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BRIEFING PAPER

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Local government: alternative models of service delivery

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Summary

Most local authorities no longer rely solely on 'in-house' operations to deliver either public services or their own internal functions. This briefing paper provides an introduction to some of the alternative approaches being used by local authorities. These include the use of 'shared services', between multiple local authorities and also between local authorities and other public bodies; outsourcing to private or voluntary providers, and its obverse, 'insourcing'; the increasing use of Local Authority Trading Companies (LATCs) to trade for profit, providing a revenue stream for the local authority; and mutuals. It also notes the development of place-based sharing of services via 'community budgets' and via the 2015-16 'devolution deals'.

The briefing also includes notes on research that has been conducted on shared services, outsourcing, and trading, plus links to relevant statistical sources.

This note covers England only. Local authorities in Scotland, Wales and Northern Ireland have also explored alternative approaches to service delivery. The legal situation is similar in each territory, though differing in some details.

1. Service delivery in local government

Local authorities have always had the legal power to make use of different forms of service delivery. Up to the mid-1980s, local authorities provided most of their services 'in house' with their own departments. Following the introduction of compulsory competitive tendering in the *Local Government Act 1988*, authorities were legally required to open many of their services to competitive tender. This requirement was replaced by the 'Best Value' regime under the *Local Government Act 1999*, after which many forms of alternative service provision have continued to flourish.

Under the Coalition government, the 2011 White Paper Open public services promoted greater use of different forms of service delivery. Reductions to local government funding during the 2010-15 Parliament also obliged local authorities both to experiment with alternative forms of service delivery, seek to reduce overheads, and explore new means to raise revenue. This note provides a brief introduction to the various options that have been pursued by local authorities.

This note covers local authorities in England. A number of the approaches outlined here also exist in Scotland, Wales and Northern Ireland, but they may operate under different legislative provisions. Councils' roles and options may therefore differ slightly from those set out in this note.

2. Shared services

2.1 Legal provisions

'Shared services' refers to two or more authorities providing a given service to their electorates on a joint basis. Sharing may take place between neighbouring authorities or non-neighbouring authorities. It may take place between county and district councils, district councils, or between metropolitan boroughs. Shared services may be provided via a joint in-house department or they may be jointly outsourced (see below). Governance of shared services can take place via a joint committee between the participating authorities, or simply through agreements between the executives of the participating authorities.

The legislative authority for local authorities to share services is in the *Local Government Act 1972*. Section 112 provides that local authorities may appoint officers to enable them to discharge their own functions and any functions they carry out for another local authority. Section 113 allows a local authority to enter into an agreement with another authority to place its officers at the disposal of the other authority, subject to consultation with the staff concerned and negotiation about any changes in terms and conditions. Additionally, section 1 of the *Local Authorities (Goods and Services Act) 1970* enables a local authority to enter into an agreement to provide another local authority with goods and services, including administrative, professional or technical services.

The general power of competence provided in the *Localism Act 2011* gives councils another legal route to provide shared services. It provides that councils wishing to deliver shared services by "trading for a commercial purpose" – i.e. for profit – must do this via a company structure (see section 4).[1]

2.2 Rationales for shared services

The immediate rationale for local authorities which have decided to share their service provision with other local authorities is often financial. They may also seek service improvements and improved internal effectiveness. A further rationale may be to tap into greater levels of expertise.

Councils do not need to be geographical neighbours to share services. There are many examples of services being shared between district councils in different counties. The LGA report said:

> Serendipity, some might say opportunity, played a part in triggering many of decisions we reviewed to share management: with the availability of a willing partner; a change of political

[1] See the Library briefing paper *The general power of competence*. The power in the 2011 Act extends only to England. A general power is available in Northern Ireland via identical legislation. In Wales, a draft Local Government Bill, containing amongst other things a general power, was before the National Assembly in 2015-16.

> leadership; the availability of transformation funding; or the imminent departure of a chief executive.[2]

There has been some overlap between agreements to share services and renewed debates, during 2015 and 2016, about structural reorganisation of local government i.e. the creation of more unitary authorities. The current procedures for local government reorganisation are outlined in the Library briefing paper *Local government in England: structures*.

A number of 'devolution deals' have been agreed between the Government and local areas, principally involving new or planned 'combined authorities', through 2015 and 2016 (see the Library briefing paper *Devolution to local government in England* for details). Many elements of the deals amount to commitments to share services between local authorities. For instance, Greater Manchester's devolution deals include commitments to redesign children's services across the ten Greater Manchester boroughs. The West Midlands devolution deal includes a commitment to "co-design" approaches to troubled individuals.[3]

2.3 Progress and evaluation

The LGA published a report in 2016 which suggested that sharing services did not necessarily lead to significant changes in the way that services were delivered. This is the concept of 'public service transformation' (see section 2.4 below). The report said:

> Simply 'bolting together' management structures to achieve short-term cost savings is a tactical solution, not a recipe for longterm success, and may leave the bigger strategic prizes of partnering on the table.
>
> **...**Comfort with ambiguity, multiple relationships and flexibility in structure, skills and behaviours seem vital to longer-term partnering success. Leaders and their HR functions need to think about developing and supporting the verb of 'partnering', rather than the noun of a single 'partnership'.[4]

The report suggested that a locally tailored approach was key to successful sharing of services. Engagement with councillors and affected staff were also important.

Grant Thornton's 2014 report, *Responding to the challenge: alternative delivery models in local government*, found that:

> Contracts and partnerships with other public bodies have increased significantly since our last report. Common examples include: shared management teams; joint service provision; joint commissioning of social care with the NHS; community budgets; joint transport and economic regeneration strategies; and more joint ventures with the Government through 'accountable body' status. These arrangements are being encouraged by the Government, for example, through mechanisms such as the

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2 LGA, *Investigating and improving the HR and OD capability in shared councils*, 23 February 2016, p. 24

3 HM Treasury, *West Midlands Devolution Deal*, 2015, p. 14

4 LGA, *Investigating and improving the HR and OD capability in shared councils*, 23 February 2016

> Integration Transformation Fund/Better Care Fund (which supports health and social care service integration). We consider that further partnership working and joint arrangements will play a significant role in helping local government move towards achieving financial security.[5]

The LGA produced a report evaluating the success of five examples of shared services in August 2012. The report suggested that initial reductions in staffing through sharing of services deliver quick savings, but then further savings result from improved business practices:

> There are clear financial benefits to be delivered from sharing services. In the early stages the savings are mainly from staff reductions as duplication is removed and structures merged.
>
> The set up and integration costs for each shared service arrangement were modest, with all succeeding in delivering a payback period of less than two years. The investment costs ranged from 18 per cent to 59 per cent of the savings in the first two years and were typically comprised of redundancy, implementation team, rebranding costs and IT expenditure. There was no evidence of any material decline in customer or staff satisfaction levels in any of the [five examined] case studies.[6]

The report also suggests that some shared services companies may seek to offer their services to other organisations as well, hence providing an income stream for the participating authorities. Under certain circumstances, this would constitute trading activities (see section 4 below). The report notes some advantages of this approach:

> Shared services could be more attractive to some councils than outsourcing. One of the reasons for this is that the council can retain more control over the shared service than an outsourced service. If an outsourced service fails the council has to find a different way of providing the service – either by taking the service back in house – if this is possible – or finding a different provider. Either option is likely to be expensive. Through the level of control and influence a council has over a shared service it can be argued this option provides a level of resilience an outsourced service does not.[7]

The NLGN report *Shared necessities: the next generation of shared services* analysed the position relating to shared services early in 2011.[8] NLGN undertook a survey of shared services across 58 English local authorities and found that the most commonly shared areas were back-office functions such as HR, finance, legal services and procurement, followed by highways, environment and regulatory services. The survey showed that 44 of the surveyed councils were sharing back office functions but only 39 front-office functions. Authorities sharing back office functions (which only account for 8.9% of an authority's total spend on average) were not saving large amounts of money, but there was potential for greater savings to be made.

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5 Grant Thornton, *Responding to the challenge: alternative delivery models in local government*, 2014, p.2
6 Drummond Macfarlane, *Services Shared, costs spared?* LGA, 2012, p.6
7 Drummond Macfarlane, *Services Shared, costs spared?* LGA, 2012, p.21
8 Tom Symons, Olivier Roth and Joe Sturge, *Shared necessities: the next generation of shared services*, NLGN, 2011

2.4 Public service transformation

The phrase 'public service transformation' is frequently used in the context of shared services. This reflects that new models of service delivery do not necessarily lead to significant changes in the *way* that services are provided: therefore they may not be a sufficient response to an era of shrinking budgets and multiple challenges to public services. 'Public service transformation' can refer to any of the following ideas:

- The concept of building public services around the user, also referred to as 'co-design' or 'co-production';
- Integration of public services ('breaking down silos'), whether with reference to a particular geographical area as in the case of community budgets (see section 5), or simply seeking closer and better relationships between service provider organisations;
- New ways of working, triggered by major reductions in grant funding for local authorities: this may include 'demand management';[9]
- Changes in traditional leadership and employment relations, including involvement of employees in transformation initiatives:

  > There is widespread belief that public services can only be more responsive to the needs of service users if employees on the front line are trusted to innovate and empowered to act with more autonomy. This requires a fundamental culture change away from traditional command and control models of leadership to one in which leadership is distributed across organisations.[10]

In March 2013 the DCLG announced the creation of the "Public Services Transformation Network". This was intended to build on the Community Budgets pilots and to:

> …spread the innovation and share the learning from the whole-place Community Budget pilots, to support other places to deliver better services for local people for less money, and boost economic growth.
>
> The network will be made up of people with experience and expertise from across government departments, councils and local agencies. Their aim will be to secure improved outcomes by co-designing better services for less.
>
> Local areas will need to set out which service areas they want to reform, how they can succeed as the 4 pilots showed is necessary, and provide evidence that a range of local service partners are fully bought in. [11]

Nine pilot areas were announced in July 2013. These were:[12]

- Bath and North East Somerset
- Bournemouth and Poole
- Hampshire
- Lewisham, Lambeth & Southwark

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9 LGA, *Managing Customer Demand*, May 2013
10 CIPD, *Leading culture change: employee engagement and public service transformation*, November 2012, p. 4
11 DCLG, *Community budget pilots inspire new nationwide network of public service revolutionaries*, March 2013
12 DCLG, *Nine new places join next phase of local public service transformation*, July 2013

- Sheffield
- Surrey
- Swindon
- The West London Alliance (Barnet, Brent, Ealing, Harrow, Hillingdon, Hounslow)
- Wirral

The Network was unexpectedly closed down at the beginning of April 2016.

2.5 Statistics on shared services

The Local Government Association has produced a compendium of shared services as well as a number of resources, available on the LGA website. The latest version, compiled in October 2015, shows that currently at least 337 councils across England are engaged in 416 shared service arrangements resulting in £462 million of efficiency savings. A map of shared services, for England only, is also available, as is a breakdown of the financial benefits realised by different types of shared services.[13] A press release in February 2016 stated:

> Re-launching its 2015 shared services map, which found local authorities had accumulated a total of £462m over the year in efficiency savings thanks to shared service initiatives, the LGA reminded councils that "not all partnerships are created equal" and that size often matters.
>
> The LGA said that while the map clearly demonstrated the huge savings sharing services can bring, with the biggest partnerships saving as much as £2.5m per year, more than half of all partnerships saved less than £100,000.
>
> While back office functions, such as legal, audit and human resources, are the most popular services to share, the LGA said they tend to offer the smallest savings.
>
> The biggest savings were made in sharing procurement and capital assets, and the LGA suggested councils with less developed shared initiatives could focus on these initially.[14]

2.6 Examples of shared services

Examples of shared service initiatives include the following:

- East Midlands Shared Services is a partnership between Nottingham City Council and Leicestershire County Council involving the sharing of back office services including human resources, payroll and finance. Finance is based in Nottingham, while HR and payroll is in Leicestershire. This is intended to bring savings in excess of £1m.[15] The partnership also offers its services to other public sector bodies;
- Christchurch Borough Council is working in partnership with East Dorset District Council and has a shared chief executive and

[13] See the Shared Services pages on the LGA website.
[14] http://www.publicfinance.co.uk/news/2016/02/lga-highlights-small-scale-shared-service-savings
[15] East Midlands Shared Services, Annual Report 2012-13

management team.[16] A number of services are being shared and the savings have been quantified at over £1 million per annum;[17]

- Hoople is a company jointly owned by Herefordshire Council and Wye Valley NHS Trust. It now offers business services – including human resources, finance, apprenticeships, business transformation, and IT – to both private and public sector organisations;[18]
- In 2015, the London Boroughs of Richmond-upon-Thames and Wandsworth announced proposals for the creation of a shared staffing structure, to be implemented by 2017, with an aim of delivering savings of up to £10 million per year in each authority;[19]
- The three London boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster have developed a close working relationship across a number of services: this is known as the 'Tri-Borough partnership'. The councils published the Tri-borough report: bold ideas for challenging times on 9 February 2011. The plans sought to guarantee the independence of the three boroughs by introducing a 'sovereignty agreement' which would safeguard each of the council's local autonomy.[20]

Further examples, and further reading, can be found on the LGA shared services webpages.

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16 See Christchurch Borough Council and East Dorset District Council Partnership, www.dorsetforyou.com

17 See "Council Tax in Christchurch 2014/15", www.dorsetforyou.com

18 Hoople, "About us"

19 "Councils announce plans for shared staffing structure", Wandsworth Council news story, 23 January 2015

20 *Tri-borough report: bold ideas for challenging times*, 2011, p.7. See also Tri-Borough Review: Critical Friends' Board Report to the London Borough of Hammersmith & Fulham, 27 October 2014.

3. Outsourcing

3.1 Power to outsource services

Local authorities have the power to 'outsource' provision of services to private or third sector organisations under section 135 of the *Local Government Act 1972*. This was modified by the introduction of compulsory competitive tendering (the *Local Government Act 1988*) and Best Value (the *Local Government Act 1999*). Today, authorities may decide to outsource services as they see fit, either singly or jointly with another authority, providing that quality and value for money are maintained. Where local authority employees are transferred to a private sector provider as a result of contracting out, they must be covered by TUPE.[21]

A major outsourcing decision is likely to be preceded by local consultation, and there are examples of successful and unsuccessful legal challenges against outsourcing proposals. Ultimately, though, it is for local authorities to decide how best to deliver their services. Legal challenges to outsourcing may argue that a local authority has failed to meet statutory duties, for instance regarding consultation or equality, and that their decision must therefore be reconsidered.

There are a variety of reasons why a local authority might wish to outsource services:

> The theoretical basis of outsourcing derives from the notion of competition as the driver of efficiency, quality improvement and innovation. The theory is overlaid with practical considerations around cost-cutting in an age of austerity and the need to tackle failings in public services. Strong counter-arguments are put forward which highlight theories of market failure as particularly relevant in the realm of public services and, on a practical level, the absence of any clear and robust evidence about the impacts of outsourcing…[22]

3.2 Examples of outsourcing

There are no comprehensive lists showing which authorities have outsourced which services, or which companies are contracted by which authorities. High-level statistics on the total contract amounts outsourced are available from Arvato's *UK Quarterly Outsourcing Index*. Information can also be found in the Outsourcing Yearbook, produced by the National Outsourcing Association.

Examples of outsourcing by local authorities include:

- In March 2015, Trafford Council announced that it had selected Amey LG to manage its economic growth, environment and infrastructure services. The contract involves the delivery of

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[21] The *Transfer of Undertakings (Protection of Employment) Regulations 2006* (SI 2006/246), which ensure that the employment rights of transferred employees are protected. These were amended by the *Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014* (SI 2014/16).

[22] NEF / UNISON, *Outsourcing public services*, 2015, p. 7

minimum savings of 20% against the net budget and the transfer of around 250 staff;[23]

- In August 2013, Barnet Council signed two contracts with Capita: one for the delivery of a range of back office services and one covering front-line services including highways, planning, regeneration, environmental health and trading standards.[24] This initiative was named 'One Barnet'. The signing of the contract was delayed by an application for judicial review, which was refused;[25]
- 'Collaborative outsourcing' consists of joint procurement of a shared service by councils working with another local public body. A recent example saw Capita contracted to provide corporate and facilities management services to Hart, Havant, Mendip, South Oxfordshire, and Vale of White Horse (most of these councils do not share a geographical boundary).[26]

Other terms used include 'Strategic Service Partnerships', where a single private organisation supplies multiple services to a single local authority: the contract terms may include incentives to achieve cost efficiencies. Legal forms used to achieve this range from 'service agreements' to 'joint venture companies'. The former are contracts permitting providers extended latitude in terms of *how* to provide the service; the latter constitute separate legal entities which will undertake the service provision.

The 2013 National Audit Office report "The role of major contractors in the delivery of public services" stated that four large contractors accounted for a significant proportion of outsourcing in the UK (across all public services, not just local government). It stated:

> - There have been several high-profile allegations of poor performance, irregularities and misreporting over the past few months. These raise concerns about whether all contractors know what is going on in their business and are behaving appropriately; and how well the government manages contracts.
> - The government believes that contractors generally have often not provided sufficient value, and can contribute more to the overall austerity programme. But the general level of transparency over contractors' costs and profits is limited. The government needs a better understanding of what is a fair return for good performance for it to maintain the appropriate balance between risk and reward.
> - Third, underlying both these issues is the concern that government is, to a certain degree, dependent upon its major providers. There is a sense that some may be 'too big to fail' – and difficult to live with or without.[27]

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23 Trafford Council, "Reshaping Trafford: New Partnership with Amey announced".
24 Capita, "Capita signs contracts with Barnet Council", 13 August 2013
25 This decision was upheld on appeal in February 2015: see Barnet Council, *Barnet Council wins One Barnet appeal*, 18 February 2015
26 Laura Sharman, "Five councils sign 'groundbreaking' outsourcing contracts", *Local Government Chronicle*, 11 February 2016
27 National Audit Office, *The role of major contractors in the delivery of public services*, 2013, p. 10

Some outsourcing deals have attracted media attention due to delays and accusations of overspending and failure. High profile examples include South West One, a partnership between Somerset County Council, Taunton Deane Borough Council, and Avon and Somerset Police. The partnership was 75% owned by IBM. Somerset County Council concluded a long-running legal dispute with the partnership in late 2015. The other public sector partners have remained in the partnership.[28] Also in late 2015, Cornwall Council won the right in court to terminate its ten-year deal with BT after two years.[29]

Academic literature too has critiqued the extensive use of outsourcing. The European Public Sector Unions have stated:

> The most comprehensive review of research on the effects of outsourcing was published in 2011 by the Danish institute AKF. It examined 80 studies since the year 2000 on the effects on costs and quality of services, and the impact on employees, including the sectors of water, waste management, electricity, public transport, education, healthcare, social care, employ-ment, prisons and other services. It concluded that:
>
> "it is not possible to conclude unambiguously that there is any systematic difference in terms of the economic effects of contracting out technical areas and social services"
>
> While there may be 'relatively small' savings from outsourcing of 'technical' areas [such as waste management], these may be offset by changes in quality; and in the 'social' services:
>
> "there is no general evidence here to say that private actors deliver the services cheaper or with a higher quality than the public sector itself does".[30]

3.3 "Insourcing"

Local authorities may choose to "insource" functions which have been contracted out, in the event that the contractor's performance has not been acceptable, or as a strategic decision to restructure service provision:

> We are aware of a number of services being brought back in-house. These are where a contract has come to an end and the council does not wish to extend or retender it; there has been poor performance; or where the services are no longer a priority and provision may be stopped completely.[31]

In 2009, APSE, an organisation specialising in the provision of frontline services by local authorities, produced a report setting out a number of examples of services that local authorities had successfully brought back

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28 BBC, "South West One contract with county council to end early", 9 December 2015

29 See Cornwall Council's press release, "Cornwall Council welcomes High Court decision on BT Cornwall contract", 21 December 2015

30 European Federation of Public Service Unions (EPSU), *Public and private sector efficiency*, May 2014. See also ed. Andrew Bowman et al, *What a Waste! Outsourcing and how it goes wrong*, Manchester University Press, 2015

31 Grant Thornton, 2014, p.4

'in house'.[32] APSE produced a further report with more examples for the trade union, Unison, in 2011.[33]

Other reported examples of "insourcing" include:

- In 2011, Thurrock Council was reported to have saved £20 million by breaking a large, integrated municipal waste contract into lots and awarding the largest lot to the in-house team;[34]
- In 2014, Birmingham City Council reportedly agreed to bring its contact centre, provided by Capita, back in house, but decided against cancelling the wider contract with Capita;[35]
- Liverpool City Council brought its IT services back in house in 2014, with an anticipated saving of £30 million over three years;[36]
- Islington Borough Council insourced waste, street cleaning and grounds services in 2013, reportedly saving £3 million per year;
- In Cumbria, nearly all outsourced services were brought back in-house in 2011 when its 10-year contracts with Capita came to an end, and the following year when a seven-year roadworks contract with Amey finished.[37]

Further examples can be found in the 2014 report of the European Services Strategy Unit:

> Dexter Whitfield, the director of the ESSU, says: "Councils have spent £14.2bn on 65 strategic public-private partnership contracts, but there is scant evidence of full costs and savings". According to Whitfield, this is due to "the lack of transparent financial audits of contracts, secretive joint council-contractor governance arrangements, poor monitoring, undisclosed procurement costs, a lack of rigorous scrutiny and political fear of admitting failure".[38]

Insourcing, like outsourcing, is not necessarily a panacea leading to higher quality services at a lower cost. For instance, Islington Borough Council insourced house repairs in 2013, but had to invest some £2 million in setting up the in-house service from scratch.

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32 APSE, *Insourcing: A guide to bringing local authority services back in house*, January 2009
33 APSE for Unison, *Insourcing update*, June 2011
34 Public Finance, "Return to Sender", 29 July 2011
35 Computer World, "Birmingham Council to bring Capita contract back in house", 3 July 2014
36 Colin Marrs, "Liverpool insourcing to save £30m", *Publictechnology.net*, 20 October 2014
37 Lizzie Presser, "Why have councils fallen out of love with outsourcing vital services?", *Guardian*, 2 March 2016
38 European Services Strategy Unit, *UK outsourcing expands despite high failure rates*, 2014

4. Trading, council companies, and income generation

4.1 Local authority trading companies (LATCs)

An increasing number of local authorities have set up local authority trading companies (LATCs). Local authorities *must* establish a company if they wish to carry on trading activities for profit. They may use powers to trade found in the *Local Government Act 2003* or under the general power of competence in the *Localism Act 2011*. Any profits made by a wholly- or partly-owned company can be reinvested in other council services.

Section 4 of the 2011 Act permits authorities, via the general power of competence, to provide a service on a commercial basis through a company – though this can only be done for things that the council can do for a non-commercial purpose. Where a local authority has statutory responsibilities to provide specific services to individuals, these services cannot be provided on a commercial basis. Guidance on matters to be considered by local authorities when deciding whether to use their trading or charging powers was published by the Local Government Association in 2012.[39]

A local authority that sets up a company must produce a business case before doing so.[40] The authority must recover the costs of any accommodation, goods, services or staff provided.

LATCs are governed by normal company law, and must be run according to the wishes of their shareholders. Like any company, they must pay VAT and corporation tax, and are subject to EU state aid rules.

Trading and commercial activity through LATCs are distinct from shared services. The former are typically used to provide goods or services to the general public or the private sector, whereas shared services represent agreements between different elements of the public sector. Shared services do not have to be delivered via a company structure.

4.2 LATCs and competition

Local authorities may set up companies to provide services that are also provided by local businesses. This can trigger accusations of 'unfair competition' from local businesses, which face competing with local authority-provided services.

In law, local authorities are free to provide services in this way, either for profit or on a cost recovery basis. Local authorities have long provided services in many areas in which private companies also provide services:

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39 Local Government Association, *Enterprising councils*, May 2012

40 *Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009*, SI 2009/2393, regulation 2

for instance, leisure centres, pre-schools, and housing. The LGA's report *Enterprising Councils* says:

> By entering the market the council may be seeking to moderate prices for essential services. This may be necessary where the absence of competition means that price rises are not being kept in check.[41]

The issue of business responses to local authority trading companies was raised as an issue during the Committee stage of the Localism Bill, by Nick Raynsford MP:

> Some outside interests will be uncomfortable with local government exercising a number of the powers that the Minister would like to give it, because they will see that as a competitive threat. If they are unsatisfied with the answers and regulations that they get from Government, they will almost certainly use the courts as a means of trying to restrict the power of general competence.
>
> I would be interested to know whether the Minister and his officials have met representatives of business… to ascertain whether they are comfortable with an open-ended power for local government to compete in that area…..[42]

4.3 Local authorities and property ownership

There are no statutory restrictions on local authorities charging for the use of land, buildings or other facilities that they own, in the same way that a private owner might. A local authority might decide as a matter of policy to offer free or cheap access to facilities, or reduced rents for organisations that they regard as desirable, but they cannot be legally obliged to do so. Local authorities are required to obtain 'best value' in their use of public money.

> Councils have discretion to subsidise services. They may also offer price concessions to service users based on, for example, their age, employment or financial circumstances. Councils can also apply concessions through reduced fees and charges to certain groups, for example, to encourage equal access to services.[43]

A controversy emerged in March 2016 when a parish council in South Gloucestershire attempted to charge a branch of the 'Parkrun' initiative to use its recreation ground.[44] In this case, the council was using specific powers found in section 19 of the *Local Government (Miscellaneous Provisions) Act 1976*, to charge for recreational facilities that it provides. By the same token, councils may seek to charge individuals who use council property for, for instance, fitness-related businesses or selling food.

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41 LGA, *Enterprising councils*, May 2012, p.7
42 Localism Bill, Public Bill Committee, 1 Feb 2011 c185-6
43 http://www.lgiu.org.uk/wp-content/uploads/2015/10/Income-generation-–-Charging-Trading.pdf
44 BBC, "Little Stoke parkrun petition tops 51,000 signatures", 16 April 2016

4.4 The 'Teckal exemption'

European Union public sector procurement rules require a competitive tendering process for any contract above certain thresholds.[45] Contracts let by public bodies may be exempt from this requirement if the contract is let to a subsidiary body which only exists to provide services to the local authority/authorities that control it. This is known as the 'Teckal exemption', after the case of Teckal Srl v Commune di Viano in 1999. It has now been codified in the Public Contracts Regulations 2015 (SI 2015/102).[46]

Under regulation 12(1) of the 2015 regulations, a public contract awarded by a contracting authority to a legal person falls outside the scope of the regulations if all of the following conditions are met:

- the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments
- more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority
- there is no direct private capital participation in the controlled legal person with the exception of no-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

The 'controlling contracting authority' can be a single authority or a consortium of authorities that has established a company to deliver services. The effect is that a local authority or group of local authorities can permit a wholly-owned company to take on its services without resorting to a competitive tender, as long as the company does not derive more than 20% of its 'activities' from sources external to the controlling authorities. In other words, the exemption applies if the authorities are not intending the company to trade in the wider market to any significant degree. A body that competes on the open market to provide services to other public and private bodies is unlikely to benefit from the Teckal exemption.

A separate case, European Commission v Germany (better known as *Hamburg*), established that authorities that share services (i.e. which do *not* establish a separate service delivery company) are also exempt from procurement requirements. The case established that the exemption would apply as long as:

> the arrangement involves only contracting authorities and there is no participation of private capital;
>
> the character of the agreement is that of real co-operation aimed at the joint performance of a common task;

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45 See the latest OJEC thresholds.

46 These apply to England, Wales and Northern Ireland. For Scotland, see the *Public Contracts (Scotland) Regulations 2015* (SI 2015/446).

no private provider is placed in a position of advantage vis-à-vis competitors;

the co-operation is governed only by considerations relating to the public interest.[47]

4.5 Local authority trading: statistics

There is no central repository of statistics showing the number of local authority companies, their revenue, capitalisation, or functions. Localis's March 2015 report *Commercial Councils* states:

- 94% of authorities share some services with another council;
- More than half of councils (58%) own a trading company, and at the rate it is increasing, full coverage by 2020 is a possibility;
- A majority of councils (57%) operate a joint venture with the private sector;
- Over a third of councils are using entrepreneurial methods in areas such as waste (46%), leisure and tourism (38%), IT/back office (38%) and housing (36%);
- Without these entrepreneurial activities, eight out of ten councils say they would have to cut services and raise taxes.[48]

Localis's report provides the following table showing income, expenditure and profit of English local authority external trading services:[49]

Table: income, expenditure and profit (£m)

	Income	Expenditure	Profit
2006-07	1093	799	294
2007-08	1104	792	312
2008-09	1139	828	311
2009-10	1158	886	272
2010-11	1130	838	292
2011-12	1131	815	316
2012-13	1092	791	301
Average	**1121**	**821.3**	**299.7**

4.6 Examples of LATC activity

The following are examples of commercial activities by local authorities in England:

- South Cambridgeshire District Council set up Ermine Street Housing in 2014 and invested £7 million in property to rent as an "ethical commercial landlord". In November 2015 the Council

47 Lexis Library, *The in-house exemption*
48 Richard Carr, *Commercial Councils*, Localis, March 2015, p. 7
49 Ibid., p. 15

agreed to invest £100 million to acquire a property portfolio of 500 homes over the next five years;[50]

- Eastleigh Borough Council has pursued a policy of purchasing a range of property assets which generate a high investment yield. By 2015, the council's expenditure (financed principally by borrowing) will have reached over £100 million and includes a range of assets such as shops, banks, pubs and offices. The most ambitious acquisition, according to the Local Government Association, has been the Ageas Bowl, home of Hampshire Cricket, where the council has invested some £40 million;[51]
- In 2012 the London Borough of Harrow became one of the first local authorities in the country to sell its recyclables in an online 'e-auction'. The council sold 100 per cent of its dry recyclables to waste management firm Viridor. The local authority received £36 a ton for its material, plus a share in any profits above a baseline sell-on price of £78 a ton, meaning that it generated £900,000 from 19,000 tons of material;[52]
- Kent Top Travel, a LATC owned by Kent County Council, operates a large commercial bus and coach fleet, providing vehicles for private hire, public service routes and Park and Ride schemes. In 2012 it had an annual turnover of nearly £6 million and employed 125 staff;[53]
- Rutland County Council purchased the former HMP Ashwell from the Ministry of Justice in order to provide affordable office, industrial and leisure premises for local businesses. The site is now home to a wide range of commercial tenants and is providing significant benefits to the council and the wider community by way of jobs, trading opportunities and an important additional revenue stream;[54]
- Basingstoke and Deane Council have a large property portfolio. According to the Local Government Association, in 2012 Basingstoke and Deane Council was receiving £15.5m from their commercial property portfolio (the 5th biggest in the country), and £3.5m from investment income. The council also purchased the freehold of the Festival Place shopping centre, which gives them a 5-6 per cent annual return;[55]
- Manchester City Council has sought to generate revenue from energy distribution, which also contributes to energy poverty initiatives:

  > The Council has also found significant opportunities in expanding the sale and distribution of energy with Manchester City Council as a trusted supplier. Further potential opportunities in energy generation and distribution are in early stages of planning. The benefits of this include the potential to generate revenue as well as reduce energy poverty. It also presents an opportunity to partly insulate Manchester City Council, residents and Manchester

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50 South Cambridgeshire Council, Council confirms £100 million housing company expansion, 26 November 2015
51 Local Government Association, Case Study: Eastleigh Borough Council, June 2011
52 Letsrecycle.com, Harrow council uses e-auction to sell recyclables, 28 September 2012
53 Local Government Association, Enterprising Councils: Getting the most from trading and charging, May 2012, p13
54 Local Government Chronicle, *Entrepreneurial*, 16 March 2016
55 Local Government Association, Emerging Council Innovation, May 2012, p1

> businesses against significant energy price increases and represents a step change in carbon reduction initiatives.[56]

- Norse Group is by far the largest LATC in the country and has an annual turnover in excess of £250 million. It is a holding company owned by Norfolk County Council and the Group brings together three LATCs providing facilities management; property design and management consultancy; and providing residential care homes and 'housing with care' schemes. Collectively, the group employs over 10,000 people nationwide.

There are also examples of LATCs that have been closed down after failing to make profits and/or to establish themselves in their business area:

- Bournemouth Borough Council established a 'Bank of Bournemouth' in 2014. This pilot community finance company was intended to help out local residents and business using £15 million of unallocated capital reserves. It had forecast a return of between £6.9m and £24.2m over its first 10 years. However, it was forced to close in 2015 after lending to just over 22 business in 18 months.[57]
- In 2012 Shropshire Council agreed to set up Inspiring Partnerships and Enterprises, a private company intended to sell the council's services to outside bodies. It was forced to close this in 2016 after securing "minimal external business" and suffering from "huge overheads".[58]

A number of other examples of income generation can be found on the LGA's website.

4.7 Mutuals

There are a number of examples of council services being delivered through staff-owned companies or 'mutuals'. The Mutuals Taskforce, established by the Coalition government to help support the development of mutuals in the public sector, defines a public service mutual as:

> an organisation which has left the public sector 'parent body' (also known as 'spinning out') but continues to deliver public services. Mutuals are organisations in which employee control plays a significant role in their operation.[59]

The Taskforce, in its first report, considered evidence about the benefits of mutuals. It stated that there were "two kinds of justification" for the greater employee engagement found in employee-owned organisations such as mutuals:

> One is intrinsic to the employees themselves: that is, greater employee engagement in the delivery of public services is desirable because of the positive impact it has on the employees. The other is that employee engagement is instrumental in

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56 LGA, Case Study: Manchester City Council
57 'Council shuts £15 million Bank of Bournemouth after issuing just 22 loans', *Bournemouth Echo*, 8 December 2015
58 "'Huge overheads" kill Shropshire outsource company', *Local Government Chronicle*, 19 February 2016
59 Mutuals Taskforce, *Our Mutual Friends*, December 2011

> improving service delivery: that is, greater employee engagement is an instrument for achieving a better service, with more satisfied users, lower costs and greater productivity in service delivery.
>
> There is a considerable volume of evidence supporting the existence of both kinds of benefit from employee engagement.[60]

Examples of current or proposed service delivery through mutuals include:

- In 2009, employees from Staffordshire County Council established Evolve YP, which provides services for children and young people who are in care or leaving the care system. It operates as a not-for-profit social enterprise under contract to the council;[61]
- GLL was initially established to run Greenwich Council's leisure centres. In 1996, it began expanding outside of Greenwich and now runs services across the country.[62]

In February 2015, Northamptonshire County Council announced plans for a "Next Generation Model". Under this model, the council would become a much smaller organisation and commission others to achieve its outcomes. As part of the process, it would establish a number of new organisations, including a children's services mutual to deliver safeguarding and other services for young people.[63]

Unlike companies that fall under the 'Teckal exemption', mutuals are unlikely to be able to 'inherit' contracts from local authorities and will have to face a standard procurement procedure. A mutual that is staffed by former council employees could therefore fail to win the contract for work previously undertaken by that department.

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60 Ibid., p. 10
61 "Case study: Children's services: Evolve YP", www.gov.uk
62 GLL, "About us"
63 Northamptonshire County Council, "Biggest ever transfer of services agreed by council", February 2015

5. Community budgets

5.1 Origins of community budgets

The Coalition government piloted a number of 'community budgets' between 2010 and 2015. These envisaged strategic joint working and/or the pooling of budgets between public sector bodies within a given geographical area. These are not to be confused with schemes run in some local authorities, where individual councillors are given small amounts of money that they personally may spend as they see fit within their wards.

Community budgets can offer opportunities for efficiencies and/or cash savings through the 'horizontal integration' of services at a local level. Health, social care, housing, and environmental services may be more effectively provided to people or localities via local integration than via large-scale single-service silos. There are affinities with the idea of shared services, but the two types of initiative have largely proceeded in parallel in recent years.

Community budgets followed on from a similar initiative under the 2005-10 Labour government named 'Total Place'.[64] Two pilot schemes were announced by DCLG on 2 December 2011.[65] This followed a call for bids on the basis of the DCLG's Community budgets prospectus, published in October 2011. The Government selected four 'whole place' areas covering groups of local authorities:[66]

- Greater Manchester
- Cheshire West and Chester
- West London - Hammersmith & Fulham, Kensington & Chelsea, and Westminster (the 'Tri-Borough partnership')
- Essex

The Government also selected ten 'neighbourhood community budget' pilots at ward or community level:[67]

- White City (Hammersmith & Fulham)
- Poplar Harca (Tower Hamlets)
- Trident (Bradford)
- Sherwood (Tunbridge Wells)
- Norbiton (Kingston-upon-Thames)
- Haverhill (Essex)
- Balsall Heath, Shard End, Castle Vale (Birmingham)
- Queen's Park (Westminster)
- Ilfracombe (North Devon)
- Cowgate, Kenton Bar, and Montague (Newcastle-upon-Tyne)

The launch of the scheme suggested that public sector agencies in the relevant areas would all work together to use a 'single pot' of funding, to better effect than was possible through 'silo-based' interventions. In

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64 HM Treasury, *Total place: a whole area approach to public services*, March 2010.
65 DCLG, *14 areas to pioneer scheme to pool and save billions*, 21 Dec 2011
66 For additional details see http://communitybudgets.org.uk/
67 See http://mycommunityrights.org.uk/our-place/

practice, each of the pilot areas developed different business cases, concentrating on particular interventions to improve service delivery and outcomes in their areas.

5.2 Pilot outcomes

The National Audit Office reported on the four 'whole place' pilots in March 2013.[68] The report noted that the four pilot areas decided to concentrate on specific areas of public services where desirable improvements in outcome could be identified. Substantial resources were committed to the pilot by DCLG, and technical advisory groups were established, around health and adult social care; criminal justice; families with complex needs; the economy; and education and early years. Substantial savings were envisaged as a result of the pilots:

> The Local Government Association commissioned consultants to examine the potential savings from implementing Whole-Place Community Budgets at greater scale. The consultants estimated that if the integrated service delivery approaches assessed by the four local areas were rolled out across England, there would be the potential to deliver a net annual benefit of between £4.2 billion and £7.9 billion when fully up and running (generally after five years). In some cases, the benefits may accrue over a longer time frame than the five-year assessment period typically used. As the consultants make clear in their report, this estimate is sensitive to assumptions around the effectiveness of local interventions, the ability of other local areas to replicate the projects, and the potential overlap with other efficiency measures that local and national bodies already have in train.[69]

DCLG produced an evaluation of the programme, entitled Neighbourhood Community Budget pilot programme, in July 2013. The 2013 Budget announced that a new network of local and national-level officials would be established to support the wider adoption of community budgets.[70] This was accompanied by the publication of a DCLG guide to creating a successful community budget.[71]

The neighbourhood community budget programme was re-branded as 'Our Place!'. The DCLG also announced a £4.3 million funding package to support up to 100 further community budget programmes. In the event, the DCLG awarded funding to 123 areas in April 2014;[72] the Our Place website lists a total of 141. A map of the Our Place! locations is available.[73]

The Centre for Economics and Social Inclusion has argued that obtaining savings from community budget initiatives can be challenging:

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68 National Audit Office, *Case study on integration: measuring the costs and benefits of Whole-Place Community Budgets*, HC 1040 2012-13, March 2013

69 Ibid., p. 23. The report referred to here is LGA, *Whole Place Community Budgets: A Review of the Potential for Aggregation*, Ernst & Young, January 2013.

70 HM Treasury, *Budget 2013*, p. 25

71 DCLG/LGA, *Local Public Service Transformation: A Guide to Whole Place Community Budgets*, March 2013

72 DCLG, *123 communities to take control of neighbourhood schemes*, 14 February 2014.

73 This site also provides a description of all of the projects. This information is also available in more readable form from the Our Place! website.

> …the "savings" from successful interventions accrue roughly 80% to central government and 20% to local government. We found … specific examples of this in our own research. For example in one area, a more streamlined and refocused drug and alcohol programme had decreased demands in Accident and Emergency while freeing up police time. However, actually capturing those returns was proving far more problematic.[74]

The Communities and Local Government Committee produced two reports on community budgets, in 2012 and 2013.[75]

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[74] Tony Wilson and Paul Gallagher, *Community works: putting work, skills and enterprise at the heart of Community Budgets*, 2013, p.37

[75] Communities and Local Government Committee, *Community Budgets*, HC 163 2013-14, October 2013; Communities and Local Government Committee, *Taking forward Community Budgets,* HC-1750 2010-12, 2012.

6. Alternative models of service delivery: accountability

Any model of service delivery that moves away from direct provision by local authorities is likely to raise questions about the democratic accountability for the service. In law, an authority that arranges for another entity to provide its services remains legally responsible for them. However, it can be argued that alternative models of service delivery reduce accountability in practice.

Shared services raise the possibility of diffuse accountability. Alterations to a shared service will require the sharing councils to agree before changes are made. This can either affect the sharing arrangement itself or detract from participating councils' control. For instance, Hammersmith & Fulham changed political control in May 2014, leading to the council to step back in some respects from the 'Tri-Borough' arrangements (see section 2.4).

Outsourcing of public services can be controversial due to the implications for accountability. Contractors are not covered by Freedom of Information legislation, and cannot be obliged to provide information about their activities (though they are free to do so voluntarily, and the local authorities may specify requirements for openness in the contracts themselves). There are also examples of public bodies refusing to release details of contract terms and values on the grounds of commercial confidentiality.[76]

Outsourcing can lead to local authorities being 'locked in' to contracts lasting for more than one electoral cycle. The contracts may be drawn up in such a way as to restrict the capacity for a change in political control to lead to a change in how services are provided.

Wholly-owned trading companies are likely to be more amenable to traditional concepts of accountability than shared services or contracting out, because they remain under the control of the relevant local authority. Control will be less direct, as authorities will not retain day-to-day control over trading companies: they would have to instigate changes in their capacity as sole shareholder.

With regard to community budgets, local bodies' capacity to develop joint strategies and pool budgets can be influenced by the need to be publicly accountable, to local electors or to Parliament, for their spending.[77] Most public bodies are required to ensure that their budgets are spent in accordance with their strategic priorities, as approved by Ministers: partnerships and shared budgets make their accountability more diffuse.

By the same token, concerns to retain formal lines of accountability can hold public bodies back from close collaboration, either in community

[76] This is a legitimate reason to refuse a freedom of information request: see section 43 of the *Freedom of Information Act 2000*.

[77] The Government policy statement *Accountability: adapting to decentralisation*, published in 2012, gives a flavour of Government perceptions of the issues.

budgets, shared services, or other forms of joint working. A witness addressed this issue in the Committee's 2012 inquiry:

> There has to be some kind of glue that is stronger than simply an open willingness to work together, because that always runs the risk of breaking down whenever anything really difficult comes up. And there will be difficult stuff here – there is no doubt about that. So you either need some kind of contractual relationship, a pooled budget, a single accountable body or someone having oversight over other people's spending and service plans. One or other of those things needs to happen if you are to make this proposal work across the country as a whole. Yes, there will be localities where you can get it to work because the personalities involved really gel together and there is a common drive to put it in place, but it only lasts as long as that relationship is in place. To make it work in a way that would deliver sustainable results over a long period of time, you need some tougher relationship between those local agencies. [78]

[78] Communities and Local Government Committee, *Taking forward Community Budgets,* HC-1750, ev. 6

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