

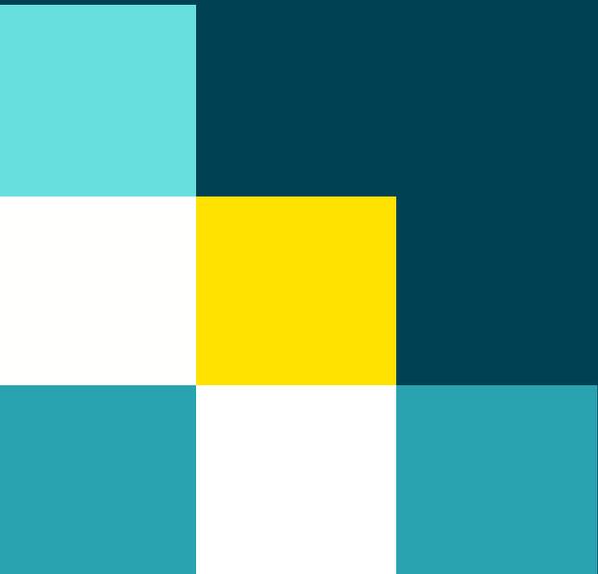


**Wales Centre for Public Policy**  
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# **Beyond contracting: public service stewardship to maximise public value**

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# Summary

- The public sector in Wales spends approximately £6 billion per annum with external suppliers. This represents nearly one third of total devolved expenditure.
- Approaches to procurement have recently come under critical scrutiny and a new national procurement strategy is currently being developed.
- Public bodies in Wales need to ensure that their procurement decisions reflect the requirements set out in Wellbeing of Future Generations (Wales) Act 2015. Adopting the principles of **public services stewardship** will enable them to do this because it ensures that procurement decisions address strategic and long-term priorities as opposed to narrow short-term cost based criteria.
- Decisions about who provides public services can have significant impacts on economic, social and environmental well-being. Therefore they need be made by political leaders, supported by senior managers, and public bodies need to invest in developing the capacity to procure well.
- Government, at national and local levels, hold responsibility to steward systems of public service provision for the long-term. These include services provided by the public sector directly, grant-funded services, and services procured via the market and delivered by private, voluntary, community or social enterprises (VCSE).
- To facilitate effective public service stewardship, at a national level Wales needs to:
  - Establish a clear policy framework that defines the strategic criteria that need to inform procurement decisions;
  - Invest in the capacity needed to procure effectively;
  - Ensure there is the information needed to allow market stewardship;
  - Create and maintain a ‘Domesday Book’ of public service contracts; and
  - Ensure stronger accountability for procurement decisions at national level.
- At local level Wales needs a place-based approach to public services stewardship. Local authorities should play a key role in co-ordinating and scrutinising this. They need to be given this responsibility and develop the capacity it calls for.
- Every public body in Wales needs to embed the principles of effective stewardship of public services in its approach to procurement. They should:
  - Demonstrate a public interest if outsourcing and set the default as in-house provision;
  - Establish strategic criteria to decide whether, what, when and to whom they outsource;
  - Assess their capacity for stewardship of public services; and
  - Review and monitor existing contracts in order to ensure that they deliver the required outcomes and terminate when this is in the public interest.

# Introduction

This paper has been produced at an important juncture in discussion of public procurement and outsourcing in Wales. Procurement services have come under significant critical scrutiny from both the Wales Audit Office and the National Assembly's Public Accounts Committee (Wales Audit Office 2017a; 2017b; National Assembly for Wales, 2018; Morgan and Lynch, 2017), and following a year of consultation, the former Cabinet Secretary for Finance announced the cessation of the National Procurement Service in its current form over time, and the development of a new procurement strategy (Drakeford, 2018).

In parallel, there has been a growing appetite to generate greater social and economic return from the c. £6 billion annual public procurement expenditure across Wales. Numerous Welsh Government initiatives now call for procurement to be used to lever broader social, economic and environmental outcomes, including generating fair work, community benefits, lowering the carbon footprint, and preventing human trafficking in supply chains (Welsh Government, 2017a; 2018a; 2018b).

This paper suggests that this means that now is a good moment to take a more strategic approach to outsourcing and procurement – at national, regional and local levels. The approach we advocate, *public service stewardship*, positions procurement as an important policy lever and recognises that decisions about how and by whom public services are delivered is not an apolitical, technocratic issue. They are of fundamental importance and need to be aligned with the strategic priorities of the Welsh Government and Welsh public bodies.

This paper draws on available evidence and expert opinion to contribute some ideas that we hope can inform the development of procurement and outsourcing strategies that enable effective stewardship of public services and reflect the best emerging practice in Wales, the wider UK and internationally. We first provide an assessment of the current approach to public services procurement in the UK as a whole and in Wales. The paper then outlines a vision of responsible stewardship of public services and explores some of the practical implications for public services outsourcing, at national and local levels and for individual public bodies.

# The current state of public services outsourcing

## Definitions

In this paper we focus primarily on the procurement of *services* (though many of the issues and ideas raised are also relevant to the procurement of goods and supplies, and to some extent works, such as infrastructure projects).

The procurement of public services from external providers is often described as *contracting out* or *outsourcing*. Outsourcing refers to the provision of a public service, which in the past have been delivered and managed by public sector employees, being delivered and managed instead on behalf of the public sector by an external provider - a private firm, a voluntary or community organisation, a social enterprise or co-operative<sup>1</sup>. It covers situations in which services are being provided externally for the first time and situations in which they are recommissioned from the existing external provider or an alternative provider.

When a public service is outsourced, the public body remains accountable for it to the electorate and taxpayers. The public body holds the external provider accountable via a contract but typically retains responsibility for issues such as the volume of service, eligibility criteria, charges and policy. In the public sphere, risk cannot be fully transferred to an external provider, as high-profile cases over the years have shown - from individual learning accounts in the 1990s, to more recent collapses of the care provider Southern Cross in 2011 and of the multi-service provider Carillion in 2018 (King and Crewe, 2014; Wearden, 2011; Public Administration and Constitutional Affairs Committee, 2018). As Cram (2014) makes clear,

**“The reality is, whatever the contract states, when things go wrong the public sector discovers that it still gets the blame”.**

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<sup>1</sup> Public service outsourcing is also distinct from both *commissioning*, and *privatisation*, though the terms are sometimes conflated in day-to-day debate. *Privatisation* happens when a public asset is sold or otherwise fully transferred to a private firm, which then uses the asset to deliver a public service. The public sector's influence over the performance and behaviours of privatised services is limited to market management tools such as regulation. Commissioning is the process of assessing needs, planning and prioritising services, and then leads into overseeing service provision, whether that is in-house provision, or partnership delivery of services.

## Public services outsourcing in the UK

The private sector, including companies of all sizes, voluntary and community sector organisations, social enterprises and co-operatives, have had a longstanding role in the delivery of public services in the UK (Sturgess, 2016) but the scale of outsourcing has increased rapidly since the 1980s (Julius, 2008) when the Government introduced policies designed to drive the growth of competitive tendering and ensure an enhanced role for the private sector. The Compulsory Competitive Tendering (CCT) regime for local government and parallel policies for other parts of the public sector initially applied to services such as catering, cleaning, grounds maintenance, hospital portering, and facilities management but by the 1990s were extended to a range of more 'professionalised' services.

In 1999, CCT was replaced by the 'best value' regime giving local authorities more scope to balance cost and quality considerations. However, public service outsourcing in England expanded both in value and in the scope of services; extending deeper into local government and health, welfare and employment services, as well as further into core functions of government such as defence and justice. (For an excellent summary, see Gash and Roos, 2012). (Wales and Scotland implemented their own versions of best value which placed much less emphasis on competition than was the case in England and led to less outsourcing than in England (Martin et al., 2013)).

By 2015, one widely reported estimate was that government spending on outsourced public services had virtually doubled from £64 billion to £120 billion in the five years of the coalition government and tens of thousands more staff transferred to private sector management. This highlights an acceleration of contracting in justice, welfare and defence, (Plimmer, 2015).

**“After 2004 in the UK, outsourcing was gradually seen as an option for (almost) all public services” (Bovaird, 2016: 68).**

Today, while no one disputes the argument that public service outsourcing is of a significant scale in the UK, there are only a few (incomplete) estimates of its total value. The National Audit Office (NAO) estimated in 2013 that 50 per cent of total spending on goods and services (£93.5 billion) went on 'third party' providers (NAO, 2013). The Business Services Association reported that in 2013 UK 'business service' activities were worth approximately £263 billion (9 per cent of GDP), of which about £80 billion (30 per cent) were services undertaken by UK businesses for the government sector (Oxford Economics, 2015). In 2015-16, the UK state spent a total of £192 billion on contracted services (e.g. outsourced and privately-run public services) and goods used in the delivery of public services (e.g. NHS pharmaceuticals, paper and energy). Capital spend contracts accounted for another £50 billion (NAO, 2016). The most recent figures quoted by the Institute for Government suggest that in 2017/18, total government procurement expenditure was £284 billion, which equates to a third of all public sector expenditure (Davies et al. 2018:5).

Over the years, a variety of justifications for outsourcing public services have been offered. Interestingly, UK governments have often announced they were outsourcing for one reason, and have then used a different narrative to explain the policy as contracts and conditions evolved. There has also been a tendency, especially since the 1997-2010 Labour Government in England, to conflate public service reform with outsourcing; and to adopt an ideologically-based assumption that competition among suppliers will lead to improved outcomes and lower costs. The more recent emphasis on outsourcing to voluntary and community organisations can also be understood in this light. As a senior Confederation of British Industry official put it in 2006, the voluntary sector has been “the weapon of choice for those engaged in the ongoing battle over public service reform” (Bentley, 2006, quoted in Davies 2011: 645).

Some of the **key rationales for outsourcing** voiced by its advocates include:

- Reducing costs;
- Creating economies of scale;
- Introducing short and long term additional capacity;
- Accessing expertise and investment;
- Faster introduction of new policies and services;
- Addressing under-performance;
- Challenging public sector trade unions;
- Offering greater consumer/user choice;
- A belief that competition will lead to service improvements;
- An ideologically driven desire to support the private sector; and
- A view that outsourcing should be the default “norm” (Bovaird 2016; NAO 2013)

These claims are based largely on theory and ideology and there is only patchy empirical evidence about the impact of outsourcing on outcomes, cost and quality (House of Commons Public Administration and Constitutional Affairs Committee, 2018). As Walker and Tizard (2018: 11) reflect on NHS outsourcing:

**“...we don’t know enough. NHS trusts don’t compare notes; don’t evaluate firms’ performance. NHS regulators don’t promote systemic capacity to contract and evidence on company performance is not centrally collected or shared”.**

In 2018, there were signs of **a step away from outsourcing** in England. A high-profile series of problems in outsourced contracts led to renewed political debate on the efficacy of outsourcing (Ring, 2018; Humphrys, 2018). These have included:

- G4S’s difficulties in supplying security guards for the Olympics;
- Capita’s failure to provide court translation services;

- Capita, Maximus and Atos missing quality performance targets for disability benefits assessment services; and
- Over-charging by G4S and Serco on electronic tagging contracts (Public Accounts Committee, 2014; 2018; Public Administration and Constitutional Affairs Committee, 2018; Work and Pensions Committee, 2018).

Political debate about outsourcing has also been shifting because of the Labour Party's commitment to publicly-owned and delivered services and increasing questioning of the effectiveness of outsourcing by public sector managers.

This has arguably been most marked at the local level. Councils spent £77 million on contracts between January and June 2018, in contrast to £136 million over the same period in 2017, a fall of 43 per cent (Arvato, 2018). There are examples of local authorities of all political persuasions taking services back in-house. Four out of ten Labour councils and a third of Conservative councils did so in 2017 (Association for Public Sector Excellence, cited by Plimmer, 2018). An NLGN survey found that only 15 per cent of English local authorities say they intend to outsource more over the next two years; 39 per cent say they will outsource less; and 46 per cent indicated no planned change from current levels (Walker and Lawson, 2018).

Some English councils have been reducing their use of outsourcing because they want to avoid 'locking up' large budgets at a time when austerity requires them to be financially agile and because of concerns about the transactional costs of outsourcing, quality issues, and its wider social and economic impact – for example on local employment and incomes. Shifting public opinion about the efficacy of business has also had an effect (Walker and Tizard, 2018; Plimmer, 2018). Some have decided to focus spend on the local economy and communities, where procurement rules allow this. Examples include the 'local community wealth building model' developed by Preston Council, which favours publicly managed in-house services to outsourcing (which is discussed in more detail below).

Four **key concerns** about outsourcing need addressing:

- In some cases, outsourcing and procurement **have not delivered the cost savings** that were anticipated. In 2013, the NAO reported that UK government departments did not believe they got good value from core contracts (NAO, 2013). More recently, there is evidence that the cost savings achieved in early outsourcing contracts have dwindled further as the contracted-out services have become more complex (Plimmer, 2015). Where cost savings have been achieved, it has often been done by cutting payroll costs by reducing headcount, transferring back office work to cheaper labour markets overseas, or paying lower wages to new staff (The Economist, 2018; Trades Union Congress and New Economics Foundation, 2015).

- There is only limited evidence of external providers **innovating to improve service quality**. A recent systematic review found that generalised claims of the economic and quality contributions of government outsourcing are almost impossible to make (Petersen et al., 2018, see also Gash and Roos, 2012). This is not necessarily the fault of providers. There is evidence that government procurement decisions prioritise reducing cost: a recent CBI survey found that just two per cent of businesses surveyed believe service quality is the main criterion by which governments award contracts, and just three per cent saw social outcomes as the determining factor (CBI & Browne Jacobsen, 2018).
- There are concerns about **commercial capability** within government. The NAO has concluded that poor performance, irregularities and misreporting on the part of private providers raise questions about the effectiveness not just of the management practices of those firms, but also “how well the government manages contracts” (NAO, 2013:10). The Institute for Government also suggests that outsourcing initiatives do not receive sufficient time and attention by government, especially once the contract has been issued (Gash, 2017). The Public Administration and Constitutional Affairs Committee acknowledged some improvements following investment in the Crown Commercial Service “albeit from a low base” (Public Administration and Constitutional Affairs Committee, 2018: para.124) but concluded that:

**“Government procurement has been driven by price while failing to appreciate differences in quality that contractors may be offering”.**  
(Public Administration and Constitutional Affairs Committee, 2018:3)

If competition is to play a positive role in public services, there must be **competitive supply markets** with effective regulation, transparency and accountability. Yet public service markets in the UK often have high barriers to entry and have evolved to depend on a just a few suppliers (NAO, 2013). Small and medium sized enterprises (SMEs) have often been unable to compete, leaving a small number of large corporations dominant which have become increasingly politically important owing to their size and the collective value placed of the services they deliver (Crouch, 2016; Innes, 2018). They are perceived as being “too big to fail”, as the cases of Southern Cross, Carillion and LearnDirect illustrate.

- A number of these larger private providers have been criticised for **over-reaching**. As the scale of outsourcing grew so did the complexity of the services provided, and the delivery models demanded. A recent example is the much-criticised ‘Transforming Rehabilitation’ programme in probation services, which the Ministry of Justice announced would be brought to an end two years early (Justice Committee, 2018). Sir Rod Aldridge, the founder of Capita, reflecting recently on the way in which large

outsourcers today have moved on from the simpler back office outsourcing contracts he was winning twenty years ago said:

**“I think they've gone too broad into markets and I think they've taken on contracts they shouldn't have taken on”** (Sir Rod Aldridge, quoted by Nimmo, 2018).

These concerns explain the signs of a shift away from outsourcing, but how this will go is not yet clear, and outsourcing remains important to public service provision across the UK. As Maddox (2018) observes, whilst “it’s hard to find cheerleaders for outsourcing at the moment”, it continues to have an important role to play and “it’s a matter of picking the right circumstances”.

## Public services outsourcing in Wales

The Welsh experience of outsourcing is different to England's (Cole and Stafford, 2015). The Welsh Government has seen collaboration and co-production as the keys to public service improvement rather than competition (Andrews and Martin, 2010) and its caution about outsourcing has led to accusations that it is suspicious of the private sector (IWA, 2010).

Nevertheless, roughly one third of the devolved Welsh Government budget has consistently been outsourced (Hutt, 2011; WAO, 2017a) and procurement and outsourcing have been promoted in policy statements on public service reform (e.g., Welsh Government, 2006; Hutt, 2015). Recently, the Welsh Government has sought to harness public procurement and outsourcing not simply for efficiency purposes, but as potential levers of inclusive growth. This is reflected in the commitment to realising community benefits in the 2011-16 Programme for Government and in the current administration’s Economic Action and Employability Plans (Welsh Government 2014a; 2017; 2018b). Nonetheless, ‘best value’ and compliance are usually prioritised over innovation or community benefit (WAO, 2017a).

There is a preference for not-for-profit provision in Wales, reflected in the Third Sector Scheme (see Welsh Government, 2014b). This is seen as offering a ‘middle way’ for public services outsourcing. Third sector organisations are considered to share the progressive values of the Welsh Government and to sit within communities. They are, it is claimed, best placed to “support a new approach to public services based on co-production” (Welsh Government, 2014b:7). Since 2010, there has however been a shift away from grant funding towards contracting for voluntary, social and community enterprises (Kapitsinis, 2018) which has seen a *commercial contract model* being applied to the relationship between providers and public service budget holders.

The Wales Audit Office has published the most definitive recent reports on the state of outsourcing and procurement in Wales (2017a; 2017b). The first highlights the complex demands placed on Welsh public bodies as they outsource – including responding to

competing priorities emerging from ambitious new policies and legislation such as the Wellbeing of Future Generations (Wales) Act 2015 and the Modern Slavery Act (2015); responding to new policy, legislation and technology; and tackling a talent gap through the recruitment and retention of key personnel (WAO, 2017a).

Its subsequent report on the National Procurement Service (NPS) found significant weaknesses in the original business case, operating model, and governance arrangements (WAO, 2017b):

**“National governance arrangements for procurement could be strengthened and there is clear scope for improvement in procurement arrangements at a national and local level”** (WAO, 2017a:10).

These concerns have triggered the current review of national procurement arrangements (Drakeford, 2018), which means that this is an opportune moment to take stock of and potentially redesign Wales’ approach to procurement.

The remainder of this report suggests some of the key considerations that could and probably should be taken in to account in order to improve approaches to procurement – at national, local and organisational levels.

## National Stewardship

In recent years, the notion of ‘stewardship’ has gained traction in discussions on the role of governments in public service provision. It requires that those at the top of public organisations take decisions for the long-term rather than being dictated to by short-term political expediency (Hallsworth, 2011; Oliver, 2017; see also Terry, 2015). It draws attention to the importance of anticipating the needs of future generations and ensuring that public services can adapt in the face of changing circumstances.

Crucially, stewardship is associated with a systems approach. In addition to the ethical and responsible management of resources for the long-term, it recognises that public outcomes are the result of a whole system of activity and relationships, not those of any single agency, service or provider (Maklouf, 2017; Leadership Development Centre, 2017). As such, stewardship is very closely aligned with the Wellbeing of Future Generations Act, and offers a useful way to articulate the approach that Welsh policymakers and public service leaders are being asked, and indeed required, to adopt.

Effective stewardship can be achieved through services provided directly by the public sector, grant-funded services, and services procured from private, voluntary, community or

social enterprises (VCSE). But it needs governments proactively to steer public service systems for the long-term, ensuring that they are stable and effective. It requires an understanding of the best combination of providers, now and in the future, and what is needed to steer different types of provision.

Stewarding outsourcing is therefore part of a broader process that involves strategic choices about the nature of public services and delivery models and the role of publicly owned and managed services and those delivered by others. It is not a mere 'technical' process. Deciding whether to outsource, what to outsource, how to outsource, to whom, and how to manage services once contracted; are complex, strategic, and ultimately political decisions (Lochlainn and Collins, 2015; Haarland et al., 2005) which need to be steered by politicians, supported by senior executive and non-executive directors nationally and locally.

We explain below five key requirements for effective national stewardship of public service procurement.

## Establishing a clear policy framework

Developing a national procurement and outsourcing strategy provides an opportunity to establish guiding principles on the benefits that procurement and outsourcing can facilitate. Such principles should be based both on evidence and on the values the government wishes to promote. There are four strategic policy choices.

First, **defining the scope of public services open to non-public sector provision**, and why. A conscious and long-term strategy could help avoid the risk of simply 'doing what we've always done', and provide a clear policy statement to which providers can respond. This might be done in a variety of ways for example:

- Defining the services that will be not be outsourced on principle;
- Setting in-house provision as the default option and requiring public bodies to demonstrate a public interest case for outsourcing services; or
- Encouraging or even requiring all public bodies to competitively procure all/some public services.

There is a case for setting the default as in-house public sector management and ownership in order to force public bodies that outsource services to do so in a considered manner which takes account of the overall impacts. For example, quantifying the impact on tax revenues, welfare payments and local spending power of any reduction in jobs and/or wages.

Second, making value-led choices about which **types of provider** are appropriate for providing public services. The Scottish Government, for example, has restricted access to contracts for the provision of children's foster care for looked-after children to VCSE providers for cases where placements are not provided directly by a local authority (The

Public Services Reform (Scotland) Act 2010; Consequential Modifications Order 2011; Statutory Guidance under the Procurement Reform (Scotland) Act 2014; Procurement of care and support services: best practice guidance, Scottish Government, 2016). Decisions of principle such as these must however be paired with a detailed understanding of the existing provider market and how the transition to a new pool of providers can be achieved without negative consequences for the (often vulnerable) population reliant on the services.

Third, establishing **regulations to ensure strategic outsourcing choices are transparent** and there is accountability for providers and public sector clients. The aim is to improve public service delivery and democratic accountability. For example, requiring public bodies to publish and consult on the case for outsourcing if they move from a default of in-house provision; and/or requiring them to adopt specified contract terms for all contracts above a de-minimis level - probably the EU public procurement threshold.

Fourth, **establishing which services are best provided over which geographical territory, whether procured or directly managed**. The Welsh Government has already indicated that its future procurement strategy is likely to organise and/or procure some services on a national basis (or even at a UK level); some on a regional or city-regional basis; and others at a local level. Of course, some services may be procured and even managed at a different level to that at which they are delivered. Judgements on these matters will be driven by political considerations, geographic identity, economic optimality, the nature of the service (including how bespoke it may be to a specific community, or possibly due its complexity, and/or capital investment requirements) and financial considerations. For example, major waste disposal may be better organised at the sub-regional level whilst household waste collection may be better undertaken on a local basis.

These are all inherently political choices, and need to be taken by political leaders, and scrutinised and debated by legislatures and councils. An absence of explicit principles, policy and regulation in a national procurement and outsourcing strategy may result in the persistence of previous practice and dominant values, without conscious consideration. In line with the notion of stewardship, re-thinking these choices provides an opportunity for Welsh political leaders and policymakers to build on the spirit and requirements of the Wellbeing of Future Generations Act. This could stimulate debate on principles such as those above, as well as requiring all public procuring bodies to ensure that their suppliers meet particular employment, environmental and supply chain standards. The forthcoming report on sustainable public procurement from the Wales Centre for Public Policy addresses these issues in some detail.

We suggest that the process of developing the national procurement strategy is undertaken in partnership with civil society and the wider Welsh public sector, as well as private sector providers, charities and trade unions. This may not be easy, but failure to gain joint

ownership of the strategy risks seriously undermining the effectiveness and efficiency of public service delivery.

## Ensuring capacity to procure and outsource effectively

National stewardship of procurement and outsourcing demands taking responsibility for ensuring that public services have the necessary expertise and capacity available across all the stages of outsourcing, from ensuring competitive supply markets, to tendering, to letting contracts, to managing those contracts and ensuring transparency and political accountability.

As we noted above, a lack of capacity has been raised as a serious issue both in Wales and in the UK government despite investment in the Crown Commercial Service (WAO, 2017a; Public Administration and Constitutional Affairs Committee, 2018; Walker and Tizard, 2018).

National stewardship of procurement and outsourcing should include ensuring there is sufficient expertise and capacity to enable Welsh public bodies to act, collectively and independently, as an **'intelligent client'** (NAO, 2016). Public bodies need access to such expertise at different times, and across Wales many public bodies may struggle to maintain appropriate resources in-house. A response to this could be a shared service, or network of shared services, to exchange experience without diminishing the independent decision-making authority of public bodies. Indeed, such arrangements locally are already emerging (WAO, 2017a) and can enhance both the quality of such decisions and their implementation. Such an approach however requires all senior decision makers to have some commercial understanding so that not all decisions are left to specialist procurement and commercial teams.

## Market stewardship

If services are to be outsourced, it is important that government ensures that the markets they rely upon, and the providers they need to deliver vital services function well. Day-to-day discussions of procurement and outsourcing tend to focus on individual transactions. Effective outsourcing of public services however relies on the presence of sufficient providers with appropriate capabilities, capacity, ethos and financial stability to bid for a contract. The Institute for Government (2015) describes public service market stewardship as follows:

**“Market stewardship takes a broader perspective – considering how to set the rules of the market so that competition between those providers works effectively.”**

A number of public services markets are dominated by just a few contractors (NAO, 2013); others, such as the Welsh adult care home market, are fragmented and unstable (Moultrie and Rattle, 2015). In England, the Care Act 2014 required local authorities to facilitate a

diverse, sustainable and high quality provider market, aimed at supporting the policy ambition of promoting the wellbeing of the whole local population, not just those currently in receipt of support (Institute of Public Care, 2016). There is however some concern that councils are struggling to meet this responsibility given individual authorities have relatively weak buying power in these markets (Cordis Bright, 2015; ADSS, 2017).

In Wales, market stewardship may be more effective at the national level and could involve responsibility for the generation of market intelligence; shaping and influencing the supply market; and, as far as state aid and other regulations allow, supporting the development of new entrants into the supply market (including start-ups, VCSEs and user and/or staff co-operatives). Where contractors operate across national boundaries, market shaping in Wales must of course also be mindful of public sector markets beyond Wales.

At the other end of the scale, national market stewardship can still leave the space for local market shaping, through which local public bodies could pursue additional specific social, economic and environmental goals via their contracting activities (see the section on place-based outsourcing, below).

## A 'Domesday Book' of public service contracts

Stewarding public service markets, at both national and local levels, requires up to date information about the state of those markets - who is operating in them, what contracts they hold, and their operational and financial resilience. Only with this information can governments monitor the spread of providers, anticipate risks, and intervene in a timely way if a contract appears to be at risk of failing. For most public service markets in Wales, and the UK as a whole, the necessary depth and breadth of information and analysis is not currently available.

**“The quality of the data available on procurement and outsourcing is poor ... Improving government data architecture has a cost, but the cost of inaction will be even greater.”** (Davies et al., 2018:36)

Developing a database - a 'Domesday Book' - of all significant outsourcing contracts (Walker and Tizard, 2018) across Welsh public services would fill this gap, providing government with information on each service being outsourced; the contractor's business details; the value of the contract; and its start and end dates; the contracted objectives; and performance information. Some building blocks are in place, such as possibly the Welsh Government's *Atemis* database, and from a different angle, the model established in the Children's Commissioning Consortium Cymru (4Cs), a consortium of Welsh local authorities that collaborates in relation to commissioning placements for looked-after children.

The database could be designed in partnership with public bodies, in order to ensure that it meets local as well as national user needs. It will be important for all public service partners

to commit to update the database with all significant contracts in the future, although linking data from the Sell2Wales portal (Contracts Finder in England) should facilitate this. Given the connectivity between Welsh and other UK public service markets, the government could also encourage the UK, Scottish and Northern Irish governments to establish similar, interconnected Domesday Books. An interim measure might be to agree access to the Cabinet Office database for major Whitehall outsourcing contracts and it will be important to take note of the recommendations set out in the Institute for Government's recent report on the scale and nature of contracting in the UK about how to improve the quality of procurement data (Davies et al., 2018).

An outsourcing Domesday Book would give ministers, officials, council leaders and other public sector leaders an overview of current and planned public service outsourcing which could inform decisions about contracting and risk management, and enable them to evaluate when outsourcing is most effective (e.g., by service type, provider type, procurement type, or contract type).

## Stronger national accountability

National stewardship of public service systems requires the establishment of the necessary policy and legislative framework, operating capabilities, and data curation and analysis, to enable those systems to operate well. As a political and strategic activity it should of course also be appropriately scrutinised.

Given that a third of the Welsh Government budget is spent on external provision, we suggest consideration is given to making procurement and outsourcing a permanent cross-cutting scrutiny theme. The National Assembly's select committees could be empowered to review particular public service systems, markets, or even major contractual relationships; with the right to call for evidence and witnesses from the public sector client, the provider, experts and other stakeholders. Such reviews and inquiries should address issues such as community benefits (e.g., impact on local economies, sustainability, staff and communities), alongside considerations of value for money.

## Place-based stewardship

Local authorities and other local public bodies must decide their policy position in respect of public service outsourcing in the same way as has been suggested for national government, as they of course adopt their own policies on public procurement and outsourcing, responding to their local social, economic and political contexts, and any national policy and

regulatory framework. We highlight here two key strategic options for public service leaders to address, rather than attempting to offer a comprehensive 'solution'.

## A place-based policy and approach

If there is a policy of public service outsourcing in a locality it is important that this is addressed as part of the local stewardship of public services. Every public body has a responsibility to ensure that its outsourcing and procurement approach achieves its social, economic and financial aims. Welsh local authorities might take a lead in coordinating a joint approach amongst local agencies, given their democratic legitimacy and place-shaping role (Davies, 2018). This could mean each council brokering agreement across the broad public sector in its locality, including via the Public Service Board but also partnering with others, with the aim of adopting common approaches to the stewardship of public services including procurement and outsourcing. Where there is potential value, regional collaboration can also be considered within the principles of the national policy framework.

Place-based approaches can improve local services by enabling the emergence of place-based systems that are better able to respond to local needs (Ham and Alderwick, 2015; IPC, 2016). They can also be designed to support the local economy, develop and build the local capacity of SMEs and VCSEs, ensure local supply of goods, promote local employment, meet diversity policies and generate a sense of civic pride. Some insight was provided by the English "Total Place" model which was piloted towards the end of the last UK Labour Government (HM Treasury and DCLG, 2010). More recently, the Local Community Wealth Building approach adopted by Preston Borough Council could provide a model for some localities in Wales (CLES, n.d.). Its key principles for place-based procurement are:

- **Wealth that's there** – harnessing the power of the money that key public institutions spend on procuring goods and works. Aiming to localise as much as possible, securing investment in local supply chains and improving local economic competitiveness.
- **Workforce** – maximising the benefits of investment in staff by building a skilled and committed workforce and providing an exemplar to local businesses. Paying at least the Living Wage to all employees and encouraging staff to spend local and save local, including through credit unions.
- **Land, Property and Investments** – using anchor institution assets to lever in additional investment, to encourage the development of new businesses and support new methods of financial intermediation. To consider asset transfer to community or private sector interests where this best serves the interests of the wider community.
- **Economic democracy** – supporting the growth of alternative models of economic governance which give citizens greater investment in and control over their economic

future. This can mean the development of new co-operatives as well as other ways of helping people feel ownership of assets and decision-making processes.

A place-based approach could mean adopting the default as being publicly managed and publicly owned services with the duty to demonstrate, through a strategic “make or buy” decision-making process, the public interest case for outsourcing, if this is the chosen option. Indeed, the Preston approach applies to the procurement of goods and works only, as they are committed to in-house management of public services. However, the principle of local procurement, if there is outsourcing, could be considered as a means of aligning public service delivery with the development of new businesses, including social enterprises and co-operatives, supporting and involving bespoke and representative voluntary and community groups and economic development.

It should be noted that the legal framework for procurement requires open and fair competition for contracts and therefore does not allow for discrimination against non-local suppliers (EU Public Contracts Directive 2014; EU Concession Contracts Regulations 2016; Public Contracts Regulations 2015; Modern Slavery Act 2015; Well-being of Future Generations (Wales) Act 2015). Indeed, most of this legislation will continue to apply should the UK leave the EU. However, local procurers can identify objective contract award criteria under which service providers such as VCSEs and local SMEs may offer additional value, linked to the quality of services. These should align with the contracting body’s social and environmental priorities, including their own economic development policies. This is discussed further in the forthcoming report on sustainable public procurement from the Wales Centre for Public Policy.

This requires a focus on longer-term economic, social and environmental goals and local politicians, public service leaders, potential contractors and service users therefore need to be brought together to engage in conversations to generate new understandings of needs, and to think through how these might be met locally (Uyarra et al., 2017). Where appropriate, conversations can be extended to regional partners both to collaborate in new approaches, and to share and continue to learn.

## **Stronger local accountability**

As public services become more integrated, and more complex, it is vital that accountability arrangements keep up (Guerin et al., 2018). Local authority scrutiny committees are responsible for scrutinising Public Service Boards (PSBs) and the statutory guidance accompanying the Wellbeing of Future Generations Act specifies procurement as a core organisational activity across all public bodies and therefore as a key lever for promoting the sustainable development principle (Welsh Government, 2016). However, the guidelines for scrutiny of PSBs are silent on procurement and outsourcing (Welsh Government, 2017b).

The principle established by the extension of Welsh local government scrutiny to PSBs could usefully be applied to the scrutiny of all local public spend via procurement and outsourcing. All public bodies could be held accountable for outsourcing in the local public interest with the aim of maximising the impact and value for money of their spend for local communities. Translating this into practice might involve:

- Enabling local authority scrutiny committees to call for evidence, review and comment on procurement and outsourcing by all public bodies operating in their district; with the right to call for evidence and witnesses from the public sector, the providers and other stakeholders including user groups and trade unions;
- Ensuring scrutiny committees have access to expert advice on procurement, contracting, service standards and commercial issues and have an understanding of what is possible under the existing legal framework;
- Publishing details of procurement and outsourcing contracts, and operational and financial performance data and placing a duty on local authorities and other public bodies to contribute to a national 'Domesday Book'; and
- Encouraging local media and citizen interest in such data and the underlying policy choices.

The tone of local accountability will be important too. If it becomes a mechanism for apportioning blame rather than supporting improvement, there is a risk change may become even harder to achieve as officials or politicians seek to avoid censure (Hood, 2007).

## Organisational practices

All public bodies, whether national or local, will want to ensure that if they are considering potentially outsourcing a public service or reviewing existing outsourcing arrangements, they are maximising public value. In this section, we highlight organisational practices that could be adopted to secure these outcomes.

### Establishing strategic criteria if outsourcing

Within the framework of the national policy principles and place-based approach proposed above, each public body could adopt its own strategic 'make or buy' criteria tailored to its priorities. These could be used to decide between a number of alternative methods of provision, including through outsourcing, in-house provision, grant-funding and partnerships.

Publishing clear criteria would help inform decisions, such as when outsourcing should be pursued (i.e. for what type or category of services), and explicit cases when it should and

should not be used, which may be value-based (e.g. personal services such as children's services or core policing). Practical considerations will include:

- The health of the market (availability of supply, quality and ethos of potential alternative suppliers);
- Quality, efficiency and effectiveness of the current service;
- The public body's capacity and expertise to outsource and manage contracts;
- Transactional costs of procurement and contract management;
- Wider experience and evidence of outsourcing the service by other public bodies and potential contractors;
- The holistic impact on local economies, staff and public expenditure;
- Implications for wider public policy goals;
- Policy and regulatory compliance; and
- Political preferences.

## Contracting in the public interest

If the decision is taken to outsource a public service, the contracting public body should consider the terms that will apply. Contract terms promoting sustainable local growth and employment rights and conditions are increasingly sought from outsourced services to reinforce social and economic value. Measures to encourage transparency in reporting and accountability should also be set in the terms of the contract and specific examples are listed in Annex I.

Public bodies might seek to negotiate such measures into existing contracts too, though the costs of doing so may be significant. Similarly, they may want to consider the extent to which they encourage or require these to be replicated throughout a provider's supply chain, and how they could reasonably enforce such requirements.

The high-profile failure of Carillion, amongst other cases, shows that public bodies must take into account the internal business practices of contractors: these can be material to an organisation's performance and behaviours, and hence to the public interest. In the extreme case of Carillion, the company directors were deemed to have put their personal financial interests first and were "responsible and culpable" for the firm's collapse (House of Commons Business, Energy and Industrial Strategy and Work and Pensions Committees, 2018:3). Commercial acumen is vital in provider assessment, and is needed to gauge the various factors that might influence behaviours, for example:

- Organisational structure and ownership, e.g. investor influence means that private equity companies are usually expected to make a greater and faster return on investment than other companies;
- Incentive schemes for managers and senior executives; and
- Overall commercial health of a provider, encompassing a company's wider business activities, and risk of failure or takeover.

All the measures suggested here are underpinned by the intention of improving contracting in the public interest. They should however be introduced in a way that is proportionate and sensitive to risk, which relies on a solid understanding of the ability of providers to respond.

## Reviewing capacity

Currently, many public bodies are under-resourced and lack the necessary skills and expertise to act on their own without external support. This is a challenge not limited to Wales, nor to national government (WAO, 2017a; Jacobs, 2018). Within the context of a national stewardship responsibility for ensuring capacity, local political and executive leaders must understand the professional capacity and expertise needed for the scale and complexity of outsourcing and contract management they are committing to. This highlights the need for investment in in-house recruitment and retention and/or collaborative arrangements to share expertise. Examples include the Cardiff Council trading company and the shared service arrangement between Pembrokeshire County Council and Pembrokeshire College (WAO, 2017a).

## Reviewing existing contracts

All too often, discussion about outsourcing focuses on the future with insufficient attention being paid to the services already being delivered under contract. Effective stewardship requires political and executive leaders to also pro-actively monitor *existing* contracts: continuously questioning and testing what is in the public interest. It requires the same knowledge and scrutiny of in-house services too, which should meet the same standards as those delivered through outsourcing arrangements.

The approach taken to reviewing contracts should be a political decision, with reviews undertaken by public officials and the involvement of key stakeholders including service users and their representatives, staff and their trade unions. The process should be transparent with the results published and subject to scrutiny, see Figure 1.

**Figure 1: Potential review considerations**

Reviewing individual contracts	Reviewing the portfolio
<ul style="list-style-type: none"> <li>• Operational performance</li> <li>• Social, economic and environmental value and impact (including to the local economy)</li> <li>• Financial performance, including value for money (for guidance on appraisal and evaluation see HM Treasury, 2018)</li> <li>• Staff terms and conditions</li> <li>• Effectiveness and cost of contract management</li> <li>• Intended or unintended consequences for other public expenditure budgets</li> <li>• Remaining period of the contract, risks, and exit arrangements (including cost and service implications)</li> </ul>	<ul style="list-style-type: none"> <li>• A forward plan of when contracts expire across the local portfolio</li> <li>• An overview of how well contracts are being met – and identification of common risks and those particular to certain providers</li> <li>• An overview of local market conditions</li> <li>• A roadmap of how national policy principles and local ‘make or buy’ criteria can be achieved from the current position</li> <li>• An approach to securing wider policy goals</li> </ul>

Such reviews could lead to the renegotiation of contracts, improved performance management of contracts, or contract termination where there is a demonstrable public interest and/or value for money benefit.

# Concluding remarks

There is real appetite to maximise the ‘social return’ on the estimated £6 billion of the devolved budget that is spent annually via procurement and outsourcing in Wales today. In this report, we have sought to articulate some practical proposals for public service outsourcing, at both national and local levels, framed by the idea of *public service stewardship*.

Public service stewardship requires that national policymakers and public service leaders take responsibility for the long-term health and integrity of public service systems and therefore set out a deliberate approach to outsourcing and procurement. Recent lessons have shown that outsourcing does not fully transfer risk to the provider, therefore there is a need to maintain capacity for oversight and accountability within the public body as the client, and to build and maintain relationships with suppliers. It also requires reconsidering the assumption that competition in supply will lead to improved outcomes and lower costs.

We suggest that a strategic approach to public service outsourcing, as one mechanism for providing public services, sits as a stewardship responsibility. In this paper we have suggested that strategic policy on approaches to public service delivery and outsourcing should be set at national, regional, local and organisational levels. The following key steps have the potential to ensure contracting is undertaken in the public interest and therefore supports greater social and economic value in the long-term from public procurement expenditure.

## National stewardship:

- Establish a clear policy framework that defines the scope of services open to being outsourced; the types of provider preferred; mechanisms to ensure transparency; and which services will be contracted at a local, regional and national level;
- Ensure capacity to outsource effectively;
- Actively steward public service markets;
- Maintain a Domesday Book of public services contracts; and
- Strengthen accountability arrangements.

## Local place-based stewardship:

- Focus on the local economy and public service system
- Build up existing partnerships to achieve a shared vision of community benefits;
- Strengthen local accountability for outsourcing.

## Each public service organisation:

- Establish aligned ‘make or buy’ criteria;
- Review capacity to do outsourcing well, and review existing contracts;
- Ensure the organisation is contracting in the public interest.

The proposals here are not comprehensive. Instead we have sought to articulate some key opportunities. In doing so, we are not advocating for more or less outsourcing, but argue that

if public bodies do procure outsourced services, they should do so deliberately, carefully and transparently; informed by evidence and experience.

Procurement and outsourcing are often incorrectly treated as wholly technocratic. While implementation demands professional expertise the guiding strategy and principles should reflect values set democratically. We note that decision making is politically influenced and we hope the ideas we have put forward stimulate debate amongst colleagues directly engaged in the development of Wales' next national procurement strategy, but also across wider civic society.

# Annex I: Contracting in the public interest

While in-house provision of public services may be the default position, if the decision is taken to outsource a public service – at a national, regional or local level – the contracting public body should consider the terms that will apply. Example contract terms that might be introduced to reinforce key types of social and economic value increasingly sought from outsourced services are listed below<sup>2</sup>, alongside measures to encourage transparency in reporting and accountability. All require careful consideration before introduction, but illustrate the growing range of approaches being discussed in the public sphere.

- **Sustainable local growth:**
  - A requirement to purchase sustainably-produced goods – e.g., FSC certified paper products; and
  - Contract award terms to include social priorities, promoting for example the employment of disadvantaged workers, which could include local unemployed people.
- **Employment rights and conditions:**
  - Payment of the ‘real living wage’ or more to all staff, and guaranteed pensions;
  - New recruits to be employed on terms equivalent to those transferred from the public sector (‘TUPE’d across’); and
  - These conditions to be applied throughout a contractor’s supply chain, as per the Welsh Government’s ‘Ethical Employment in Supply Chains’ code of practice (Welsh Government, 2018a).
- **Reporting:**
  - Transparent reporting and publication of operational and financial performance, against the original objectives and targets;
  - Transparent reporting of the provider’s tax and remuneration policy; governance standards; and similar indicators of their ethical basis;
  - Any changes to the ownership structure of the provider (Davies et al., 2018); and
  - ‘Open book’ accounting to national standards with independent audits and which affords a mechanism for profit sharing or capping if appropriate.
- **Strengthening accountability:**
  - Contractor(s) to apply Freedom of Information (FOI) requirements on the same basis as the public sector;

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<sup>2</sup> The forthcoming report on sustainable public procurement from the Wales Centre for Public Policy explores some of these measures in more detail.

- Contractor(s) and public client functions and data to be subject to public auditors and inspectorates;
- Contractor(s) to give evidence to Assembly and local authority oversight and scrutiny committees when requested;
- Staff, trade unions, service users and representative groups to be involved in monitoring and review of service design and performance, with providers;
- Contractor(s) to have an active whistleblowing policy that allows staff to alert public sector commissioners and media, not just the employing contractor; and
- Addition of an optional break clause should a contractor change ownership, radically alter its internal business model, or have major commercial problems.

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