

Foreword



Competitive markets are the best way to secure sustainable growth for consumers and communities. Right across all sectors of the economy, they have been able to deliver good outcomes including choice, innovation and value for money when they place the consumer at the heart of everything.

A handwritten signature in black ink that reads "Katja Hall". The signature is fluid and cursive.

Katja Hall,
Chief Policy Director, CBI

Public services can benefit from expanding the use of markets to realise the benefits they bring for citizens. As our report *Open Access* showed in 2012, there is still much to be done to achieve truly open public service markets. The need to do this is clear. Citizens, as both taxpayers and service users, are now demanding more of their public services. Business as usual is no longer an option.

Evidence from across the range of public services show that where markets have been introduced, people's experiences of those services have been positive. Bringing in new and different types of organisations to deliver a public service shakes up old ways of doing things, introduces better ideas, gives people more choice and drives better value for money.

But public services are different from some other markets. Service failure, for example, is not an option for many frontline services which people depend on for their daily lives.

So to unlock the benefits of markets, the public must trust them. People's legitimate desires for

transparency around provider performance must be addressed and assurances about continuity of service must be given. Additionally, recent news stories have highlighted the need to ensure that commissioners and providers have the skills to manage markets effectively. Those two elements are crucial for fully functioning public service markets.

This report sets what needs to be done to win this trust in public services. The concrete steps laid out in this report show how government can continue to make the move from providing services itself to managing effective public service markets, thus saving money, improving public services and transforming the way our essential public services work for people.

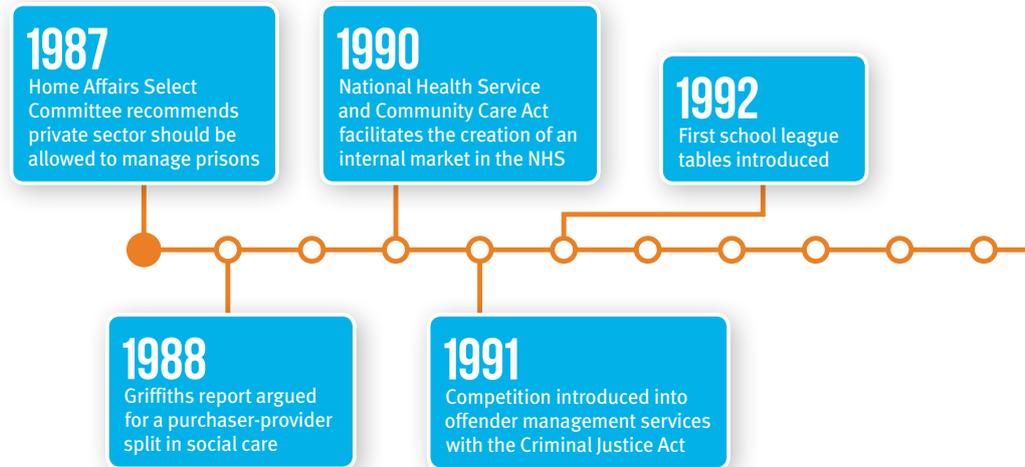
The time to act is now. Providers and commissioners must step up to the plate and earn their licence to operate effective public service markets.

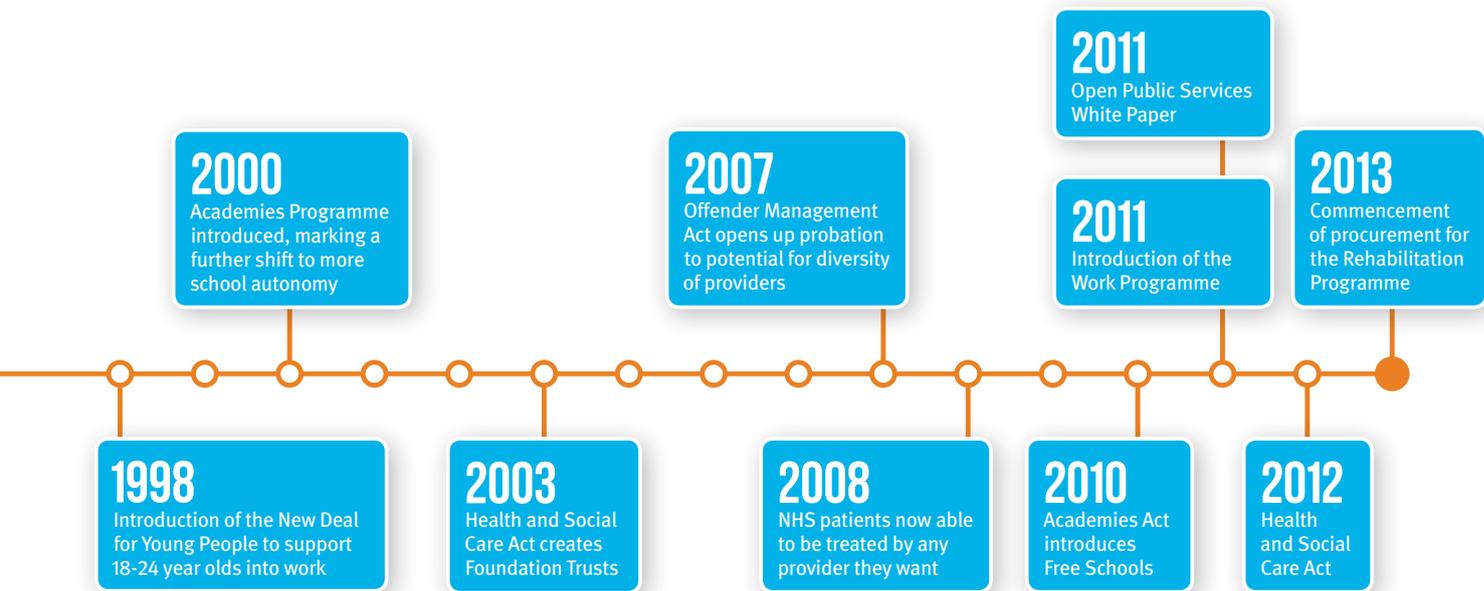
Markets in public services deliver value for money and better quality for people but they must command public confidence

The Government set out a clear vision for transforming the delivery of public services in the 2011 Open Public Services White Paper by opening them up to market forces. Government must transform the way in which public services are delivered – in many cases, they can no longer afford to be a direct provider themselves.

The CBI wholeheartedly supports the Government's aim and our report *Open Access*, published in 2012, highlighted the progress made so far (Figure 1), but more importantly, the work that remains to be done to open up more markets in public services¹.

Figure 1: Open road? Thirty years of open public service markets





The need to address this and go further and faster to open up new public service markets is now urgent:

- The pressures on the public finances are evident. Departmental spending will have been cut by more than 18% (in real terms) between 2010-11 and 2017 which means that government cannot deliver services in the same way in which it has done in the past². Evidence (in Figure 2) shows that where markets have been opened, they have been successful at securing value for money for the taxpayer. Currently, of the total amount spent by government on providing public services, 60% of this is spent on services that could be delivered through markets but are not. The savings available to the taxpayers from opening up markets in these areas are estimated as being potentially as high as £22.6 billion³.
- Demographic shifts and changes in what the public expect from their services mean that the challenges on the demand side are equally as pressing. To take one example, by 2035, the number of people over the age of 85 will double and the UK population as a whole will rise to over 73 million – resulting in more pressure on services like health and welfare.

EXHIBIT 1: Taking local government as an example, 98% of the UK social housing management market remains closed to new players as does just over half of the waste management services provided around the UK. Not opening services like these up to markets is unsustainable, especially when almost half of local authority chief executives believe that they are currently unable to make the savings required without affecting the quality of services.

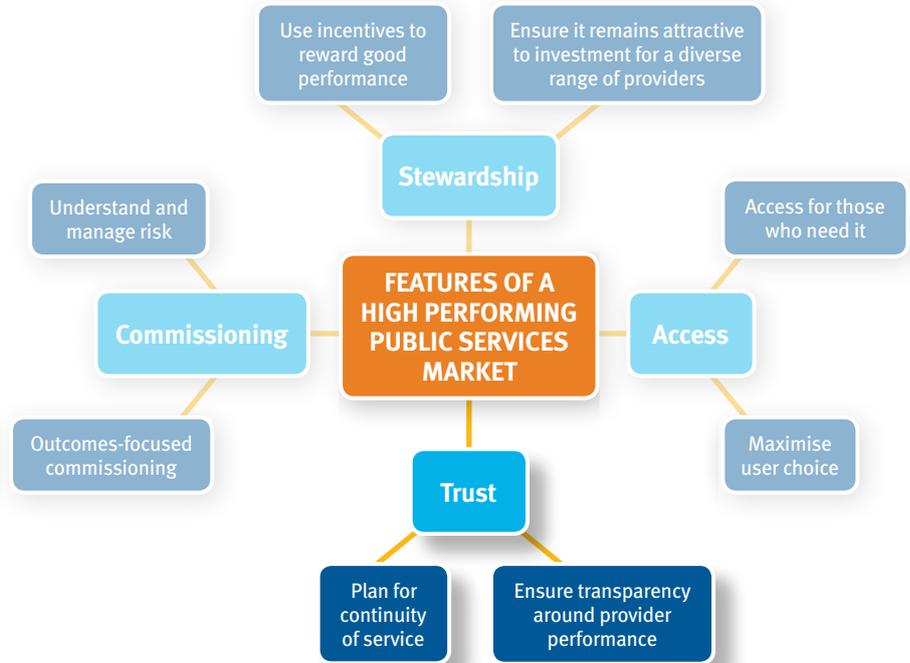
Figure 2: Percentage of public spending saved per public sector market⁴

Service market	Savings made [*]
Forensic services	9%
Prison management	9%
Waste management for local authorities	8%
Back office services for local authorities	15%
HR and payroll services for local authorities	14%
Social housing management services	15%
Facilities management in hospitals	7%
Facilities management in schools	10%

**This represents the proportion of departmental spending in this area which was saved as a result of delivering the service through a market.*

Examples from different public services demonstrate how markets drive improved quality which, in turn, addresses such challenges. Opening up a market in the operation of prisons led to lower rates of reoffending⁵, a better quality of care for prisoners, fewer escapes and better employment opportunities. Where healthcare has been opened to genuine competition, it has led to better managed hospitals with an improved quality of care for patients⁶. Introducing a market into social care resulted in patients being more satisfied⁷. Fostering competition in the school sector has enabled parents to make better choices about the schools to which they send their children⁸.

Figure 3: Features of a high performing public services market



Markets can improve the service that people get but people must trust them

Markets in public services deliver quality improvement and innovation in the services delivered because they bring in new players to shake up outdated systems. When commissioners focus on the outcomes that they want the market to achieve rather than how they will deliver a service, the citizen is put at the heart of the market. Giving service users a choice over a provider shifts the focus away from government as the customer and, rightly, places the focus on the end user (see Exhibit 2). Making a market attractive for investment drives value for money and eases the financial pressure on government. Using incentives to reward good performance harnesses the motivation of providers to make profit for the delivery of an effective public service.

Fully achieving the vision of Open Public Services depends on winning public trust in the use of markets (as shown in Figure 3). In particular, without addressing the legitimate expectation of transparency around provider performance and an assurance for continuity of service when a provider fails, trust in public service markets cannot be fully realised.

Members of the public don't automatically expect the public sector to be the sole provider of their public services. 75% of people are happy for the private and voluntary sectors to deliver services. But this is only as long as they can trust that the service will still be delivered even when a provider fails or that people will still have easy access to the service⁹.

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This means that the public want to be confident they can trust the providers of their public services. Ultimately, to build public confidence in the capacity of markets to deliver, plans must be set out at the outset to ensure continuity of service. Equally, citizens desire transparency around provider performance because taxpayers' money funds public services and citizens have a right to know their money is being well spent.

In other words, there is a need to build systems that provide assurances around continuity of service and transparency to ensure that markets command public confidence. To do this, government must now shift from being a default service deliverer to becoming a market-maker. To use a football analogy, rather than supplying all the players as well as the referee, the government must see its role as that only of the referee – allowing the market to work effectively but ensuring there are plans in place if things do not go as expected.

Putting these principles into practice and developing a focus on market management requires a range of different skills in the public sector - some of which are evident but others that must be developed further. The predominant focus of government has been on its procurement skills. However, effective market management skills are equally as important.

These skills fall into four categories:

1. Commissioners need to analyse what needs will exist in the future, for example, projecting the demand for public services
2. Commissioners need to learn how to plan for this, by setting out their desired outcomes and engaging with the market to see how they might be delivered
3. Commissioners need to procure this effectively and work with contractors to achieve their desired outcomes
4. Commissioners need to review if the market works, if services are delivering for people and that there are assurances around service continuity in place if a provider fails.

EXHIBIT 2: An example of how choice drives competition in public services can be found when examining how GP practices operate. Where it is easier for patients to find and choose local alternatives on the basis of the standard of care they provide or the extent of their opening hours, GP practices come under more competitive pressure. A 2010 study found that where GP practices faced such pressure, the quality of care patients received was better¹⁰. No matter what the background of the service provider, a market succeeds in delivering better services because competition and user choice drives providers to achieve results for users.

The public's need for certainty around service continuity and transparency about provider performance must be addressed quickly to enable further and faster reform by government and the public service providers' industry.

Government and commissioners must give the public assurance around continuity of service

Markets work best when players are kept on their toes by others challenging to take their place. That means they continually look for new ways to improve performance for consumers, drive value for money for commissioners and deliver a return on investment for shareholders.

The challenge in public services delivery is for government to design these markets so that such failure doesn't mean that service users suffer. In the past, this issue has not been properly addressed in market design. For example, in 2009, the Public Accounts Committee found that 56% of public service contracts did not include a continuity regime¹¹. This must be addressed for all providers – public, private and voluntary.

EXHIBIT 3: One of the better known examples of where no plan was made for provider failure in recent years, in a relatively open public services market, was the collapse of Southern Cross, a care homes provider. It encountered severe financial difficulty in early 2011 leading to a subsequent announcement that it intended to close, causing huge uncertainty for the 31,000 older residents for whose care it was responsible. While the government ultimately intervened to ensure that care of such vulnerable people was not disrupted, the sudden nature of Southern Cross' announcement showed that government had not been in a position to pre-empt the collapse or plan for alternative provision, leaving a large number of vulnerable people at risk of losing their homes and the care that was so crucial to their lives¹². Social care is an example of a service where the market is relatively open. The failure here was that people had no assurance of what would

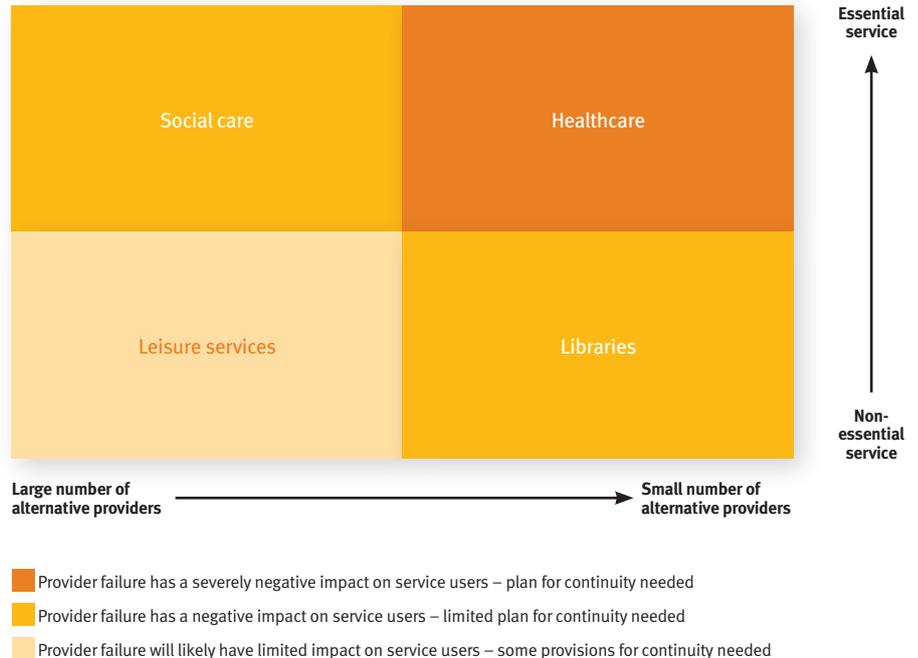
happen when things went wrong. The experience of Southern Cross underlines the importance of this.

However, similar failures have occurred where no market exists. A public sector monopoly does not guarantee better results for service users either. The failures of the Stafford Hospital and Mid Staffordshire Foundation Trust rightly provoked public outrage when the extent of the hospital's shortcomings came to light, especially after it became clear that patient safety was being endangered by the hospital regime. This highlighted the need to monitor the quality of the service provided, regardless of the provider. This is especially true in the case of a service where failure endangers the lives of patients, as was the case in the Stafford Hospital. Once again, it became clear that there was no plan in place to detect this failure and address it before it had serious consequences for members of the public.

What is clear from both examples in Exhibit 3 is that failure can happen whether or not a service is delivered through market mechanisms. This underlines further the need to put processes in place to give the public peace of mind about what happens when any provider of a service fails financially or on quality, especially if the service being delivered is essential to people’s lives such as health or education.

The consequences of provider failure are not the same across all services and markets – in the eyes of the public, some services, such as health or education, are more essential than others. This means that the plans for failure will differ from service to service – plans for failure in health will be different from plans for failure in waste management. Figure 4 shows how this need varies from service to service – depending on how essential the service is to who uses it and whether or not there is a large amount of alternative providers ready to step in to take over if a provider fails.

Figure 4: When is a plan for continuity of service needed?



Government must become a market-maker rather than a service deliverer

As a first step to address continuity of service, commissioners must always promote diverse and competitive markets in public services to ensure that the market has a ready capacity for alternative provision if a provider fails, as has been done in the case of the Work Programme (Exhibit 4). To do this, barriers to entry must be lowered.

Additionally, if government is going to start opening up markets in public services, it needs to move from direct delivery of services and think more as a “market-maker” or “enabler” than a “provider”. In other words, government needs to start asking “how best do we get the outcome/service we need” rather than “how do we deliver this service ourselves?” This requires new skills that must be embedded across the public sector (see Exhibit 5). Government should move to share best practice where it exists across the public sector (see Exhibits 6 & 7).

“ Government needs to think more as a “market-maker” than a “provider” ”

EXHIBIT 4: The Work Programme is a good example of how commissioners deliberately sought to involve a diverse range of providers in the delivery of services in order to ensure that alternative provision is in place in case of provider failure. Two or three prime providers deliver the programme in each of the different contract package areas (CPA). This ensures that there is alternative provision in place in case one of the providers in any CPA fails. Additionally, it allows for market shift, where poorly performing providers can be replaced with high performing providers.

EXHIBIT 5: Examples of these skills include:

- financing and commercial modelling;
- understanding service delivery, implementation and cash flow understanding;
- how to design contracts so that they may be “managed to success”;
- knowing how to deal with risk;
- contract management of underperformance ; and
- general market management, e.g. learning about access to capital or media relations

EXHIBIT 6: The government's new Commissioning Academy is one example of a method in which best practice for commissioning can be shared. Other examples of organisations that promote best practice in commissioning include the Association of Directors of Adult Social Services, Local Government Association, Society of Local Authority Chief Executives, Academy of Justice Commissioning, NHS Clinical Commissioners and the King's Fund.

EXHIBIT 7: The government has set up a new multi-agency network called the Public Services Transformation Network which aims to provide advice and support to local areas when integrating and transforming their local public services. The network will act as a facilitator, spreading the learning from the four Whole-Place Community Budgets pilots. The network will involve a mix of central and local government staff as well as employees from their local partners, such as the NHS, including staff on secondment from the Treasury, the Cabinet Office, the Department for Work and Pensions and the Department for Communities and Local Government.

Commissioners and providers should work together to plan for service continuity

Responsible commissioners must plan for every contingency. Providers must be engaged early in the commissioning cycle so there is clarity about how to plan for provider failure. This conversation must be two way, however. Providers must be open and frank about their capacity and commissioners must be clear at the outset about what they mean by “provider failure” (see Exhibits 8 & 9).

 **This conversation must be two way** 

Exhibit 8: Monitor’s approach to designing the service continuity regime in healthcare is an example of collaboration between providers and commissioners. The regime is designed to ensure that essential health services continue to be delivered. Under this new framework, where a provider of essential services is deemed to be at risk of financial failure, it will be put into “special administration”. This could involve restructuring the service or looking for an alternative provider to take over. This special administrator has responsibility for the continuity of provision of services that are deemed essential by local commissioners and would be financed from a “risk pool” fund, gathered through a levy on providers and commissioners of essential services.

Exhibit 9: The recently published Defence Procurement White Paper sets out a similar procedure to that established by Monitor with the proposed GoCo model for Defence Equipment and Support. In the event that the desired results are not delivered by the contractor, the Secretary of State for Defence will be able to initiate a regime that will allow the transfer of the business to another provider, or back to the Ministry of Defence.

Exhibit 10: The collapse of ABC Learning (a childcare provider) in Australia shows the consequences of a failure to monitor effectively. Following an unexpected drop in profit, ABC found its share price falling and was unable to avoid receivership. The Australian federal government was forced to pick up the tab in order to ensure that ABC’s childcare centres remained open; a situation that might have been avoided had the government been monitoring ABC’s performance.

Monitoring the performance of all providers is crucial

Monitoring providers is important to make sure they are not failing – financially or on quality. Such regimes must be robust enough to detect early warning signs of failure; not doing so has negative consequences (Exhibit 10). To ensure a level playing field, all providers – public, private or voluntary sector – should be subject to uniform reporting timescales and formats (see Exhibit 11).

“
Monitoring regimes must be robust”

Struggling providers should be given a chance to turn their performance around

Where providers are struggling, they should be given a period of time to turn their performance around. Unnecessary disruption to a service should be avoided and all providers may experience difficulty at some point over which they have no control. If the provider is able to address this difficulty in time, then there should be no need for them to exit the market. However, if not, this is where markets must work – failed providers should leave and new entrants should take their place in an orderly way (see Exhibit 12). In such a case, all types of provider should have a right to challenge to take over the running of that service.

The time to step up to the plate is now

Giving the public assurance on the plans in place for service continuity is an important component of delivering the goals of the government's Open Public Services White Paper – the opening up of markets across public services. Commissioners and providers need to step up to the plate and set out the concrete steps that they will take to hard-wire continuity regimes into all public service markets.

To do this, the CBI believes that providers and commissioners should move to adopt the five-point action plan, displayed overleaf.

Exhibit 11: OFSTED's approach to monitoring schools shows how the level of monitoring can be used as an incentive to improve performance. From now on, underperforming schools will be assessed more frequently whereas excellent performing schools will be inspected less. Schools have an incentive to perform well and thus avoid the bureaucracy of non-necessary monitoring.

Exhibit 12: Hinchingsbrooke NHS Trust is an example of a case where a provider was given an opportunity to turn its performance around but having failed to do so, an alternative provider was found. The hospital developed a cumulative deficit of £39 million between 2004 and 2008 (on an annual income of around £73 million) because of falling activity levels and poor financial management. Despite an opportunity to turn the performance of the hospital around by an injection of £40m from the Department of Health, the trust failed to financially recover. As a result of this, the Department of Health allowed the local Strategic Health Authority (SHA) to explore options for an alternative management structure for the Trust. The SHA invited NHS organisations, private companies and the third sector to bid, opening a public service market. In November 2011, the Authority awarded a ten-year operating franchise to Circle, a private provider.

5-Point plan to ensure continuity of service in public service markets

1 Commissioners must always promote diverse and competitive markets in public services

Recommendation 1: The Competition and Markets Authority should be given a clear mandate for promoting competitive markets in public services.

Recommendation 2: Barriers to entry to public service markets must be removed at both central and local government.

2 Government must learn how to become a market maker rather than a service deliverer

Recommendation 3: The Cabinet Office must ensure a “no excuses” culture across government to participation in the Commissioning Academy and the Public Services Transformation Network and must move at pace to implement the Civil Service Reform Plan.

Recommendation 4: Commissioners must prioritise the harnessing of the expertise of skilled individuals working in established regulators of private markets and employ them to develop and strengthen markets in public services.

3 Providers must work with commissioners at an early stage of the commissioning and contracting process to plan how continuity of service will be guaranteed

Recommendation 5: The Cabinet Office must work with departments, local authorities and providers to develop comprehensive guidance for commissioners on the role of pre-market engagement and what “good practice” looks like.

Recommendation 6: Where relevant and possible, contracts, terms and conditions and funding agreements must be drafted with failure and service continuity in mind, ensuring that lessons are learned from provider failure in the past and are fed back into the commissioning process. These contracts must ensure that the same mechanisms are applied to all service providers.

4 Commissioners must monitor the performance of providers as effectively and as efficiently as possible

Recommendation 7: Government departments, local authorities and regulators should collect financial information from all providers of public services – public, private or voluntary – using uniform reporting timescales and formats.

Recommendation 8: Contract managers and regulators should take a risk-based approach to the monitoring of consistently well-performing and financially sound providers and direct greater attention to organisations that are identified as struggling.

5 When faced with a failing provider, commissioners must have a clear plan for intervention to ensure service is continued

Recommendation 9: When a provider fails, providers from every sector – public, private or voluntary sector – should have a right to challenge to take over the running of that service.

Recommendation 10: Commissioners and regulators should always ensure struggling providers are given time to turn a service around but the period in which to do this must always be finite and this should be set out at the start of the commissioning process.

CONFIDENCE
PROVIDERS
DELIVER
KEY
SUPPORT
INNOVATION
VALUE FOR MONEY
QUALITY
EFFICIENCY
FINANCIAL

All providers must support their commissioner in driving transparency

The public rightly expect public services which are operated by any provider – public, private or voluntary sector – to be transparent. Citizens are entitled to know how taxpayers’ money is spent – regardless of which organisation ultimately delivers the service in question. This scrutiny is understandably enhanced when government has to make tough spending choices.

In addition, transparency helps improve service standards. It is integral to identifying what works and what does not, and spreading good practice across the country. Similarly, transparency helps hold to account those responsible for service failures.

All providers – public, private or voluntary sector – who deliver public services must be wholeheartedly committed to working with their commissioners to improve transparency. They must recognise that public expectations of public services are greater than ever before. The CBI believes that providers should be committed to the release of service delivery information – both proactively and on request. However commissioners must also take responsibility, as often providers are more than comfortable to publish information, which the commissioner is reluctant to put in the public domain.

Yet markets must remain competitive if they are to drive the service transformations that are required. Organisations which provide

public services – or otherwise support public services – are a vital part of the UK economy, delivering value at home and exports overseas.

The CBI’s statement of principles (annex) on the transparency of public services is intended to contribute constructively to the debate on transparency by highlighting how, within the existing legal framework, members of the public can find out more about privately delivered public services.

It is a starting point, not a “silver bullet”, and aspires to form the basis of conversations with government, parliamentarians, and stakeholders – the most crucial of which is the public itself.

Recommendation 11: All providers – public, private or voluntary sector – of public services should adhere to the CBI statement of principles on transparency in public services.



Annex: Statement of principles on the transparency of public services

World-class public services underpin the UK's economic and social prosperity. This contribution is enhanced when public bodies that procure and oversee public services ('Commissioners') and organisations that deliver public services ('Providers') – whether from the public, private or third sectors – are open about how services are performing. Transparency is also a worthwhile end in itself, as it builds public trust.

Intention of the statement of principles

This statement is intended to promote the availability and accuracy of information ('transparency') about the delivery of public services that are publicly funded. It affirms that:

- Citizens are entitled to know how taxpayers' money is spent
- Publicising good performance is integral to spreading good practice

- Highlighting underperformance helps hold Commissioners and their Providers to account
- Embedding common transparency standards and practices, and contextualising information where appropriate, makes it easier for the public to access and compare delivery information.

While recognising that competition:

- Spreads innovation and raises standards by challenging services to improve their performance
- Underpins transparency by identifying and rewarding success, but, to improve services, companies' competitiveness needs to be protected.

Companies that deliver public services must be mindful of their existing legal and other obligations, including (but not limited to):

- Competition law
- Contractual obligations and key performance indicators, including the Freedom of Information Act (FOIA) and client confidentiality

- The Corporate Governance Code
- The Data Protection Act
- Employment law
- Environmental information regulations
- Existing voluntary codes of conduct
- Inspection and sector regulatory regimes
- Public procurement law
- Tax law.

The objectives

This statement aims to:

- Ensure the public has access to clear and accurate information pertaining to service delivery
- Emphasise the importance of Providers and Commissioners working together to improve transparency
- Highlight the merits of a proactive approach to information management by Commissioners
- Advocate a seamless and consistent flow of service delivery information between Commissioners and their Providers.

The statement of principles

Overarching transparency principles

- All Providers – whether from the public, private or third sectors – should support their Commissioner in driving transparency, in order to build public trust in their services.
- All public services should be transparent about their performance, regardless of their scale, function or delivery model.
- Exemptions should follow the provisions of the FoIA – for example, on national security or commercial confidentiality grounds – and have regard to past rulings of the Information Commissioner’s Office (ICO), while ensuring there is no distortion to the competitive process.
- As early as practicable and as a matter of good commercial practice, independent Providers and Commissioners should agree what categories of information should be exempted within any existing legal framework.

Principles governing the proactive release of information to the public

- Providers and Commissioners should agree schedules for the Commissioner to proactively release delivery information to the public, within any existing legal framework.
- Published information should be in an accessible format and as easy as possible for the public to understand.
- Provider contracts with the public sector should not, other than in exceptional circumstances, explicitly prohibit or otherwise impede the proactive release of information by Providers.

Principles governing the release of information on public request

As early as practicable, Commissioners and Providers should agree how to manage enquiries from the public.

In addition, Commissioners should:

- Be a single point of contact for public enquiries relating to the performance of independently delivered services they oversee

- Decide, in consultation with Providers, what information is relevant to the contract(s) in question
- Cascade enquiries regarding a service that the Commissioner oversees to the relevant independent Provider in a timely fashion
- Respond to public enquiries, using information supplied by the relevant Provider(s).

In addition, Providers should:

- Supply their Commissioner with information that helps their Commissioner respond to public enquiries regarding the contract(s) in question
- Supply their Commissioner with information that helps their Commissioner respond to the Commissioner’s own transparency obligations
- Respond to Commissioner queries that are relevant to the service in question within a reasonable time frame and with due consideration to the urgency of the question.

References

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- 4 *ibid*
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- 6 Gaynor, M., Moreno-Serra, R. and Propper, C. 2010 *Death by Market Power. Reform, Competition and Patient Outcomes in the National Health Service*
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- 11 Office for Fair Trading 2012 *Orderly Exit: Designing continuity regimes in public markets*
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compete and prosper for the benefit of all.

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