



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 services. 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 opposite, “insourcing”; the increasing use of Local Authority Trading Companies (LATCs) to trade for profit, providing a revenue stream for the local authority; and mutuals.

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 area, 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*, since when many forms of alternative service provision have been in use.

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 to experiment with alternative forms of service delivery, seek to reduce overheads, and explore new means to raise revenue. This briefing provides an 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 service to their electorates on a joint basis. Sharing may take place between neighbouring authorities or non-neighbouring authorities. It may take place between different types of authorities (e.g. county and district councils). Shared services may be provided via a joint in-house department or they may be jointly outsourced (see section 3 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.

In England and Wales, section 113 of the *Local Government Act 1972* 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 idea of sharing services, and the associated benefits (and drawbacks), is not unique to local authorities. It has been employed by the broader public sector since at least 2005 (see the White Paper [Transformational government: enabled by technology](#), Cm 6683). More recently, the Government published a [strategy for shared services](#) in 2018. This had three main rationales: delivering value and efficiency, convergence around processes and data, and meeting end user needs.

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.

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

Non-neighbour initiatives are far from common and present real challenges, such as the amount of time officers spend travelling and the difficulty of sharing place-based services. However, some councils, such as Breckland and South Holland, have proved they can work.

....

Where shared management does work between non-neighbouring councils, communication is key. Travelling time can be reduced through the use of technology such as video meetings. Bringing staff and services together in these situations is

a challenge, but successful non-neighbour partnerships could go on to draw in more councils in larger groups in the future.¹

In some cases, extensive sharing of services has preceded a full local authority restructuring. Dorset County Council and its six district councils implemented a restructure in 2019. This followed a number of years of shared services between the seven authorities. This was also true of Suffolk Coastal and Waveney district councils, which have merged to become East Suffolk. These are the exception to the rule, however: it is not the case that sharing services inevitably leads to pressures for mergers.²

The Local Government Information Unit has suggested that sharing services between local authorities is more widespread in England than in other parts of the UK:

Partnering is also limited in Scotland and Wales. In Scotland, sharing tends to focus on individual services, including collaborations between councils, private firms, other public sector bodies and third sector organisations. In Wales, a working group on local government reform is considering partnership working as an alternative to full-scale reorganisation.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. 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.

The LGA produced a report entitled *Stronger Together* in November 2016, focusing specifically on the sharing of chief executives and senior management teams between local authorities. Sharing at this level may lead on to a more comprehensive merger of various teams within the participating local authorities.

The report set out a number of critical features of successful sharing initiatives. These included political leadership; trust, honesty and

¹ LGA, [Stronger together: shared management in local government](#), November 2016, p6-7

² LGA, [Stronger together: shared management in local government](#), November 2016, p24

³ LGIU, [Shared services](#), 11 December 2018

⁴ LGA, [Investigating and improving the HR and OD capability in shared councils](#), 23 February 2016

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openness; adaptability; councillor involvement; staff engagement; and communication. It also listed factors that hindered success:

- lack of a clear and shared vision of the reasons for shared management
- concerns around the loss of sovereignty of a council
- a fundamental difference in the organisational culture of the councils
- fears of a 'takeover' by one council
- a poor relationship or lack of trust between councillors, leaders or managers.

'Politics' is often given as the reason for attempts that fail or discussions that are dropped. However, one council leader said it was too easy to simply blame 'politics' and the problem would better be described as weak or inconsistent political and/or managerial leadership.⁵

Thomas Elston and Ruth Dixon, of the University of Oxford, published a paper in 2018 that found no discernible relationship between shared services and administrative costs. They analysed local authorities' administrative spending relative to frontline spending (their "administrative intensity") for 317 English authorities between 2008-2016, comparing those involved in sharing services versus those who were not. They found no correlation between reductions in administrative costs and the degree of participation in shared services. They also found that sharing of professional services, rather than clerical services, correlated with a slight increase in administrative costs:

...sharing of labour-intensive professional (rather than automated clerical) services actually showed a small but significant *positive* relationship with administrative intensity. This likely reflects the limited potential for scale economies in activities that are not capital-intensive, combined with the costs of coordinating multiple partners.⁶

A study of the financial impacts of shared services in South Australian local government found that procurement of shared services was associated with an average rise in expenditure of some 8%.⁷

2.4 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 2018, provides details of 559 shared service arrangements resulting in £971 million of efficiency

⁵ LGA, *Stronger together: shared management in local government*, November 2016, p18. See also Grant Thornton, *Responding to the challenge: alternative delivery models in local government*, 2014; Drummond Macfarlane, *Services Shared, costs spared?* LGA, 2012; Tom Symons, Olivier Roth and Joe Sturge, *Shared necessities: the next generation of shared services*, NLGN, 2011

⁶ Thomas Elston and Ruth Dixon, "[Austerity in English local government: why collaboration was not the answer after all](#)". *LSE Politics & Policy*, 13 Mar 2019. [A longer working paper](#) is available on the University of Oxford website.

⁷ J. Drew, D McQuestin and B. Dollery, "Good to share? The pecuniary implications of moving to shared service production for local government services", *Public Administration* 97: 132-146, 2018

savings. The figures are provided by local authorities themselves and have not been quality assured by the LGA. It is not clear what the savings figures are intended to compare against, and some authorities do not provide savings figures. A Local Government Information Unit briefing note on those figures said:

The annual survey relies on voluntary submissions by local authorities and so may not cover all the councils sharing services. Estimates of saving are provided by the local authorities themselves.

But there appears to be an upward trend, with 182 partnerships established between 2015 and 2018, compared with 175 in the previous four years and just 74 between 2007 and 2010. In 2018, the largest number of partnerships involved councils in Southeast England (117), followed by the East Midlands (85). By comparison, just 19 were reported in North East England.⁸

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.⁹

2.5 Examples of shared services

Examples of shared service initiatives include the following:

- Bromsgrove DC and Redditch BC, in Worcestershire, share a number of services: ICT, economic development, leisure and cultural services, regulatory services, policy, communications, procurement, legal and democratic services, customer services, administration and revenues. Some services are also shared with Wyre Forest District Council and some across Worcestershire.¹⁰
- In 2015, the London Boroughs of Richmond-upon-Thames and Wandsworth announced proposals for the creation of a shared staffing structure.¹¹ This was [implemented in October 2016](#);
- The three London boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster developed the “Tri-Borough partnership” in the early 2010s.¹² Most elements of the partnership [came to an end from 2018](#).
- Cheltenham, Cotswold, Forest of Dean and West Oxfordshire district councils have shared HR, finance, procurement and audit, ICT, and customer services since 2016, with three of the councils sharing public protection and building control; land, legal and property; and revenues and housing). This has delivered annual financial benefits of £1.83 million.¹³
- Staffordshire Moorlands and High Peak district councils share regeneration and development control, with each service providing surgery advice centres across both areas. Over 10 years

⁸ LGIU, [Shared services](#), 11 December 2018

⁹ See the [Shared Services pages on the LGA website](#).

¹⁰ LGA, [Stronger together: shared management in local government](#), November 2016, p7

¹¹ [“Councils announce plans for shared staffing structure”](#), Wandsworth Council news story, 23 January 2015

¹² [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.

¹³ LGA, [Stronger together: shared management in local government](#), November 2016, p21

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the initiative has saved £12m, and in 2017 the councils launched a new waste collection and recycling company with a third partner council.¹⁴

Further examples, and further reading, can be found on the [LGA shared services webpages](#).

¹⁴ LGIU, [Shared services](#), 11 December 2018

3. Outsourcing

3.1 Power to outsource services

Section 135 of the [Local Government Act 1972](#) provides local authorities with the power to “outsource” provision of services to private or third sector organisations. This was modified by the introduction of compulsory competitive tendering (the [Local Government Act 1988](#)) and Best Value (the [Local Government Act 1999](#)).

Local 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. They are subject to standard public sector recruitment laws, including the requirement to advertise contracts above a certain value in the Official Journal of the European Union (OJEU). Where local authority employees are transferred to a private sector provider as a result of contracting out, they must be covered by TUPE.¹⁵

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...¹⁶

Occasionally legal challenges are brought against outsourcing proposals. For instance, LB Barnet’s decision to outsource the bulk of its service delivery responsibilities in 2013 was challenged (unsuccessfully) in the courts. The challengers sought a judicial review of the decision on the grounds that the council had not properly consulted residents and that no impact assessment had been carried out as required under the *Equality Act 2010*. The challenge failed as it was ruled out of time.¹⁷ Another example is a failed challenge to the Haringey Development Vehicle (HDV), a contract of comparable scale to the Barnet one, in 2018.¹⁸ (The HDV was later abandoned following political disagreement.)

¹⁵ 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).

¹⁶ NEF / UNISON, [Outsourcing public services](#), 2015, p. 7

¹⁷ See [R \(Nash\) v Barnet](#), EWCA Civ 1004, 2 Aug 2013; Mark Smulian, “[Court clears way for Barnet outsourcing](#)”, *Public Finance*, 6 Aug 2013; BBC, “[Barnet services outsourcing challenged in court](#)”, 19 Mar 2013

¹⁸ See Local Government Lawyer, “[High Court rejects challenge to lawfulness of Haringey development vehicle](#)”, 8 Feb 2018; [Peters v Haringey](#), EWHC 192 (2018)

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](#).

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 minimum savings of 20% against the net budget and the transfer of around 250 staff;¹⁹
- 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.²⁰ This initiative was named "One Barnet". The signing of the contract was delayed by an application for judicial review, which was refused;²¹
- "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).²²

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 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.

¹⁹ Trafford Council, "[Reshaping Trafford: New Partnership with Amey announced](#)".

²⁰ Capita, "[Capita signs contracts with Barnet Council](#)", 13 August 2013

²¹ This decision was upheld on appeal in February 2015: see Barnet Council, "[Barnet Council wins One Barnet appeal](#)", 18 February 2015

²² Laura Sharman, "Five councils sign 'groundbreaking' outsourcing contracts", [Local Government Chronicle](#), 11 February 2016

- 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.²³

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.²⁴

3.3 Statistics

Local authorities (along with other public bodies) are required to supply contract notices for procurement over certain values to the Government's Contracts Finder system.²⁵ However, there is no repository of current contracts, and there are no collated statistics indicating the total value of contracts that local authorities have let to the private sector. Some high-level figures exist in the public domain: for instance, Walker and Tizard, writing for the Smith Institute in 2018, say:

The Business Services Association says outsourcing is worth 8% of GDP (£263bn), of which between £100bn and £120bn is in the public sector, including contracts to charities and not-for-profits as well as firms. This is probably an overestimate since in 2015/16 the UK state spent a total of £192bn on services and goods, which include everything from fighter aircraft to manhole covers...²⁶

3.4 Insourcing

Following extensive, high-profile critiques of outsourcing in local government, many local authorities have chosen to "insource" functions in the later part of the 2010s. This may be a response to poor performance by a contractor. It may also be a means of expanding a council's capacity as part of a broader service restructuring, or where a contract has come to an end and the council does not wish to extend or retender it. Alternatively, some companies have decided to stop bidding

²³ National Audit Office, [The role of major contractors in the delivery of public services](#), 2013, p. 10

²⁴ BBC, ["South West One contract with county council to end early"](#), 9 December 2015

²⁵ See Crown Commercial Service, [Procurement Policy Note – Promoting Greater Transparency Information Note PPN 02/17](#), December 2017

²⁶ David Walker and John Tizard, [Out of contract: time to move on from the love-in with outsourcing and PFI](#), Smith Institute, 2018, p5

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for certain types of work following ongoing difficulties with delivering contracts:

Cheshire West & Chester Council last week [January 2019] voted to establish a council owned company to deliver its waste services after Kier said it wished to end the contract...

A Cheshire West & Chester paper noted Kier had said it would leave the waste market after problems on its contract, and another in East Sussex, landed it with an extra cost of £35m in 2016.

Hastings BC and Rother and Wealden DCs appointed contractor Biffa this month to replace Kier after a mutual decision to terminate their joint contract early.²⁷

The collapse of the service provider Carillion in January 2018 triggered considerable activity at central government level (see the Library briefing paper [The Collapse of Carillion](#)). Carillion held contracts with some 30 local authorities, and the Government committed to ensuring that all public services affected by the collapse continued to be delivered.²⁸

Carillion's collapse led to a report by the National Audit Office, *Investigation into the Government's handling of the collapse of Carillion*,²⁹ a report from the Public Administration and Constitutional Affairs Committee,³⁰ and new guidance from the Government on the contracting out of services.³¹ The think-tank Reform also published a report in March 2019 entitled *Please Procure Responsibly*.³² Collectively, these publications emphasise the following points:

- Ensuring that a "make or buy" decision – i.e. a decision on whether to contract out or deliver a service in house – takes place at an early stage in the outsourcing process (as opposed to public bodies defaulting to contracting out);
- Where a contract is to be let, ensuring that the relevant market is healthy and competitive;
- Ensuring that the contracting authority has the requisite skills to negotiate and let a contract effectively;
- Continuing to monitor a contract throughout its lifetime: in the words of Reform, at present "too many resources are invested in the contracting-out phase of the procurement cycle at the expense of contract management, resulting in an imbalanced procurement cycle and a lack of effective monitoring for outsourced services";³³

²⁷ Sarah Calkin, "[Sixth council ends ties with contractor this month](#)", *Local Government Chronicle*, 26 January 2019

²⁸ Gov.uk, Government protects essential public services as Carillion declares insolvency, 15 January 2018

²⁹ NAO, [Investigation into the government's handling of the collapse of Carillion](#), HC1002 2017-19

³⁰ PACAC, [After Carillion: public sector outsourcing and contracting](#), HC-748 2017-19, 9 Jul 2018

³¹ Government Commercial Function, [The outsourcing playbook: central government guidance on outsourcing decisions and contracting](#), February 2019. This advice is targeted at central government departments and does not apply directly to local authorities, though councils may choose to refer to it.

³² Joshua Pritchard and Rose Lasko-Skinner, [Please Procure Responsibly: the state of public service commissioning](#), Reform, March 2019

³³ Joshua Pritchard and Rose Lasko-Skinner, [Please Procure Responsibly: the state of public service commissioning](#), Reform, March 2019, p8

- A renewed emphasis on the goals of the [Public Services \(Social Value\) Act 2012](#). This Act permits local authorities to use procurement (and other) policy to deliver wider public goals: for instance, “the protection of the environment, energy efficiency, combating climate change, promoting innovation, employment and social inclusion...”;³⁴

David Walker and John Tizard, writing for the Smith Institute in 2018, attacked the performance of outsourced contractors and called for a change in emphasis towards in-house supply:

With in-house provision as the default option for public services, [the Government should] set out new criteria for “make or buy” decisions by public bodies, writing into contracts Freedom of Information requirements, involvement of public and staff, transparent reporting of profit, labour and living wage clauses, union recognition, compliance with fair tax and boardroom remuneration. These criteria might give preference to charities and social enterprise if services are contracted out.³⁵

The New Local Government Network conducted a survey of local government leaders, chief executives and mayors in July 2018. This showed that:

A significant minority indicated that they would outsource less (39 per cent), while nearly half indicated no change (46 per cent). Only 15 per cent indicated that they would outsource more.

This dwindling confidence in outsourcing suggests that councils are seeking greater control over service delivery arrangements, driven by funding and demand pressures. Evidence also shows that councils are increasingly exploring new, innovative forms of partnerships such as trading companies and joint ventures.³⁶

In March 2019, the Labour Party proposed to require local authorities to reassess a service when a contract to a provider comes to an end. If the service “involves significant contact with ‘at risk’ groups, exercise of coercive powers, or risk of infringement of people’s rights”, a Labour government would issue statutory guidance to bring the service in-house.³⁷

Some recent examples of insourcing are provided in an article on the *Public Finance* website.³⁸

³⁴ Government Commercial Function, [The outsourcing playbook: central government guidance on outsourcing decisions and contracting](#), February 2019, p45. See also Pritchard and Lasko-Skinner, 2019, p22-24.

³⁵ David Walker and John Tizard, [Out of contract: time to move on from the love-in with outsourcing and PFI](#), Smith Institute, 2018, p4

³⁶ NLGN, [“Declining appetite for outsourcing in local government: time to rethink partnerships between the public and private sectors”](#), 10 October 2018. The survey referred to covered Great Britain and had a 25% response rate, with 191 respondents.

³⁷ Labour Party, [“Labour pledges to end the scandal of outsourcing services involving contact with people ‘at risk’”](#), 24 Mar 2019

³⁸ Dominic Brady, [“Coming home: local government insourcing”](#), 6 February 2019

4. Commercialisation

4.1 Introduction

In the local authority context, the term “commercialisation” can have several different meanings. It may refer to a change in emphasis within a local authority’s internal operations, with the aim of identifying opportunities to generate income in response to falling levels of grant. It can refer to joint ventures with other public and private organisations, seeking to bring in external commercial expertise to increase efficiency and profit. It can refer to local authorities offering services in a competitive market, either directly or through a wholly-owned company. The consultant Jonathan Flowers suggests the following four categories of activity:

1. Making money – doing something that generates profits that can then be deployed for councillors’ priorities.
2. Behaving in a more business-like way – adopting some of the positive culture and behaviours that are sometimes associated with commercial organisations.
3. Commissioning councils – creating a separation between service commissioners who are super-intelligent ‘buyers’ of what’s needed, and super-efficient providers, who may also compete for others’ business.
4. Being business friendly – to promote local economic growth and prosperity.³⁹

In commercial matters, local authorities are subject to the same fundamental legal framework as those of private companies. They have the power to establish companies and joint ventures and to decide to commit funds to them. These powers must be exercised within the general financial regulatory structures applying to local authorities, details of which can be found in the Library briefings [Local authority financial resilience](#) and [Local government: commercial property investments](#). These are essentially aimed at preserving the overall health of a local authority, and they are unlikely to provide a case against a particular local authority decision.

4.2 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 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. Where a local authority has statutory responsibilities to provide specific services to individuals, these services cannot be provided

³⁹ Jonathan Flowers, [Creating council commercialism: a discussion](#), Capita, 2013, p3

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 2012.⁴⁰

A local authority that sets up a company must produce a business case before doing so.⁴¹ 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. Where a councillor or council officer is appointed as a company director, they must act in the best interests of the company. They may need to manage any conflict of interest between this and their other role(s). LATCs must pay VAT and corporation tax, and are subject to EU state aid rules, like other companies.

A research report from Grant Thornton, published in September 2018, draws a link between recent growth in the use of LATCs and the turn towards insourcing noted in section 3:

Although many outsourced contracts are successful and deliver the savings required by local government, the more high profile cases of failure have shaped a narrative that outsourcing has fallen out of favour and the days of large scale outsourcing are gone. Public sector confidence has been affected in relation to the more commercial approaches and this is impacting on willingness to enter into new arrangements with private sector providers for fear of resistance from stakeholders and the possibility of failure. ... This has led many to use LATCs as a mechanism for insourcing, ie putting services into a wholly owned company or joint venture. Unlike keeping (or bringing back) the service into the authority itself, this provides the opportunity to trade externally as well as delivering services on behalf of the owning authority.⁴²

4.3 Partnerships and joint ventures

Local authorities have the legal power to establish joint ventures with other public or private bodies, by creating jointly-owned vehicles.⁴³ The Treasury produced extensive guidance in 2010 on the creation of joint ventures by public sector bodies. The guidance set out the following reasons for creating a joint body:

Usually, for the public sector, the core reason for considering JVs is to mobilise complementary resources. The JV enables the complementary resources of the public and private sector parties to be integrated, so creating a wholly new business not otherwise achievable. Typically the purpose of the JV would stem from one, or a combination of the following objectives:

⁴⁰ Local Government Association, [Enterprising councils: supporting councils' income generation activity](#), June 2017

⁴¹ [Local Government \(Best Value Authorities\) \(Power to Trade\) \(England\) Order 2009](#), SI 2009/2393, regulation 2

⁴² Grant Thornton, [In good company: latest trends in local authority trading companies](#), September 2018, p7

⁴³ One element of the Haringey Development Vehicle case ([Peters v Haringey](#), EWHC 192 (2018) – see section 3.1 above) was clarification that local authorities have the power to deliver services through a joint venture. The HDV was to have been 50% owned by Haringey Council and 50% by the contractor.

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- Value capture - The desire to capture long term value, from say property development or a commercialisation/Wider Markets Initiative opportunity. A JV provides an alternative mechanism for capturing longer term value, as the public sector body will hold an equity stake in the JV.
- Route to market - The need to establish a new route to market for intellectual property or other assets, such as through the formation of a spin-out company from a Public Sector Research Establishment (PSRE) to establish and run a self-standing business. This is generally coupled with a desire to share in value capture as above.
- Service delivery programmes - The need to manage a long-term programme of service delivery and/or investment in order to improve the delivery and efficiency of public services and infrastructure justifies the formation of a separate self-standing and sustainable organisation. This would include e.g. Building Schools for the Future and Local Education Partnerships.⁴⁴

4.4 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: for instance, leisure centres, pre-schools, and housing. A response to a Parliamentary Question in 2018 said:

The general power of competence provisions set out in the Localism Act 2011 build on existing powers to charge and to trade. If a local authority wishes to trade for a commercial purpose, this must be carried out through a company to ensure that it does not have an unfair tax advantage over business. Local authorities can choose to deliver local services through companies provided that they assure themselves that doing so delivers best value to local residents. Local authorities, like other bodies, are subject to and must abide by competition law and it is their responsibility to ensure they comply with the requirements of state aid, competition and procurement law.⁴⁵

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.

⁴⁴ HM Treasury, *Joint ventures: a guidance note for public sector bodies forming joint ventures with the private sector*, March 2010, p6

⁴⁵ [PQ HL 8738 2017-19](#), 18 June 2018

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.....⁴⁶

4.5 The “Teckal exemption”

European Union public sector procurement rules require a competitive tendering process for any contract above certain thresholds.⁴⁷ 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).⁴⁸

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 substantially 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:

⁴⁶ [Localism Bill, Public Bill Committee](#), 1 Feb 2011 c185-6

⁴⁷ See [the latest OJEC thresholds](#).

⁴⁸ These apply to England, Wales and Northern Ireland. For Scotland, see the [Public Contracts \(Scotland\) Regulations 2015](#) (SI 2015/446).

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- 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;
- 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.⁴⁹

4.6 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.⁵⁰

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.⁵¹ 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.

4.7 Mutuals

The Government provides support for groups aiming to establish public service mutuals. It defines a mutual as:

... an organisation which:

1. has left the public sector (also known as ‘spinning out’)
2. continues to deliver public services and aims to have a positive social impact
3. has a significant degree of staff influence or control in the way it is run.

The Government stated, in August 2017, that “there are now approximately 115 public service mutuals across England, delivering an estimated £1.6billion of public services across a wide range of sectors”.⁵² This figure covers all public service mutuals, not just those

⁴⁹ Lexis Library, [The in-house exemption](#)

⁵⁰ Alan Weaver and Tom Lawrence, [Income generation – charging and trading](#), LGIU, October 2015, p5

⁵¹ BBC, [“Little Stoke parkrun petition tops 51,000 signatures”](#), 16 April 2016

⁵² DCMS, [Public service mutuals](#), 21 August 2017

originating in local authorities. The 2015 report *Public service mutuals: an essential guide*, from the LGIU, comes to similar conclusions:

In July 2014 the Cabinet Office announced that 91 new mutuals have 'spun out' from the public sector since May 2010: to be found in every region of the country (see map here); delivering nearly £1.5bn of public services; employing 35,000 people (ranging from a handful of staff to upwards of 2,000); and generating over 3,000 additional jobs in the last three years.⁵³

The LGIU report also provides links to a number of examples of existing public service mutuals. It notes that companies described as "mutuals" do not necessarily have *majority* employee ownership / control. There have been disputes about the definition of the term revolving around this point.

In 2017, CIPFA published a report based on a survey of 60 public sector mutuals. The report identified the following challenges and benefits of mutualisation:

- Participants have identified faster/easier decision-making and reduced bureaucracy as drivers of their success in developing better services and improving staff satisfaction.
- More than half of public service mutuals have reported expansion into new areas, awards of new public sector contracts and reduced dependency on their original contract.
- Drivers of mutualisation come in two forms: external economic factors (budget cuts); and an understanding of the benefits of mutualisation, for example 84% of respondents cited freedom to innovate services as a key driver.
- The process of mutualisation was seen as extremely challenging. Participants identified the need to have a strong business case and a robust and realistic business plan for spinning out. It was also considered useful to have access to independent legal and business consultancy services from the outset.
- A key capability that is absent in new public service mutuals is marketing and communications. The function is either adopted by an inexperienced staff member or neglected. This is considered to be detrimental given the perceived importance of marketing and communications in the early stages.⁵⁴

The report also found that 50% of its respondent organisations were wholly owned by their employees, and 79% had staff representation on the organisation's boards.⁵⁵ 51% had adopted the legal form of a community interest company (CIC).

A further report was produced by Social Enterprise UK in 2018, based on 75 respondent organisations. It too found that a majority used the CIC legal form. A majority of its respondents identified themselves as

⁵³ Mark Upton, *Public service mutuals: an LGIU essential guide*, LGIU, May 2015, p8

⁵⁴ CIPFA, *Research into the Public Service mutuals sector*, February 2017

⁵⁵ *Ibid.*, p23

“social enterprises”, with a significant minority also identifying as “mutuals”.⁵⁶

The Coalition Government established a Mutuals Taskforce in 2011, to encourage mutualisation as one of a number of alternative forms of service delivery. The Taskforce’s first report 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 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.⁵⁷

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.

The 2017 CIPFA report found that 69% of respondent organisations were continuing to deliver their original contract. However, only 22% of respondents were doing this after having retained the contract following a competitive re-tendering. In other cases, it is possible that the “parent” public body decided to stop providing, or radically change, its service provision. This itself can be a factor leading to the decision to create a mutual organisation.

4.8 Local authority trading: statistics

There are no collated statistics showing the number of local authority companies, their revenue, capitalisation, or functions. Annual statistics are produced showing spending on trading and commercial activities, but they do not provide any detail on whether the income comes from trading companies, investments or in-house activities.⁵⁸

A research report from Grant Thornton in September 2018 stated that they had identified 743 LATCs in Great Britain, and that 59.2% of local authorities owned at least one. These figures include commercial property companies, which make up 23.2% of all LATCs.⁵⁹

A survey of local authority chief executives and senior officers, conducted by the Local Government Chronicle in January 2019, showed 66% of respondents expected their council’s commercial revenue to rise

⁵⁶ Social Enterprise UK, *Public Service Mutuals: the state of the sector*, April 2018

⁵⁷ Mutuals Taskforce, *Our Mutual Friends*, 2011, p. 10

⁵⁸ See MHCLG, *Local authority capital expenditure and receipts in England: 2017 to 2018 final outturn*, 11 October 2018

⁵⁹ Grant Thornton, *In good company: latest trends in local authority trading companies*, September 2018, p5

by up to 25% in the following three years. 6% expected it to rise by 25-50%, whilst 14% expected commercial revenue to fall.⁶⁰

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.⁶¹

4.9 Examples of LATC activity

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

- 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;⁶²
- Nottingham City Council operates trade waste collection services for a number of local businesses and for neighbouring councils such as Rushcliffe and Derby City Council, which do not offer similar services themselves;⁶³
- 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 businesses against significant energy price increases and represents a step change in carbon reduction initiatives.⁶⁴

- [Norse Group](#) is by far the largest LATC in the country and has an annual turnover in excess of £250 million. Established in 2002, it

⁶⁰ See Jimmy Nicholls, "[Revealed: 72% expect rise in commercial revenue within 3 years](#)", *Local Government Chronicle*, 17 January 2019

⁶¹ Richard Carr, [Commercial Councils](#), Localis, March 2015, p. 7

⁶² Local Government Chronicle, [Entrepreneurial](#), 16 March 2016

⁶³ Chris Mahony, "[Investment, joint venture and trading: how councils seek income](#)", *Local Government Chronicle*, 18 January 2019

⁶⁴ LGA, [Case Study: Manchester City Council](#)

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is a holding company owned by Norfolk County Council. 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.

- Durham Council has established a venture capital fund, “Finance Durham”, which has invested some £20 million in local businesses on an equity or loan share basis. The council’s financial planning allows for the possibility that some investments will fail;⁶⁵
- A number of authorities have established wholly-owned housing companies, building for either sale or rent. Homes owned via a company are not subject to Housing Revenue Account or Right to Buy provisions, making this a more flexible approach for local authorities than providing housing directly. Details of this type of initiative can be found in the Smith Institute’s 2017 report [Delivering the Renaissance in council-built homes](#). Research from *Inside Housing* in early 2018 suggested that the number of homes built, and financial outlay, via this approach is minimal as yet.⁶⁶

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 businesses in 18 months.⁶⁷
- 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”.⁶⁸

A number of other examples of income generation can be found [on the LGA’s website](#), within the Local Government Chronicle’s [special report of January 2019](#), and in the 2018 Grant Thornton report [In good company](#).

⁶⁵ Chris Mahony, [“Investment, joint venture and trading: how councils seek income”](#), *Local Government Chronicle*, 18 January 2019

⁶⁶ Nathaniel Barker, [“Councils set up 58 housing companies since 2012”](#), *Inside Housing*, 16 February 2018

⁶⁷ ‘Council shuts £15 million Bank of Bournemouth after issuing just 22 loans’, [Bournemouth Echo](#), 8 December 2015

⁶⁸ “‘Huge overheads’ kill Shropshire outsource company”, [Local Government Chronicle](#), 19 February 2016

5. Governance

5.1 Public service transformation

The phrase “public service transformation” is frequently used in the context of shared services. A number of examples of public service transformation at local levels can be found in the Public Service Transformation Academy’s 2018 report [Public service: state of transformation case studies](#). “Public service transformation” can refer to any of the following ideas:

- Place-based governance: this took the form of pilots of community budgets, also known as “Our Place!”, under the Coalition government in 2010-15;
- Addressing reductions in funding by changing the way that services are delivered, including “demand management”;
- Collaboration between multiple public bodies;
- “Co-production” of services with service users.⁶⁹

In March 2013 the DCLG announced the creation of the “Public Services Transformation Network”. This was intended to build on the Community Budgets pilots.⁷⁰ Nine pilot areas were announced in July 2013.⁷¹ The Network was closed down in April 2016.

5.2 Local authority capacity

Views are mixed within the local government sector on its capacity to operate commercial approaches successfully. A 2019 special report from the Local Government Chronicle quoted senior officers as follows:

I think there are some councils who are very good at it... there are some who perhaps [are] a little more naïve and a little less thought-through on what the business case and business plan are for a particular venture...

The appetite for risk absolutely differs between different authorities, and some of them really do have an appetite for risk and others frankly shy away from what I’d consider to be the lowest risk.⁷²

A survey carried out for the think-tank Localis, in 2015, found over half of those questioned (150 senior councillors and officers) saw a lack of relevant skills within local authorities as a barrier to increasing commercialisation.⁷³

... local authorities are not commercial organisations. They are local, **monopoly** providers of **essential** services that are **publicly** funded, **politically** rationed and **democratically** accountable. Considering the emphasised words in the last sentence – and the

⁶⁹ LGA, [Managing Customer Demand](#), May 2013

⁷⁰ DCLG, [Community budget pilots inspire new nationwide network of public service revolutionaries](#), March 2013

⁷¹ DCLG, [Nine new places join next phase of local public service transformation](#), July 2013

⁷² Jimmy Nicholls, [“How councils can match commercial risks with returns”](#), *Local Government Chronicle*, 21 January 2019

⁷³ Richard Carr, [Commercial councils: the rise of entrepreneurialism in local government](#), Localis, 2015, p20

governance that will be implied by them – it is obvious that a local authority is rarely going to be able to turn on a sixpence, and it's pretty obvious that we don't want anyone 'betting the company'.

But this doesn't mean that culture can't be addressed, or can't be better. ... There's a growing body of evidence where former council staff, when moved into a different organisation, blossom entrepreneurially. For example, staff who spin out into mutuals are more engaged, more creative in finding solutions and, for example, far less likely to incur sickness absence.⁷⁴

5.3 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.
- Companies that fulfil outsourced contracts 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.⁷⁵
- 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. Alternatively, contract terms may make it difficult for a local authority to require adjustments to an outsourced service in response to new priorities, or if the original plans are simply not working as intended.
- Wholly-owned trading companies are likely to be more amenable to traditional concepts of accountability than shared services or contracting out, because they remain in local authority ownership. The degree of control sought by local authorities for trading companies varies. In some instances, councillors or officers may sit on the board of the trading company. There is no legal right or requirement for them to do this; and if they do so, they must distinguish their role as director from their role as councillor. In other cases, councillors may be content with regular reports on the health of the business.

⁷⁴ Jonathan Flowers, *Creating council commercialism: a discussion*, Capita, 2013, p9

⁷⁵ This is a legitimate reason to refuse a freedom of information request: see section 43 of the *Freedom of Information Act 2000*.

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