

---

## **Breaking the State Monopoly in the Provision of Schooling: The Experience in England**

**Neil McIntosh, CfBT**

**This is an interim review of experience in England and is in the process of being amended in the light of current developments**

**September 2005**

### **THE PRIVATE SECTOR IN STATE EDUCATION**

#### **Defining the private sector**

##### **Introduction**

This paper analyses the moves towards greater involvement of private, voluntary and independent (PVI) organisations in the delivery of education in the UK and puts these developments in the context of wider PVI involvement in public service delivery.

Education - and health - have a special status in the public consciousness in Britain which largely denies the private sector a role. There is an understandable, though also self fulfilling, tendency to see a causal relationship between private, which includes both commercial and not for profit and privilege. Education is one of the few areas of endeavour where the assumption that the public sector will provide more efficiently is still rarely challenged head on.

That is not to say that the education sector has excluded any private sector involvement in the past. As in any other field of endeavour there are and have always been companies large and small making a good living out of education. But the bulk of that provision is in supplying goods and services, what one supplier called the 'chore' of education not the 'core'. The public perception is that state and private sector are rigidly separated when it comes to the

---

direct business of teaching and learning. In fact even that is not quite true. There have been, traditionally, three sources of supply of schooling. There is a small but highly influential and successful fee paying private sector which caters for around 7% of the population. The vast majority of the remaining 93% attend public sector schools which charge no fees. However the units of local government which run these schools and which are statutorily responsible for ensuring the availability of schooling for all children between the ages of five and sixteen also spend millions of pounds on sending pupils to independently owned and managed schools. The pupils in these cases have a variety of special needs and sometimes have been excluded from mainstream schools for bad behaviour. The schools are run by a variety of providers, some commercial, others not for profit. In education the public sector relies on largely unacknowledged, private bodies to cater for its most needy children.

Nonetheless these exceptions do not alter the extent to which the public sector is, for the most part, a monopoly provider of schooling throughout the UK. There is, as we shall see, significant church involvement, but essentially provision is by the state which, for example, employs all teachers, even in church schools.

The Blair government has, since 1997, indicated its lack of enthusiasm for this public sector monopoly. There have been many initiatives to liberalise, privatise or market test various activities within the education system. These efforts seem, indeed, to be gathering pace in the second half of 2005. But thus far, as I will seek to demonstrate, progress has been much more modest than the rhetoric of either the government or its critics would suggest and it has been patchy, in the sense of unsystematic.

Partly this lack of progress is explained by dynamics which seem to affect all such developments everywhere in the world. First there are invariably powerful, public or quasi public sector forces shoring up their defences and resisting competition, sometimes with some success. The task of promoting diversity in what was formerly a state monopoly is neither easy nor is it universally welcomed. The UK has a longer and tougher record of promoting diversity than most other countries and of trying to ensure competitive neutrality between state and PVI suppliers. However, achievement of competitive neutrality requires real commitment. That commitment has been much less consistently present in the education sector, complicated as it is by splits in statutory responsibilities between central and local government, than it has in, for example, the truly nationalised sectors like health or prisons.

See Box 1

**Box 1**  
**Fostering Competitive Neutrality**

The concept of 'competitive neutrality' is a familiar one; it is the principle that competition should be fair, that there should be a level playing field between public, private and voluntary providers of goods and services. PVI organisations increasingly find themselves in competition in a mixed economy in both the public and private sectors.

In the early stages of the development of a mixed economy, it is not unusual for public providers to have a competitive advantage because of legislative and historical privileges.

It must be stressed that competitive neutrality policy has nothing to say about the decision to privatise, commercialise, liberalise or market-test public services. It has nothing to say on the question of whether or not public services ought to be provided through a public monopoly. But once the decision has been made to create a mixed economy, where PVI sectors are in competition, then competitive neutrality policy insists that a level playing field be maintained.

In order to ensure that there is a level playing field, government may need to undertake fundamental restructuring of market design, the regulatory system and the public sector provider itself. Government may need to introduce changes to taxation law or the rules on public access to data held by public authorities.

In the United Kingdom, there is no formal statement of government policy which seeks to address the underlying issues involved in competitive neutrality, or how they might be applied and enforced. The result is that, across a wide range of sectors, market distortions continue to exist.

The OECD has identified a number of different sources of advantage and disadvantage for public sector businesses:

- e. advantages and disadvantages that arise from the governance and regulatory arrangements. The OECD includes regulation, taxation and the cost of capital in this category;
- e. de facto or de jure exemption from competition law;
- e. subsidies from government to fund public service obligations, if used to cross-subsidise commercial activities;
- e. advantages from lax public procurement rules, where public sector providers are allowed to set prices below full cost;
- e. power to collect data for public purposes, where the public sector entity can use that data on terms more favourable than those available to the private sector.

There are a number of instruments which government(s) use to promote neutrality but it is difficult to ensure a level playing field and a more comprehensive policy framework may be required.

The UK government relies heavily, although by no means exclusively, on competition law to regulate anti-competitive structures and conduct. Central and local government authorities are warned that the provisions of competition law on anti-competitive conduct apply, and that they must seek advice to ensure that they comply.

However, as the UK's Competition Commission recognised, one of the key tests used to define markets and monopolies has limitations in many public service markets, 'where bidding competitions take place infrequently, prices are determined for the duration of the contracts and the competitions occur at one point in time'. There is also no mechanism for ensuring that public sector suppliers comply.

One of the difficulties is that regulatory authorities have only a limited ability to look at the regulatory environment within which public services are delivered.

Responsibility for the enforcement of the competition provisions of the EC Treaty rests with individuals or firms who have submitted a tender, and they are able to launch a legal action in the High Court if they have been harmed or if they are at risk of harm from the breach of these laws.

There is considerable evidence that, in the UK at least, private sector firms are reluctant to take legal action or to lodge formal complaints, particularly in public service markets where government is the only customer.

Article 87(1) of the EC Treaty provides that financial assistance granted through state resources in a form which distorts or threatens to distort competition by favouring certain undertakings (insofar as it affects trade between member states), could constitute unlawful state aid. The elements of state aid include the receipt of an economic advantage that would not otherwise have obtained under normal market conditions, some element of selectivity in the application of such aid, and a distorting effect on competition.

As yet, the UK government has not chosen to incorporate the state aid provisions explicitly, although they are taken into account in Treasury guidelines for public undertakings. The

guidance provided to new trading local authority trading companies in the UK warns that consideration must be given to EU rules on state aid. But no detailed instructions are provided and other guidance documents recognise that the rules are complex and that it is often very difficult to establish whether the state aid elements have been met.

While competition law must remain a central element of competition neutrality policy, it is not enough. This has long been recognised in the large body of legislation, regulations and guidance notes that have been promulgated over the years dealing with the constitution, regulation and taxation of the trading activities of various kinds of public undertakings.

The UK could benefit from the development of a comprehensive competitive neutrality framework, to give these disparate strands of policy much greater clarity and coherence. It seems probable that one of the reasons why there are still significant anti-competitive distortions in the UK market is that a comprehensive policy of this kind has not been developed.

G Sturges, The Serco Institute 2005 for the Confederation of British Industry

There is another feature of the position in the UK which is not particular to that country. It seems to be almost universally true that modern democratic societies tend to expand their definition of statutory responsibility which tends in turn to favour public sector suppliers whose area of activity widens even as they are being faced with potential competition from alternative suppliers. This development is very apparent in for example, services for the under fives in the UK

### **The Preschool Sector**

In the UK education is compulsory for those aged between 5 and 16, although free provision is available for 13 years of schooling, up to age 18. The hours of schooling are similarly statutorily defined. Under fives provision, on the other hand, has been non statutory and commonly provided by the private sector. The same applied to a range of after school provision. Increasingly, however, government is trying to encourage and even legislate for under fives provision and wrap around schools which will provide a service through from breakfast to 6 p.m. or later. In the case of under fives provision, after the Labour government scrapped the previous government's hastily devised and implemented nursery vouchers

---

scheme, established private sector providers are increasingly struggling to compete with the subsidised public sector.

The UK government has recently announced a ten-year strategy for childcare, which proposed that a new duty be placed on local authorities to secure sufficient childcare to meet the needs of their areas. It is contemplated that in order to fulfil this duty, authorities will need to assess the local childcare market, developing an understanding of parents' demands and sources of supply. Significant work has been undertaken in the Department for Education and Skills on the development of market-level institutions.

The new policy framework does reflect concerns about competitive neutrality. One of the key principles of the 'Draft Code of Practice on the Provision of Free Nursery Education Places for 3 and 4 year olds', released in June 2005, is that 'Local Authorities should fund both the maintained and PVI sectors fairly, transparently and equitably'. And parents using their entitlement to early years education in the private and voluntary sector will be able to access this facility for the full 38 weeks that it is available to parents using nurseries and reception classes.

However, the obligation to fairness, transparency and equity between maintained and PVI sectors is apparently limited to funding and does not, for example, explicitly cover efforts to develop the local childcare market. Inspection regimes for 3 to 4 year olds will differ between sectors. The new policy proposes extended use of school facilities to provide additional childcare, particularly to 3 to 4 year olds, and it is contemplated that capital funding will be provided to facilitate this expansion of capacity. This may have the effect of distorting the market and creating unfair advantages for public providers. The explanations given for this policy are concerned with better utilisation of school facilities given falling pupil numbers in

---

primary schools\*, and the desire to concentrate and cluster expertise, particularly in after-school services for young children. But these outcomes could have been achieved in ways that were neutral as between the different classes of provider.

\* Falling school roles encourage the resistance to new providers who can only succeed at the expense of existing ones

It is perhaps not surprising, given the existence of this institutional opposition to change in this field, that the common feature of the moves towards engaging the PVI sector in education in England (Scotland, Wales and Northern Ireland show little sign of wanting even to question the public sector monopoly) is that the instruments devised by the government have been hybrid, complex and, as a result, have not provided scaleable models.

What we face, therefore, are two related issues. Even if senior Ministers want to extend PVI involvement in education, do they consider it sufficiently important to expend their political capital winning the argument with their traditional support? And, if they do, does government have the models and the skills to manage the creation of sustainable markets. The relationship between these two issues is illustrated by the unsustainable nature or, more accurately, the lack of scalability of some of the initiatives up to now whose complexity seems in part at least the result of an unwillingness by government to argue straightforwardly and wholeheartedly for the diversification and the injection of independence they seek.

I want to look briefly at three attempts to encourage greater private sector involvement in education. Each has had its successes but they each have deficiencies, either in the limited nature of the private sector engagement or in the failure to create competitive neutrality, e.g. by not addressing the issues of capital costs and running costs together.

## **Contracting Out**

For over ten years the government in England has been increasingly contracting out its own activities (the trend in Scotland and, particularly, Wales has almost been the opposite) and the in principle commitment of the government to splitting the service purchaser and service provider roles continues to be quite firm. But there are major caveats to this. First this commitment to contracting out has almost entirely excluded the direct provision of schooling. A substantial sector of service suppliers has built up, but primarily to manage services which are at least one step removed from pupils and parents. Secondly, where local government have had the power to decide whether outsourcing should take place they have, in general, been much more conservative. Thirdly, schools themselves have had very considerable regulation preventing them from contracting out their core teaching and learning activities except on a temporary basis.

And in two respects, central government has proved to be an unreliable customer. First the rush of initiatives which emanated from the Blair government in its first term has inevitably dried up somewhat.

Less forgivably, private sector providers find themselves increasingly in competition with quasi state agencies. A plethora of government grant aided bodies have used their protected status, and the fact that their overheads are already paid for, to bid against genuinely independent organisations for commercial contracts. Competitive neutrality is far from being an established and secure principle across public services as a whole and it is acknowledged that both health and correctional services, which are central government responsibilities, are considerably more advanced in this field than education. (see Box 2)

**Box 2**  
**A case study in market mismanagement**

In the mid 90s the then government decided to outsource the task of providing careers guidance in schools.

Local government suppliers were required to bid against other potential contractors but the supply sector was at that time very underdeveloped. Nonetheless the exercise was reasonably successful. Although most of the contracts were won by stand alone, one off companies largely controlled by local authorities, four significant suppliers emerged each of whom won contracts to provide the service in four to six areas. As a result a substantial minority of the careers guidance in England was supplied by the private sector. The four companies concerned consisted of two commercial companies and two not for profits.

The exercise also proved successful in terms of delivery. Comparative data within and across regions over the ensuing years showed the private sector deliverers consistently performing substantially above average.

### **The move to Connexions**

In 1999-2000 the government decided to refocus the service towards the most disadvantaged young people. What was proposed was locally based Connexions Partnerships should be created. It was envisaged that these Partnerships should incorporate a wide range of stakeholders including the existing suppliers, but with the local authorities a particularly strong component. Government officials proposed that the existing Careers Services should 'transmute' into the new Connexions Partnerships, which were notionally independent organisations, relying 100% on government grant for their funding with Boards drawn from a range of local stakeholders .

It was quite clear that the Department officials concerned had not considered or understood the position of the PVI suppliers. While it was possible for companies which had been created solely to provide the careers service in one area to transmute into a Connexions Partnership, it plainly was not possible for PVI suppliers with a much wider portfolio.

The result was the creation of two very different sets of circumstances. First there were the Partnerships with no significant PVI involvement, where contracting out was confined to small services provided by voluntary organisations and where there was no purchaser/provider split. Secondly there were Partnerships which were envisaged as purchasers rather than providers and where there were existing and successful PVI service providers. Notwithstanding the different management needs of the two types of Partnership the Government insisted that each Partnership should have similar management teams, each led by a Chief Executive.

The consistent and widespread experience since the creation of these Connexions Partnerships has been that the new executive teams have sought by any means possible to convert themselves from being just a purchaser and to take services in-house. Their explicit message to the PVI suppliers has been that their management expertise was not wanted and that, insofar as they were required at all, what was looked for was the provision of inputs which were specified in increasing detail. Throughout the five year period all four suppliers have faced cuts in contract value to finance central bureaucracies of the Connexions Partnerships and very short term contracts.

While the services supplied by external contractors were put under consistent scrutiny and attack the 'transmuted' Connexions Partnerships enjoyed complete stability. There was no objective assessment of any of these suppliers and the status quo has been maintained in every case.

These agencies presented themselves as being part of the public sector when arguing to take business in house but, having acquired this new standing in the market place they used their newly acquired credibility to bid competitively for other contracts often against the companies whose contracts they had taken over. Such agencies, which are not directly subject to the disciplines of either the market or democracy are an increasingly common feature of public administration in the UK.

## **PFI**

The Private Finance Initiative is the instrument by which the government has sought to pass on the risk of the capital financing of its school building programme to the private sector. Companies have won 25 year contracts to build schools and manage the plant. Teaching and learning activities have been excluded and, as a result, there is no evidence to suggest that PFI schemes will have any favourable impact or indeed any impact on educational outcomes. Their main attraction for the government has been to keep major borrowing commitments out of the public sector books.

PFI schemes have involved fiendishly complicated contracts. A legitimate concern has been the difficulty in assessing the genuine costs and benefits in the light of the very long-term obligations into which the public sector is entering. It also remains to be seen whether the potentially frustrating relationship between those running the educational activities of the school and those maintaining its physical infrastructure will prove to be a problem. To set against that, it is probably genuinely the case that more capital investment has been made available more quickly than would otherwise have been the case.

PFI is a mechanism which has been used widely by government to finance capital projects. But in some other areas, e.g. prisons, the PFI contractor takes on the running of the service as well as the maintenance of the plant. The results have been broadly positive and the government seems to have been persuaded that the total separation of contractors from

---

service delivery in education is undesirable. The result has been the creation of a new programme ‘Building Schools for the Future’, a programme which is intended to combine private sector financing of school rebuilding programmes on an area basis with the transformation of the educational offer in those schools. This is to be effected by the creation, in each local government area, of a Local Education Partnership in which both the local public sector and the private contractors participate.

But LEPs are ill defined to say the least. The policy statement referring to them assumes that LEPs will be genuine partnerships in which both public and private sector organisations will participate and which will take full responsibility for the management of schooling in the area. But the programme envisages that each local authority can opt for a ‘deep’ or ‘thick’ LEP with genuine private sector participation in educational delivery, or a less deep LEP with little such involvement. In the latter case the BSF programme will be not much more than a capital works programme. Given that this is likely to be the preference, not just of the Local Authorities on one side of the table, but equally of the private sector building contractors on the other, it is difficult to see ‘deep’ LEPs becoming the norm. Construction companies are playing the game of demonstrating their educational credentials through partnerships with organisations such as CfBT, but that is not where their true interests lie.

### **City Academies – The ‘Independent, State School Model’**

For some five years the flagship of the UK government’s attempts to diversify the governance, management and provision of schooling has been what is called the Academies programme. In one significant respect this builds on the long-term history of involvement by non state bodies in school provision. The mainstream churches were providers of schools before the state largely took over more than a century ago. The churches were incorporated

---

into the state system on a partially, very partially, autonomous basis. Church schools, to this day, appoint their own governing bodies according to rules which differ somewhat from local government schools. They are also required to provide 10% of the capital spending undertaken by their schools. However all staff are employed by the local authority and the curriculum is very much the same in both church and local government schools. The churches would argue, with some evidence to support them, that their ethos is distinctive and that, as a consequence, education outcomes are better. Critics would counter that it is the school intake of pupils which favours the church schools, i.e. they admit fewer challenging pupils.

It may be this historical precedent which encouraged the government to seek sponsors rather than investors when devising a model for the new Academies. Each Academy, thus far, has been envisaged as a newly built school with the closure of an existing, weak school, creating the space, sometimes physically and always in terms of pupil demand. The sponsor is required to provide £2 million, which is assumed to be 10% of the capital cost of the new school. Having made available this contribution, the sponsor can then create a foundation which controls the membership of the governing body of the Academy and can thus influence how the school goes about its business.

This is an expensive programme and, particularly in the light of the fact that there is no evidence of a strong causal link between new buildings and improved attainment, it is difficult to understand why the government has created this model. It has a number of serious disadvantages, some of which include:

1. the barrier to entry is the willingness to make a donation not educational philosophy, ideas or expertise;

2. the motivation of the sponsors is open to question. Some appear to have a very specific agenda in mind for their academy, such as the promotion of a particular brand of Christianity or creationism;
3. the motivation of some other sponsors may have little to do with the school. Some companies which regularly seek government contracts have, either corporately or through their Chairman as an individual, sponsored Academies. Although the system may not be corrupt, it is far from transparent. One of the first Academies to get a poor inspection report is sponsored by a large company which was much involved in contracting to supply government services, but recently less interested in what it sees as a declining education market;
4. although there are sponsors interested in more than one Academy the model is not easily scalable and it is not clear whether the government will support the idea of anything more than a loose federation of academies;
5. it is not easy to see what government can do in the event of failure other than to take back control. Sponsors commonly have neither the experience nor the infrastructure to cope with major problems;
6. as a consequence, the government is nervous of the degree of autonomy which it is willing to make available, which undermines two of the key potential contributions, diversity and independence, which Academies might bring.

This restricted autonomy is most starkly demonstrated by the description of the Academies as 'independent, state schools'. This is a formulation used increasingly by government figures, including the Prime Minister.

Why would government devise a model both so complex and so open to criticism? There are a number of possible answers. First the British government has signally failed to win, or

---

perhaps even try to win, the argument with its traditional supporters that private sector participation is in the public interest. As a result it may be that it feels unable to promote a more transparent model, relying instead on the fairly thin specious argument that it is securing new resources for the public sector in the form of the sponsors' contributions.

It is equally possible that the government's commitment to the notion that diversity and independence are desirable qualities to promote is at variance to its well established tendency to centralise. Until the early 1990s the central government's education department was by some way the smallest of the Whitehall spending departments. The Department contented itself with devising policy and issuing circulars. Local government was largely responsible for the task of delivery of schooling.

In the last fifteen years, initially under the Conservatives but much more rapidly since 1997, responsibility for the quality of schooling has, in effect, been nationalised. The creation of a new cadre of independent suppliers runs counter to that and many in government are ambivalent.

More positively there is some evidence that key people in government genuinely believe that the sort of successful entrepreneurs they have encouraged to become engaged with the Academies programme have the capacity to transform schools. There is some practical evidence to support this optimism. Undoubtedly some talented people whose talents were previously otherwise engaged, have devoted considerable energy and money to 'their' Academies. Moreover the results from the first batch of academies are quite encouraging. The question is whether the success of these individual sponsorship deals amounts to a systematic or structured response to Britain's educational weaknesses. For every sponsor of real quality there will be others with less to offer, or whose interest is short-term or who cannot spare sufficient amounts of their time from their main business.

---

What is encouraging about the Academies programme is that it still seems to be evolving. The first tranche were modestly innovative in terms of curriculum and were steered very heavily by central government. But there are ongoing discussions with providers such as the Steiner Foundation whose educational principles simply cannot be accommodated within the government's national curriculum or, indeed, teacher training and accreditation rules.

The government is by no means claiming that its initiatives in this field are complete. Both the Prime Minister and the Secretary of State for Education have been speaking on their wish to make it possible for parents groups and not for profit organisation to start schools. A Government official paper (a White Paper) on this is promised before the end of 2006.

## **Summary**

The provision of schooling continues to be dominated by public sector monopoly providers in the UK. The principle of a purchaser-provider split is very widely supported in principle but frequently ignored in practice. This is particularly true, first in the case of quasi government agencies which are not directly subject to the disciplines of either the market or democracy, and secondly at local government level where, it has been observed, few people stand for election with a view to becoming strategic enablers.

Although there have been consistent attempts to pluralise provision there are significant barriers inhibiting the success of those efforts. Those barriers include:

- 
- falling school roles – which means the entry of new providers is inevitably at the expense of existing providers
  - the National Curriculum – which makes it difficult for a range of providers who want to offer a distinctly different approach to meet the regulatory requirements
  - the complexity of school administration in England – which means that it is well nigh impossible succinctly to define the division of responsibility between central government, local government and schools themselves
  - the non scalable nature of initiatives thus far – which is a further reflection of the tendency to create structures with complex governance arrangements which are far from transparent for the consumer
  - the opposition of national trade unions to interventions which might undermine their national pay bargaining
  - the belief that there is no serious market of suppliers – which is a self fulfilling prophecy as long as there is no reliable demand.

NMcl

21.09.05.