff as part of privatisation:

- 1. their employment is retained in-house**
- 2. they are seconded, retaining their existing contracts and terms and conditions but their day-to-day management passes into the hands of a private sector employer**
- 3. they are transferred into the employment of the private sector**

If an options appraisal process leads to management support for a formal procurement process, we have an immediate strategic interest in winning agreement that whatever provider is awarded the contract should protect its workforce. This means ensuring that whoever the employer is honours their obligations to transferring staff under legislation.

But more importantly, it means seeking agreement from the employer that pay rates, working conditions and pension entitlements will be comparable with and at least no less favourable than those for staff in the public sector. Our overriding interest here is winning agreements that prevent the embedding of a two-tier workforce.

What protection does TUPE entail?

TUPE legislation offers some important protections, but as its primary function is to enable the smoother transfer of staff out of the public sector, it should be remembered that this legislation is no substitute for real protection. In particular, the protections that TUPE brings are dependent entirely on employer goodwill or unions' industrial power. If an employer can make a business case for changing terms and conditions or pay rates, they can do so. If a union can make it clear that doing so would create great resistance, they may not. Crucially also, TUPE protections do not cover pensions.

What should we be demanding?

Defending members' terms and conditions

Our starting point should be that no members of staff should be transferred out of the employment of colleges or universities. But failing this, they should be on the same or very similar terms and conditions and pay rates as university or college employees.

It is vital to remember that TUPE alone will not protect staff. We must negotiate agreements that embed the defence of terms and conditions and pay in the long term

This must include pension entitlement. TUPE does not protect membership of pension schemes and transfers between employers can entail significant and immediate material detriment for members. Below you will find a model agreement for negotiators to use with employers.

What about new staff?

Some of the privatisation deals being signed in higher education have relatively little direct effect on existing staff, but they involve people being hired to deliver pre-university and university-level courses on company pay rates and terms and conditions. These pay rates and terms and conditions are almost invariably worse than those for direct university employees.

Some people argue that this is not particularly threatening. As long as they aren't taking over existing provision, the argument goes, we can accept this. This is to take a very narrow view of what is happening.

UCU has a strategic interest in opposing the embedding of a two-tier workforce. As colleges and universities become more 'business-facing', more anxious to develop partnerships of all kinds with the private sector and more focused on competing for tighter funding, so they look to cut their primary cost, which is staff. Colleges and universities are frustrated with the restrictions placed on their freedom of action by existing contracts and pay rates and many will take any opportunity to alter these. Many are already developing 'spin-off' ventures or offshore facilities and these usually involve employing staff on worse contracts and pay rates. The more embedded these precedents become, the weaker is our position in defending existing pay and terms and conditions in the core employment areas. Our members therefore have a strategic interest in ensuring that new staff are treated no worse than themselves.

The protocol below is based on an enhanced vision of TUPE, used widely by unions to protect staff and it sets out a series of demands that negotiators can use to establish a fair employment framework at their college or university.

TUPE Plus Protocol

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will either be college or university employees or will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within their pension scheme (USS or TPS)
- Annual pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the University/college employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the University/College.
- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- The University/College must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.

Below is a checklist developed by the European Services Strategy Unit (ESSU) that should help negotiators to ensure that they address all employment issues in discussions:

Basic pay	TUPE Plus
Unsocial hours payments	Trade union recognition and facility time
Sick pay	Part-time workers rights
Bonus schemes	Race equality
Equal pay	Gender equality
Pensions	Age equality
Working patterns	Lesbian and gay equality
Health and safety	Disability equality
Holiday pay	Family friendly policies
Education and learning	Job security
Training	Changes in location of workplace
Redeployment and retraining	Workforce development plan
Joint Consultative Committee arrangements	Role of staff forums
Industrial relations in JVC	Transfer/secondment arrangements

Part 2: What to do if privatisation goes ahead

It's easy to think that once a contract is signed, our campaign ends and we should demobilise, but nothing could be further from the truth. In reality, the campaign has simply entered a new phase and UCU branches have new opportunities to be active in fighting privatisation. Indeed, it's essential that we do campaign as it sends a clear message that UCU will not accept or tolerate the erosion of service or employment standards by a contractor once it has won a contract. It also helps us to extend some union control across the private sector and further reduce the attractiveness of the unregulated environment.

There are two main ways in which we can campaign once a contract has been signed:

1. **Monitoring the contract**
2. **Organising and recruiting in the privatised workforce**

1. *Monitoring the contract*

The record of private companies in the public sector shows that once they have won contracts they tend to try to erode standards and costs to ensure their profit margins. The risks of non or under-performance are substantial. The European Services Strategy Unit lists these as including the following:

- Corporate policies may not be fully implemented by providers.
- Higher than anticipated transaction and monitoring costs.
- Service performance does not meet required standards.
- Provider has high turnover of staff.
- Equalities for users and/or staff not mainstreamed.
- High cost of contract termination.
- Provider imposes price increases, particularly for non-specified work.
- University/college has reduced control and flexibility.
- Provider fails to achieve required environmental performance standards.

(European Services Strategy Unit, 2009)

This means that unions have a key role to play in exposing bad practice and holding them to account.

If the contract follows a public procurement process, then the initial intention to tender document, placed in the Official Journal of the European Union, will tell you exactly what the contractor agreed to provide.

If the contract was agreed in private, you should ask for publication of all the details of the contract in terms of delivery and employment standards. If this is refused you could consider a Freedom of Information Act inquiry. If you do this, you should seek advice from Regional Officials or the National Campaigns Team about how to do this to avoid the excuse of 'commercial confidentiality'.

It should be part of a branch's negotiating strategy to ensure that any invitation to tender or draft contract should contain clear indicators of how service performance will be monitored

They should clearly set out:

- the responsibilities of the client and contractor for the organisation and management of monitoring
- the performance management framework (and the scope of Key Performance Indicators if used), with regard both to academic and employment standards
- details of how race and equality compliance will be ensured
- exactly what systems will be in place for receiving, recording and investigating complaints how users and other stakeholders will be involved in monitoring

UCU in action

UCU in Portsmouth University have set up a 'NavitasWatch' email address to enable whistleblowing on the performance of the new international college set up by the company on their campus.

Branches should also strive to ensure that monitoring is taken seriously by the employer. This should involve clearly establishing that resources are set aside for contract monitoring, including a dedicated monitoring officer.

2. *Organising and recruiting in the privatised workforce*

While UCU is committed to defending public education and will do everything in its power to prevent privatization, we are also committed to protecting and representing our members in the private sector.

While campaigning against privatization, UCU branches should try to negotiate a recognition agreement with the new employer prior to any transfer or new venture. This agreement should be at least as comprehensive as the recognition agreement UCU has with the old employer. It will be easier to recruit the contractors' staff if we can point to the recognition agreement and to the greater degree of control and influence that unionised staff have over their terms, conditions and working environment

The new employer may well refuse to even discuss this until after the transfer is complete and if no transfer takes place, in which case, seeking such an agreement must be a priority immediately after agreement. If there has been no transfer, or even if there has, the new employer may refuse to discuss anything with the union.

Whether the new employer agrees to a recognition agreement or not, it is absolutely vital that UCU recruits and organizes among staff in the private sector.

However, you **MUST** seek advice on this from your regional officials or from the National Sector Department and Campaigns Team. The danger is that a branch can get into the position of negotiating an agreement with a private company that is significantly inferior to existing 'public sector' agreements and sets a dangerous precedent. [INSERT PARA BREAK]

Here are some tips for recruiting and organising among private sector staff:

Map the workplace: this is important in every workplace but even more so among those who are in a newly privatised workplace. If you have contacts there, ask them to provide you with a staff list so that you can identify who and where potential members are. Or arrange a meeting with a contact to list all the people they know.

Do some research on the employer. You need to build up information on the employer in order to make the case for joining UCU. You can get help on this from the national campaigns team and on the Fighting Privatisation section of the UCU website, which contains updated information on several companies operating in our sector.

Most importantly, go to talk to the employees. Ask them how they are treated and what concerns them. What are their issues? How are they treated at work? Are their pay rates fair? What terms and conditions do they have?.

Identify and prioritise one issue. If you can find an issue they care significantly about that affects a number of workers, you can start a campaign that will raise the profile of the union, make it look relevant to these staff groups and encourage them to join.

UCU in action:

UCU undertook a survey of members and non-members alike in prison education, about their treatment by the company A4E. As well as being a useful lobbying tool with the LSC, who awarded the contracts, this exposed the fact that many staff were concerned about the lack of access to time off for professional development and encouraged a number of non-members to join UCU.

- Be aware of the dangers for staff. It is important to realize that if staff feel exposed in our university and college workplaces, they feel even more so in the private sector. Our meetings with staff in private sector workplaces have revealed real fear about becoming subjected to management intimidation and disciplinary procedures. This makes it even more important to build a team of people to share out the work and not rely on one or two people.
- Once you have recruited over 50% of the workforce to the union, you may be able to apply for statutory recognition through the legal process. Your UCU Regional Officials can

Part 3: An anti-privatisation agreement for tertiary education

As noted in the introduction, procurement by colleges and universities is very largely unregulated by agreements with unions. This means that when a college or university decides that it wishes to outsource an area of provision or set up a partnership with a private provider, it can usually move through the service review and options appraisal phases of the commissioning process without ever having to inform or consult the unions. This hampers our attempts to campaign effectively in the field of privatisation.

The best way of countering this is through a proactive campaign to win an institution-wide agreement on a comprehensive policy that establishes the institution's obligations and the union's rights in relation to procurement.

Our starting point has to be to win agreement at institutional level that management will not seek to outsource educational provision or hand existing areas of provision over to any partnerships with the for-profit private sector in the field of core educational provision.

Further, though, we also have to win agreement over our right to information, consultation and negotiation across the whole field of 'procurement'.

As well as introducing much-needed regulation into our sector and enabling us to campaign and negotiate more effectively when necessary, such an agreement would make pursuit of the private sector option more difficult and less attractive for institution managements. It would also reduce the attractiveness of tertiary education contracts for private sector providers.

An agreement based on that below would therefore play a critical role in creating a terrain that was less conducive to the private sector and would shift the balance of power more in our direction, making it easier for us to defend public education with greater effectiveness.

Clearly, in selling such an agreement to management we need to recognise that they function in the context of a short-termist, competitive funding environment, in which reputation is key. Our arguments need to include the following:

- This is based on best practice in the public sector, based on years of experience of partnerships and outsourcing
- Such an agreement would provide a framework within which it would be possible to resolve conflicts

- An agreement would provide a regulatory and monitoring framework that would protect the quality of service, which is the key to establishing and maintaining an academic reputation
- There is a wealth of evidence of market failure by the private sector in both its own environment and in the delivery of public service contracts
- Regulation and the involvement of unions and other stakeholders make good business sense.

The importance of campaigning

This is obviously not something we can just walk into a negotiating forum with one day and expect to get agreement on. As with reactive campaigning, we will only get this through a dynamic combination of campaigning and bargaining and all the same principles will apply:

- We must raise members' awareness early in the process, explaining why it's important and ensuring we have their support.
- We must build broad alliances on campus to show that we are the majority and isolate management
- We must ensure that our campaign escalates actions that express the aims of the campaign and show the extent of our support to the maximum possible degree.

The advantage we will have in planning a proactive campaign is that we are not working to management's timetable in fighting a specific contracting process. But that doesn't mean we shouldn't plan our campaign carefully.

Branches should still look to establish an action committee to discuss the campaign and to plan the campaign strategy so that when the time is chosen to go into negotiations, reps are armed with a clear mandate from members and evidence of widespread support. And the strategy should have a clear idea of how to take the campaign forward by escalating action if management say no.

Tactics like mass meetings, petitions and online polls, supported by leaflets and posters in support of our aims are just as important in proactive campaigning as in a reactive and defensive campaign.

Please refer to the section on campaigning in part 1 for more specific ideas. If you are planning such a campaign and want advice, remember that you can contact the National Campaigns Team at campaigns@ucu.org.uk

A model agreement

Below is a comprehensive model policy for branches to use with managements. This policy is based on a series of protocols drawn up by the European Services Strategy Unit and parts of it are taken from a groundbreaking agreement with Newcastle City Council.

All of the elements of this policy are important and reinforce each other, although branches may take a judgment that they want to seek agreement on parts rather than the whole.

Information Protocol

An Information Protocol should contain the following:

- Identify the key information to be made available to trade unions at different stages of service review, options appraisal and procurement processes outside of a commercial confidentiality agreement.
- Clarification of classification of public and confidential information and the application of Freedom of Information regulations.
- University/college to seek agreement with bidders on access to information.
- Basis of the application of commercial confidentiality and information agreements.
- Format and access to information.
- Assistance in the interpretation of information and proposals.
- Responsibilities of trade unions and community organisations to maintain the security of information made available to them.
- Responsibilities and responses if there is a breach of confidentiality.

For example, Newcastle City Council's Corporate Procurement Strategy makes a commitment to:

- Provide appropriate information to staff and trade unions at all stages of the procurement process;
- Establish regular consultation processes with staff and trade unions at appropriate frequencies;
- Provide an opportunity for trade unions to comment on all aspects of the procurement process at key milestones of the procurement process;
- Facilitate meetings between trade unions and potential providers at key stages of the procurement process.
- The trade unions will select their own representatives for meetings with contractors and site visits.

- Allow full discussions between trade unions and the City Council's preferred bidder prior to contract award.
- Use a minimum of temporary and agency staff during the procurement process, consistent with service and operational objectives.

Protocol for In-house Options and bids

Discussions will be held with trade union representatives on the approach, development and overall content of any In-House Option at the start of the procurement exercise.

Service users and community organisations will be consulted in the preparation of the bid or project for direct service provision where user needs and views are important.

- Trade union representatives will be consulted on the principles and approach of the in-house option including any proposed changes to working practices.
- Consultation will also include the active participation of staff and trade union representatives in the preparation of Service Improvement Plans to harness staff ideas for innovation and service development.
- Community organisation and service user representatives will be encouraged to participate in the preparation of the Service Improvement Plan to ensure the plan reflects their needs, ideas and experience.
- Trade union representatives will be consulted on the selection of advisers to assist with the preparation of an in-house option.

Protocol for Options Appraisal

Many options could cause anxiety and uncertainty for staff and service users. Equally, every option within the City Council's chosen framework must be properly considered, even if the end result is to dismiss it as a means of improving the service in question. For such consideration to be fully effective the positive contribution of Service user organisations and community organisations, staff and trade union representatives must be an important element of the appraisal; this contribution must be obtained without causing unnecessary alarm to the users or staff of the service in question.

User and community organisations

Service user organisations and community organisations will be involved in the options appraisal process in connection with key services and regeneration projects where their involvement is an essential part of the public policy making process.

User/community organisations and trade union representatives will also be consulted if any 'deconstruction' of a service is under examination for outsourcing or market testing purposes in order to assess the detailed implications.

The formulation of proposals on workforce inclusion or exclusion from the service to be

procured as part of the risk assessment process will be carried out by officers, with consultation with trade union representatives on the draft conclusions of the exercise.

Staff and Trade union representatives

- Trade union representatives will be given the opportunity to contribute to and comment on the formulation of the options appraisal and the evaluation criteria. It will be important in coming to a proposal on the most advantageous option that workforce-related issues are fully understood and taken into account.

During this process, information and the thinking behind it will be shared in confidence on the understanding that it will not be revealed more widely to staff of the service until

- a single preferred option has been identified; this is to avoid causing unnecessary uncertainty or anxiety over some of the more extreme options. Staff will be aware that options appraisal is under way as part of a well-communicated process.

Trade unions will be asked to make available information as part of the contribution to market analysis from any databases and research studies relating to market analysis and the performance of providers which can only be accessed by the council's trade unions.

- Trade union representatives will have the opportunity to comment on the draft options appraisal analysis.
- Once the City Council has finalised an appraisal of each option for future delivery of the service, trade union representatives will again be consulted on the outputs and will be fully briefed on the reasons for the proposed preferred option. The options will be discussed in as much detail as is appropriate to their realistic application to the service, and the views of trade union representatives will be considered in the final proposal of preferred option.
- Where any option other than continued in-house provision is preferred, the City Council will seek to procure the service from the widest possible scope of potential service providers. In order to maintain the credibility and business-like reputation necessary to attract a wide spectrum of interest, there will be no communication outside of the City Council until the Procurement Committee has sanctioned any release of information.
- The preferred option will not be communicated outside the City Council until the Procurement Committee has sanctioned any release of information so that the scope of potential sources of service delivery is not unnecessarily reduced.

Communicating with staff

As soon as a preferred option has been identified, with the views of trade union representatives taken into account, this option and its implications will be communicated and fully explained to all staff potentially affected. This will include the implications and intended process fully explained. This will be done via the most effective channels of

communication, which will usually involve a major face-to-face element. There will be no undue delay in communication since this could exacerbate concerns and give credence to rumours.

The nature of the communication process will depend on the preferred option and ideally, the communication will be jointly by management and trade union representatives, even where there is disagreement on the conclusion as to preferred option.

Communications in such circumstances will follow the guidelines recently issued by Organisational Development:

- establish the message to the employees affected, that is the vision, reasons for change, benefits, impact on employees, timescale and end results;
- minimize uncertainty by explaining a clear process and timescale;
- identify the concerns that employees will have and be clear about the assurances that can be given - manage expectations carefully;
- if issues remain unclear explain when they will be resolved and follow that up without fail;
- keep the flow of information going with further face to face briefings;
- ensure that employee representatives are well briefed and respond fully to concerns that are raised by them without delay;
- consider planning a series of communications to the workforce as a whole to raise awareness and influence opinion.

TUPE Plus Protocol

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will either be college or university employees or will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within their pension scheme (USS or TPS)
- Annual pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the University/college employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the University/College.

- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- The University/College must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.

Protocol on Staff involvement in the procurement process

(Protocol from Newcastle City Council's Corporate Procurement Strategy approved by Cabinet in 2003).

Introduction

This protocol further develops and expands some of the provisions of the City Council's Fair Employment Charter approved by Cabinet on 19 June 2002. Paragraph 3 of the Charter includes the following commitments relating to the involvement of staff and their representatives in procurements where there exists the potential for transfer to another employer:

- Consultation with trade union representatives in consideration of procurement options at an early date.
- Transparent and timely discussions with all staff potentially affected by procurement proposals.
- Involvement of staff group representatives in discussions with shortlisted bidders and reasonable access to appropriate documentation related to the bid.
- Trade union representatives having the opportunity to put forward written comments for evaluation, which will be taken into account in the evaluation process and for these to be presented to the relevant evaluation and decision-making body.

Clearly there is a requirement for agreed guidelines to govern these processes and ensure that the City Council, the staff and indeed external organisations involved in such procurements have their respective interests properly protected. Furthermore, the increasing emphasis on comprehensive options appraisal as a fundamental aspect of Best Value reviews and other procurements leads to the need for similar guidelines to accommodate that process as well as procurements directly.

The degree of formality of the protocols necessary will vary according to the stage of the process, and will reflect the City Council's risk assessment of each part of a procurement. "Internal only" stages such as options appraisal will be governed by relatively light touch guidelines, while relationships with potential or actual bidders during a procurement are likely to require a more detailed and explicit framework.

Procurement Proposal

A comprehensive risk assessment will be a key feature of the formulation of any procurement proposal. As part of this process, any procurement where there is the potential that staff may be transferred may consider the exclusion of the workforce from the services to be procured. This consideration will depend to some extent on the nature of the service in question. It will depend on the business case and the materiality of the workforce in the overall service.

In the case of a PFI procurement, the OBC will enable the council to formalise a view on risk transfer and obtain government approval of the exclusion. See "Procurement Documentation" below for some of the means by which this will be achieved.

Principles

To be effective, protocols require compliance by all parties. Rather than write a set of rules, which may not be enforceable, a set of principles has been established which all parties (elected members, officers, staff/trade union representatives and user/community representatives) sign up to. The council has a disciplinary and grievance procedure.

- Principle of partnership;
- Acting in the public interest and safeguarding public service ethos;
- Information concerning market analysis, potential providers and procurement documentation will be shared;
- Non-disclosure of confidential information;
- Staff/trade union and/or user/community representatives may be required to sign a confidentiality agreement if requested by an external bidder;
- Contact with bidders must be within the terms of the protocols and procurement policy;
- Officers and community/trade union representatives who fail to act according to these principles may be replaced;

Appropriate action will be taken by the City Council in any breaches of confidentiality or biased assistance to external bidders to ensure that all parties comply with the policies and protocols.

Trade union representatives will be required to sign information confidentiality agreements as and when required. The trade unions agree to abide by the principles, practices and protocols in the Corporate Procurement Strategy, the Procurement Framework and Options Appraisal.

Procurement Documentation

The wording of documents has a significant influence on the shape and outcomes of the procurement process. It is important that potential bidders or partners are aware of the material issues that they may face in delivering the service; this of course includes workforce issues as one of the principal elements.

- Trade union representatives will be consulted and invited to comment on workforce proposals/wording in drafts of documents, although the final version and approval process will be the responsibility of officers and members.
- During the tendering or negotiation stages any decision on workforce exclusion from the services to be procured and consideration of the inclusion of requirements for mandatory variant bids or suggestions for optional variant bids will be explicitly documented to enable potential bidders to comment on the commercial structure of the service delivery.
- Given the sensitive nature of such documents as part of a legal process, it will be vital to ensure that their draft content is not divulged to anyone outside of the group responsible for the procurement until they are formally approved and published. Trade Unions must agree to this stipulation before being allowed access to the draft documents.
- Trade union representatives will be consulted and invited to make comment on the drafts of bid documentation in relation to workforce issues and working practices, so that potential bidders or partners can gain a full appreciation of the issues they may face in delivering the service in question. This opportunity will be subject to a non-disclosure agreement.
- Bid documentation must at this stage capture the conclusions of the procurement on workforce matters.
- Trade unions should be informed of the names of shortlisted bidders.

Bidder/Partner Discussions

A positive and comprehensive staff contribution to relevant aspects of discussions with bidders or potential partner organisations is critical to ensuring that negotiations produce the most effective outcome for the City Council. Equally, the bidder/partner organisations need to be confident that the information they disclose to the City Council during discussions and negotiations will be treated with the appropriate level of confidentiality.

Trade union representatives will be given the opportunity to participate in discussions with potential bidder or partner organisations when such discussions cover aspects of the procurement process directly affecting the employment of staff and changes to working practices.

- Trade union representatives will be given access to confidential information supplied by the bidder/partner organisations to the City Council. The City Council will negotiate with bidders as to the level of confidential information made available. Trade union representatives will be required to sign a confidentiality/non disclosure agreement before access to information will be allowed.

- Following receipt of information the trade union representatives will be expected to raise issues with the City Council relating to terms and conditions of employment and working practices as stipulated in the Fair Employment Charter;
- Once potential bidder or partner organisations have been shortlisted to receive an ITT, ITPD or ITN (or the equivalent stage of any procurement), trade union representatives will have access to discussions with those organisations, on an agreed agenda, where discussions cover issues relating to the employment of staff and working practices. This involvement will be subject to the agreement of the bidder or partner organisations.
- Trade union representatives will be allowed access to information supplied by bidder or partner organisations where this information relates to the employment of staff and where the trade union representatives and the relevant Trade Union have signed a non-disclosure agreement.
- Trade unions will be able to share procurement documentation and information with their appointed advisers who will also be able to attend meetings in an advisory capacity.

Evaluation Process

As noted above, the City Council's decision-making processes focus on members acting on the advice of officers. Following the discussion and negotiation stage, the evaluation of the offers of competing bidder/partner organisations and of the preferred bidder will be carried out by officers, assisted by any formally approved external advisers.

The evaluation criteria, including and extending the main criteria established for the options appraisal stage – (see Part 2) should include:

- Vision and innovation
- Service and community needs
- Equity, equalities and diversity
- Technical/design assessment
- Impact on service users
- Added value
- Financial assessment
- Development and investment
- Environmental sustainability
- Democratic accountability and participation
- Partnership
- Management practice
- Information and communications technology
- Risk management
- Asset management
- Employment, training and human resource policies
- Corporate impact on the authority
- Community well-being and the local economy

- Social and organisational impact
- Regional strategies

To ensure that staff concerns are properly communicated to the evaluation body and taken into account in the evaluation process, trade union representatives will have the opportunity to make a presentation of their submission to the evaluation body.

Whilst the Procurement Committee will provide a challenge to the evaluation process before accepting any evaluation report and recommendation consideration will be given to the possibility of including an independent observer agreed by the City Council and bidder organisations on the evaluation body together with a similarly approved independent observer nominated by trade unions.

Trade union representatives will have the opportunity to make written submissions to the evaluation body for the procurement and to present those submissions to the evaluation body.

In line with the communications guidelines set out above, the evaluation body will reveal to trade union representatives the thinking behind the eventual recommendation and the ways in which staff concerns are dealt with and how they will be dealt with in the ensuing contract or partnership arrangement.

