

Roundtable Summary

Summary Note – 20 November 2012

Introduction

Government uses private providers to deliver a vast range of public services in many different market contexts. The purpose of the National Audit Office Roundtable was to consider when government decides to use user choice and provider competition as its delivery model, what are the principles that government should apply to ensure effective oversight of markets?

The NAO is keen to foster dialogue across government to help improve the delivery of public services; and this had been the purpose of organising the roundtable and the impetus behind the NAO's report published in June this year *Delivering public services through markets: principles for achieving value for money*.¹

The Roundtable heard from a range of leading practitioners and commentators on public service markets including:

Amyas Morse

Comptroller and Auditor General

Professor Julian Le Grand

London School of Economics

Catherine Davies

Director of Cooperation and Competition, Monitor

Ed Smith

Director, Office of Fair Trading

Philip Cullum

Partner Consumer and Demand-side Insight, Ofgem

David Boyle

Barriers to Choice Review for Cabinet Office

Sir Stephen Bubb

Association of Chief Executives of Voluntary Organisations

Professor Simon Burgess

Bristol University

Tom Gash

Programme Director, Institute for Government

Brief speaker biographies can be found at [Annex One](#).

¹ National Audit Office Report, *Delivering public services through markets: principles for achieving value for money*, June 2012 is available from the National Audit Office's website: www.nao.org.uk

The invited audience for the Roundtable included representatives from the following organisations:

- Department for Business, Innovation and Skills
- Department for Education
- Department of Health
- Cabinet Office
- Care Quality Commission
- Monitor
- Office of Fair Trading
- Ofgem
- ORR
- Institute for Government
- The King's Fund
- Social Market Foundation
- Association of Chief Executives of Voluntary Organisations
- Which?
- Co-operatives UK
- PwC
- London School of Economics
- University of Bristol
- City University
- National Audit Office

Effective oversight of public service markets

Achieving value for money

User choice and provider competition provide an opportunity to deliver public services in innovative and different ways from the traditional delivery mechanisms that government uses to provide public services, such as employing staff to deliver them directly or purchasing them, on behalf of the taxpayer, from the private or not-for-profit sectors. It therefore requires government departments and agencies to possess and deploy a very different skill set suitable for a commercial market environment, and brings a new set of risks to achieving value for money.

There are risks and opportunities to achieving value for money from delivering services through markets, as there are with any service delivery method. Markets present opportunities for services to become more personalised, responsive, efficient, diverse and innovative. There are also risks that need to be understood and managed to achieve value for money. markets can lead to fragmentation, potentially reducing the capacity of individual delivery units and increasing the overall costs of the system.

- 1 markets can lead to over-concentration of provision and hence higher costs to users, if competition is ineffective. It is therefore important that the additional costs of using this mechanism to deliver public services, in particular the need for providers to make profits, is justified by efficiency gains.
- 2 private markets can promote efficiency, but may not naturally provide universal services or equity of provision. They will not offer services if the cost of doing so is uneconomic, unless financial incentives are provided.
- 3 personalisation of services can help meet individual users' needs, but where users receive direct cash payments it may increase the risks of error and fraud in the system.

Moreover, when markets are used to deliver public services, the government typically retains a reversionary interest if services fail, yet it has much less ability to intervene than when it delivers services directly. It was emphasised that it is not only well worth thinking through what happens if providers fail before that day arrives but effective oversight also requires sustained monitoring of how the market is operating, otherwise the outcome of neglect is unlikely to be benign.

Securing value for money when public services are delivered through markets, therefore, requires clear oversight of several key areas and a set of associated skills to exercise that oversight effectively such as: commercial, economic, legal and analytical skills as well as 'softer' skills such as insights into consumer behaviour. Departments and local authorities with oversight responsibilities will need to assess their existing capabilities and identify skill-gaps and areas of expertise they need to develop and fill if they are to undertake effective market oversight.

According to the NAO's empirical evidence and other sources, the main principles that the government needs to consider to help it achieve value for money when using markets to deliver public services can be summarised into four areas:

- 1 All public services markets need rules to ensure their orderly operation, both to enable effective competition between providers and to protect users (Rules and enforcement);
- 2 Users need to be empowered to make good choices, but to do this the information and support provided to them needs to take account of their capability and willingness to act (User choice and empowerment);

- 3 In order for public services markets to deliver innovation and quality in service provision, new providers need to be able to enter the market, successful providers to expand and ineffective providers to exit, while ensuring service continuity and avoiding harm to users (Provider competition, diversity, flexibility, and service continuity); and
- 4 It is essential for government departments to monitor whether the market mechanisms are delivering their policy objectives and to have in place the necessary powers, tools and capabilities to intervene if necessary (Review of market outcomes and delivering public policy objectives).

Different delivery models and the rationale for adopting user choice and provider competition

Professor Julian Le Grand has characterised four main ways of running public services as trust, mistrust, voice and choice.² All have been tried, there is no perfect method of delivery but some work less badly than others. The case for user choice and provider competition is based on the limitations of the others rather than the intrinsic nature of the model itself. It won't solve all the problems with the other methods, but it arguably has fewer problems than the others.

The four models are not mutually exclusive and most systems are a mix of the four; it is a question of shifting the balance between them.

Some of the points raised at the roundtable in the ensuing discussion included:

- Information and transparency through publication of the quality ratings of providers in league tables – is this voice or choice or a mixture of the two? It brings reputational competition and there is reasonably good evidence that it works quite effectively to motivate managers and governing bodies of hospitals to improve without users having choice. On the one hand this stops people making choices based on the 'wrong' criteria, but its downsides include that government decides the metrics on what the criteria should be. Money also does not follow choice directly, so whilst commissioners may allocate funds to those providers with higher ratings there is a certain time lag, and there is no automatic mechanism to prevent resources flowing to poorly-performing providers in the meantime.
- Another recent development is the use of social networking websites which can act as a default outlet (part of 'voice') for people's views or concerns where the system for delivering public services appears not to be working effectively.

Rules and enforcement

Some of the points raised at the roundtable for this session included:

- In an immature market there is a need to get the approach to enforcement right; advocacy plays a key role. Most providers are hazy about how competition law applies and need educating about the forms infringements of the law can take, for example the sharing of pricing information. Recently the OFT had raised concerns that a number of NHS hospital trusts were exchanging commercially sensitive pricing information between their private patient units, and had taken action to require their future compliance with competition law and to raise awareness through training of staff.
- However there is also a need to bear in mind the risk of 'over-enforcement' in an immature market which can have a 'chilling' effect on innovation and development of the market. This is not to imply however that enforcement as a course of action should not be used for serious infringements by more experienced providers who would be expected to be fully-compliant with competition law. Enforcement of the law sends out a strong message that helps to deter other providers from anti-competitive behaviour.
- Another consideration raised was that a system of enforcement should not lead indirectly to patients being punished when it is the provider at fault.
- In healthcare, integrated care does not necessarily conflict with competition. It is about people doing different things but in a coordinated fashion from the patient's perspective. To date there have been a few conduct complaints cases in NHS-funded healthcare, but providers are not bringing anti-competitive behaviour complaints, one factor that may help to explain this is that providers may not wish to jeopardise their relationship with commissioners.

² Professor Julian Le Grand *The Other Invisible Hand: Delivering Public Services through Choice and Competition*, 2007

User choice and empowerment

Some of the points raised at the roundtable for this session included:

- Choice is a means to an end rather than an end in itself. Users want to be in control over the service, and have improvements and services tailored to their needs. However, choice is not always popular with people for various reasons:
 - people don't like complexity, especially when they suspect that it is deliberately created to make comparisons between services more difficult (an example of this was cited from the energy market where there are 400 tariffs approximately, and sometimes people find they have inadvertently switched to a more expensive package).
 - provision of too much information can obfuscate especially when the information does not consider the user perspective. Not all people wish to spend time trying to interpret information on different service providers when it is not presented in an accessible manner.
 - benefits of choice are not always felt equally. The more informed and active switchers tend to get the better deals.
 - consumers don't like being used as a regulatory tool. Other bodies (regulators, public authorities, and government departments) have an important part to play in ensuring that all public services meet a decent standard.
- There is a need to simplify choices – reducing the number of tariffs should create more effective choice, not less choice. Straight-forward, jargon-free wording in provider material is also important.
- Intermediaries can play a key part in markets to help users make good choices and by helping them with the switching process. Regulators may accredit switching websites with a kite mark-type designation if they can prove to be helping customers.
- Another development is 'collective switching' which is beginning to be discussed more. Which? tried it earlier this year and signed up multiple thousands of users to give them greater bargaining power with energy suppliers.
- Customer feedback tools, like tripadvisor.co.uk, can also play an effective part in user choice as most providers care about what people report on a public forum. An example of 'voice' helping choice.
- In public services, bureaucracy, capacity constraints, lack of information, and lack of advice can all get in the way of users being able to make effective choices. Choice is a politically contested word. The paradox of choice is that sometimes disadvantaged groups are the most keen to exercise choice, but can also be sceptical about it for various reasons which would be worth examining further.
- Evidence has shown that in rural areas people are more prepared to exercise choice as they are used to having to travel to use public services and may have a number of urban centres within travelling distance. People who live in urban areas are more likely to opt for the local school and local hospital (etc) and may not be used to travelling further afield to access public services. They may also feel more of an affiliation to 'support' their local service providers (even when the quality ratings may not be as good as other providers within a reasonable distance).
- What is the ideal level of switching in a market? Is the current level of 12 per cent in energy markets too high or too low? Switching rates that are too high may in fact undermine the effectiveness of public services, however it is important that switching pressures are maintained to encourage provider performance improvement. Switching can have externalities (good and bad), for example people may switch away from hospitals with long waiting lists, even though waiting lists may be longer because the hospital is highly rated. Providers may differentiate between groups of customers, and focus more efforts on trying to keep customers who have experience of switching, as they are more likely than non-switchers to switch away from them.

Provider competition, diversity, flexibility, and service continuity

Some of the points raised at the roundtable for this session included:

- When replacing direct delivery with alternative publicly-funded delivery models what matters is what works effectively. Two types of models were considered:
 - the managerial model: reforms aimed at saving taxpayer money where competition is based on price, and
 - the citizen or community rights model: where the main driving force is what works best for beneficiaries.
- The latter model harnesses the power of the voluntary sector which is driven by what works best for users. The model can however be stymied by the fact that potentially far-reaching savings to the wider public purse do not necessarily accrue directly to the department in question and can be, to an extent, hidden or difficult to track through the system. An evaluation of rehabilitation services for ex-offenders had found that the financial savings had accrued to parts of the policing and courts systems. A Private Members Bill is due to be debated shortly that will propose that wider societal benefits are taken into consideration.
- Procurement practices based on commissioning of the intended outcomes would play more to the strengths of the voluntary sector, but can commissioners make effective choices when rigid procurement rules appear to prevail, which may drive out innovation and non-conventional models? The problem may not lie with the procurement rules per se but in the way they are applied by commissioners. There is a need to help people procure more effectively, and to overcome potential obstacles such as disproportionate rules for smaller value contracts. Perhaps the NAO has a role to play to encourage commissioners to take a more outcomes-focused perspective on procurement.
- In education, there is a potentially diverse range of providers. What will be the impact of free schools on educational standards? They raise the competitive threat for neighbouring schools, but the evidence to date that this has had a demonstrable effect on competition is either weak or non-existent. Free schools have significant set up costs; it is unlikely in the current economic conditions that more than one free school will be allowed per area. It therefore represents a one-off market threat for the existing schools in the area. Nevertheless, free schools could bring other benefits such as pedagogical innovation. However governance arrangements still need to be nailed down, for example what happens when their founders leave?
- What should be done with failing schools? Ofsted's inspection system seems to be relatively effective at driving improvements. A 'notice to improve' does appear to have the desired effect of bucking up the school's leadership. If it fails to improve, the school gets converted into an academy and the leadership is changed. However the discussion raised a number of issues on the demand for and supply of school places.
 - What if people make the 'wrong' choice and continue to opt for a failing school? Is there a role for the state to intervene in order to secure public policy outcomes and taxpayer interests? In which case should it override user choice in this type of scenario?
 - Will there ever be sufficient funding to address the lack of spare capacity that exists in the education system? Would it not be better to provide spare capacity only in certain areas where it is most likely to drive improvements?
 - The existing system does not provide incentives for successful schools to expand, heads see their role more as making their school better.
- Some thoughts were raised on the effectiveness of failure regimes, how do we have an effective failure regime if exit is not possible in certain areas i.e. merging the poor performer with a stronger one is unlikely to produce good outcomes? Closing hospitals is politically difficult. Is there a need to help local people know what choice there is and to find alternatives so they feel less strongly about closures?

Review of market outcomes and delivering public policy objectives

Some of the points raised at the roundtable for this session included:

- With the increasing use of market mechanisms by government (whether for delivering user choice and provider competition, PBR or commissioning) it raises the question how well is government set up to design and oversee markets for public services to ensure they achieve policy outcomes?
- Research undertaken in 2011 looked to address this question and found that most public servants involved in opening up public services to market mechanisms have few if any relevant skills or capabilities to achieve this. The focus has mainly been on mechanisms or systems to implement markets rather than on developing capability; innovation has been happening on weak foundations. There is no standard approach to implementation or set of mechanisms that can guarantee success. Skill levels and understanding should improve over time with experience, but it is likely that in some cases it will be hard-won through learning the lessons from what goes wrong.
- The research also found that government lacks a shared language and common understanding of market mechanisms. The language used is different in each department. A common understanding needs to develop before people in government can converse with each other productively on public service markets.
- Departments do not have the tools to help them make effective decisions, for example not many departments are able to tell their Ministers which services are more or less suited to the use of market mechanisms. There is a need for greater refinement in thinking of how and when to use market mechanisms. Also in reality, it is necessary to recognise that public expenditure cuts are driving some decisions; local authorities are under pressure to focus on the lowest tender to the exclusion of everything else. Providers are unlikely to invest and seek to enter a new market where their future sustainability is uncertain.
- The research also found a mismatch in levels of oversight. At the national level oversight is massively under-managed in many ways, and yet can be overly-managed at a micro level in different ways. It is not always clear who should be doing what, for example the provision of information as the system does not necessarily produce the right information. There is not necessarily a need for government to exercise tight oversight but it must have a watching brief on whether the market is operating effectively. There should be deliberate decisions taken to address market imperfections, such as setting up effective user information systems that help drive user choice, or to furnish provider diversity in the market.
- There can be pressure from Ministers to achieve results now, but it takes a while for markets to develop and for people to learn how to make a market work effectively. There is a risk of 'managing' the market when it really needs to be left to develop on its own.
- The IfG is aiming to contribute to a more joined up thinking and shared language by developing tools and frameworks to help policymakers and practitioners work out where and when to use market mechanisms such as user choice and provider competition. In addition they are trying to provide evidence of where and when things have worked and share these across the piece.

Next steps

A community of people within and outside government who have an on-going interest in the effective oversight of public service markets would be a worthwhile legacy from this roundtable. This event hopefully provides a spring-board for a future on-going dialogue within and across different areas of government where policymakers and practitioners have a common interest in overseeing markets effectively and are attempting to grapple with similar issues. Along with other parties, the NAO will try to play its part by helping this conversation to develop with a common language, and a by helping to share experience of what works.

Annex One

Brief speaker biographies

Professor Julian Le Grand

Professor Julian is the Richard Titmuss Professor of Social Policy at the London School of Economics. In 2003–5 he was seconded to No 10 Downing St as a senior policy adviser to the Prime Minister. As well as his position at No 10, he has acted as an adviser to the President of the European Commission, the World Bank, the World Health Organisation, the OECD, Her Majesty's Treasury and the UK Departments of Health and Work and Pensions. He is Chair of the Cabinet Office's Mutuality Taskforce.

Catherine Davies

Catherine is a competition law specialist with experience in all aspects of EU and UK competition law. Catherine also has experience of public procurement law and judicial review. Before joining the CCP in February 2009 as Legal Director, she worked at the Competition Commission and a large City law firm. Catherine is now the Director of CCP and Executive Director of Cooperation and Competition at Monitor.

Ed Smith

Ed is a Director of Infrastructure, Services and Public Markets at the Office of Fair Trading. He leads their work on public service markets, and choice and competition in public services.

Philip Cullum

Philip is currently Partner, Consumer and Demand-side Insight at Ofgem, and a member of the Consumer Panel for the Civil Aviation Authority. Previous appointments include: a member of the Regulatory Policy Committee (2009–12), and Deputy Chief Executive of Consumer Focus (2008–11).

David Boyle

In June the Cabinet Office appointed David to lead an independent choice review which is looking into what people currently do with the choices that they have, whether barriers exist that are currently preventing individuals from exercising choice and the factors necessary to ensure choice is available to everyone. His report to Ministers was published in January 2013. David is an author and has written about the effectiveness of public services, co-authoring of a series of reports with NESTA. He is a Fellow of the New Economics Foundation and a journalist.

Sir Stephen Bubb

Sir Stephen has been Chief Executive of the UK charity leaders representative body Association of Chief Executives of Voluntary Organisations (ACEVO) since 2000. Prior to that he was Director of Personnel for the National Lottery Charities Board. He received a knighthood in 2011 for his services to the voluntary sector. From March 2011 to June 2011 he was seconded to the Department of Health, as part of the team leading Andrew Lansley's National Health Service (NHS) "listening exercise".

Professor Simon Burgess

Simon is Professor of Economics in the Department of Economics, University of Bristol. He is the Director of The Centre for Market and Public Organisation, CMPO and also the Director of The Centre for Understanding Behaviour Change. Simon's main research interests include the role of markets in education and health, and empirical models of incentives in organisations. He is also a Visiting Professor at LSE through CASE, and a Research Fellow at Centre for Economic Policy Research.

Tom Gash

Tom is Programme Director at the Institute of Government which he joined in January 2008. He leads the Institute's work on public service reform, looking at contemporary innovations in the UK and worldwide. Tom was previously a senior crime policy adviser in Tony Blair's Strategy Unit and a strategy consultant at the Boston Consulting Group.

