A new era of public service employment relations? The challenges ahead

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The last twenty five years have witnessed considerable change in the public sector spanning the privatisation of nationalised industries, increased outsourcing and changes in the workforce itself.

The future is likely see a period of further transformation. Current Government measures including the drive to reconfigure the role of state, and to roll out a deficit reduction programme are likely to have wide ranging and in some cases, profound implications for employment relations.

Professor Stephen Bach has written widely on the public sector. Following the publication of the Acas Future of Workplace Relations Paper, Stephen Bach was commissioned to share his views of the key areas of change facing GB public sector managers, employees and their representatives. The paper focuses in particular on the core public services – the NHS, local government and the civil service – and explores the implications of proposed structural changes in the workforce as well as shifts in policy emphasis including the growth of ‘user centred’ services, an emphasis on ‘civic society’ and the concept of the Big Society.
Introduction
The state of public service employment relations in 2020 is taking shape now as employers respond to government policy to reduce the deficit and address the costs of the public service workforce. Measures to change the role of the state in terms of public provision are likely to leave a permanent legacy. Just as a lengthy period of Conservative government influenced the public service policies of the New Labour administration, in the same way the current government has been influenced strongly by the public service reforms started under its predecessors. A similar evolution can be expected over the next decade as layers of public service reform are built up; borrowing, modifying and re-labelling aspects of earlier reforms against an altered political and fiscal context. The previous and current governments share a commitment to transform public services and their associated employment practices. In January 2011, the Prime Minister, David Cameron, suggested that ‘I want one of the great achievements of this government to be the complete modernisation of our public services’.

Over the last two decades public service employment relations has moved centre stage. This has come about because there has been increased recognition that the reform of public services cannot be accomplished solely by changes in organisational structures and performance standards but requires effective workforce engagement (MacLeod and Clarke 2009). In some cases this message was brought home starkly, when failures in social or health care highlighted the mismanagement of staff and shortcomings in professional practice (Laming 2003). In contrast to some expectations public expenditure, the public service workforce and the scope of public services have all expanded. Over recent decades, an era of increased uncertainty and a heightened sense of risk has encouraged citizens to look towards the state not only to provide a basic level of personal and economic security, but also to tackle broader societal concerns, such as obesity, caring for elderly relatives, climate change, migration, social mobility and international security (O’Donnell 2009).

Alongside this increased remit, government has redirected its efforts; the welfare state is no longer designed primarily to eliminate Beveridge’s five evils of want, disease, ignorance, squalor and idleness but has been redirected towards ensuring the UK is globally competitive. Finally, whereas the public sector has remained the stronghold for collective employment relations and national bargaining this approach to employment relations has disappeared in many other parts of the economy. Ensuring effective public service employment relations is crucial, if the government is to meet its aspirations to deliver world class public services and to enhance UK competitiveness.

This paper forms part of the Acas future of work policy discussion paper series. It examines current developments in the public service sector and the consequences for employment relations. It concentrates on the core public services – the civil service, local government and the NHS. Two main issues are examined in drawing out the current trajectory of employment
relations. The first relates to the increased diversity of service provision and the associated emphasis on ‘user centred’ – personalised – services and the connections to the narrative of the Big Society. A second theme relates to the future of institutional employment relations and the future of national pay determination. The paper starts by examining the impact of deficit reduction on public service employment relations. The impact of the Big Society is then considered and the attempts to diversify service provision and increase the role of voluntary sector and other providers. The last section examines the erosion of institutional employment relations and sketches out the consequences for trade unions.

**Deficit Reduction: Workforce Implications**

The most immediate impact on public service employment relations stems from the current government strategy to scale back public spending. April 2011 signalled the start of the tightest five year period of public expenditure in living memory (IFS 2011). There are significant variations in the extent to which specific services and localities are exposed to public expenditure reductions, reinforcing recent trends in public expenditure in which health and to a lesser extent education have been the least affected. The 2010 spending review identified winners and losers with the largest cuts in housing, higher education, the Home Office and the Ministry of Justice (impacting on policing, prisons and immigration services) and environmental services. In real terms many of these departments are experiencing cuts in excess of twenty-five per cent and capital budgets in particular are being sharply curtailed (IFS 2011). A particular challenge across the public services arises from the emphasis within government plans for fiscal consolidation to move rapidly to reduce the deficit. This will make it more difficult to develop medium to long term solutions to the financial challenges they face.

The general government pay bill comprised around £182 billion in 2009, about 30 per cent of all government expenditure (IFS 2011). The June 2010 emergency budget introduced a two-year pay freeze for the public service workforce with some protection for staff earning £21,000 or less (with the exception of local government). Uncertainty has arisen as to how far the policy is confined to basic pay. Particular issues have arisen in relation to the handling of incremental progression, because this is not covered in the NHS and local government pay freezes. Some commentators have noted that this has encouraged the NHS and local authorities to examine other options (IDS 2011). NHS Employers, for instance, proposed a national enabling framework that in return for a two-year freeze on increments for all staff offered a guarantee of no compulsory redundancies for staff in the majority of Agenda for Change pay bands, an estimated saving of £1.9 billion (NHS Employers 2011).

The rejection of this proposal by NHS staff indicated that the workforce remained unconvinced that the agreement would be sufficient to forestall redundancies. It highlights the challenge of reaching a national agreement when NHS trusts operate in differing local health economies, confront different
budgetary constraints and are positioned in distinct labour market contexts. More broadly this suggests that the scope for industry level social pacts in which pay restraint is traded off against employment security is limited. This is not only because of the increasingly differentiated budgetary and labour market contexts in which local employers operate but also because trade unions cannot reach agreement with employers if the concessions demanded of their members are too extensive.

Local authorities also face variable budgetary and economic circumstances with differences by region, political complexion and individual tier of local government. Overall, however, local government retains its unenviable position as the poor relation of public services. Since 1997 it has received substantially lower increases in council non-schools funding compared to health and education (Local Government Group 2010). Local government has needed to move more rapidly to generate economies, with a wide-range of service reduction measures under consideration which are likely to be taken up in other parts of the public services. Local authorities are seeking pay bill savings by wage and staffing reductions, changes in allowances for working anti-social hours such as weekends and evenings, reduced mileage rates for car users, and reduced sickness entitlement and annual leave.

Not surprisingly it is difficult for local authorities to implement these changes through collective agreements and they may be forced to dismiss and re-engage staff on new contracts of employment (IDS 2011). Although local authorities may portray these changes as tactical responses to severe fiscal restraint, their long-term impact is more significant because they signal a radical shift in terms and conditions of employment and a further erosion of national bargaining (see below). These responses are being supplemented across the public services by increased uptake of ‘lean’ and other forms of service re-engineering, including a re-evaluation of ‘place’ with a more systematic switch towards online services and moving towards fewer services being provided in traditional physical locations (eg acute hospitals).

Workforce reductions

According to the Office for Budget Responsibility (2010) overall employment in the public sector will be reduced by around 330,000 posts. But in what ways will job losses be distributed and what other mechanisms are being used to reduce the pay bill? One area of staff reductions is undoubtedly managerial posts, and in particular senior managers. The NHS White Paper Equity and Excellence: Liberating the NHS, pledged to reduce management costs by more than 45 per cent between 2010-2014. Although there has been significant growth of managerial staff in most public services in recent years, the introduction of more complex contractual arrangements and payment-by-results systems is likely to require increased managerial capacity. Reductions in managerial positions will be brought about by full or partial mergers, such as the partial merger of the three London Boroughs of Hammersmith and Fulham, Kensington and Chelsea and Westminster. The extent to which mergers can be reconciled with attempts to encourage localism remains uncertain.
A second group that will be vulnerable to staffing reductions are any functions that can be labelled as backoffice staff such as HR, IT, payroll and legal services. However, ‘backoffice’ is undoubtedly being defined in an expansive manner with more functions subject to outsourcing and offshoring than a narrow emphasis on ‘non-core’ services implies. In the civil service, the Next Generation HR programme intends to halve the number of HR staff in central government by developing a shared service type model in which key HR activities are located in specific departments, such as civil service recruitment and deployment being based in HM Revenue and Customs. There are a variety of shared service models and as Gospel and Sako (2010) point out in their analysis of HR outsourcing at Unilever and Procter and Gamble, the development of shared services is frequently an intermediary step towards full outsourcing of service provision. The trend towards outsourcing will be reinforced by the increased migration of public services online.

A third group that are at risk are occupational groups such as teaching assistants and Police Community Support Officers (PCSO). At first sight this may seem curious as it might be tempting to employ a teaching assistant or a PCSO at a lower cost than a teacher or a police officer. Employment of these occupational groups has expanded rapidly. The number of teaching assistants, for example, increased by over 200 per cent between 1997 and 2009 (IFS 2011). However, in many cases, specific resources were allocated to encourage their recruitment and the removal of these funding streams has made them vulnerable to staffing reductions. In addition assistant roles are frequently filled by low-paid women, without the equivalent bargaining power and capacity to mobilise as other more highly unionised public service professionals. It is likely, however, that not all assistant roles will be affected equally by budgetary reductions. A distinction can be drawn between occupational groups such as teaching assistants and health care assistants. Teaching assistants supplement the role of teachers and are therefore vulnerable to staffing reductions in a period of budgetary constraint. By contrast health care assistants are more secure because they have become more central to health care provision (Bach et al 2008; Kessler et al 2010), and are more likely to be used to substitute for registered nurses, reviving strategies of dilution that were widespread in the 1980s and 1990s (Grimshaw 1999). Overall, there are likely to be significant reductions in the size of the workforce over the next decade and major shifts in workforce composition.

It is unlikely, however, that even a combination of these measures will be sufficient to generate the level of savings required. As a result, public service organisations in some instances are retrenching to statutory services and discontinuing services; altering eligibility criteria to curtail the services they offer, increasing charges and more explicitly rationing service provision. Illustrations of these trends include: the closure of school library services in several parts of the country, charges for householders using municipal recycling centres and attempts to reduce the provision of services for people with disabilities.1
There are more immediate issues about the management of downsizing including the extent to which employers are able to overcome 'survivor syndrome' and maintain employee engagement. Data from the Workplace Employment Relations Survey series (WERS) indicates that, traditionally, public service employers are much more inclined than their private sector counterparts to reduce the workforce by using early retirement/voluntary redundancy rather than compulsory redundancies (Bach et al 2009). This legacy suggests that public service employers may opt for voluntary rather than mandatory redundancies, but this still leaves important questions about the cost of redundancies and the criteria used to select staff for redundancy. Public service employers therefore face major challenges in dealing with the process and costs of redundancies and the potential implications of cuts, including industrial action. Many public service managers have little experience in dealing with these issues and ensuring effective consultation, but organisational outcomes can differ markedly depending on whether employers are genuine "active consulters" or merely "communicators" (see Hall et al 2010).

The extent to which employees judge that employers communicate problems in an open way, genuinely consult with them about alternatives to redundancy, and establish an acceptable process for managing staff reductions will have a bearing on their behaviour and motivation long after the redundancy process has been completed. A different type of engagement challenge will arise for employees, councillors and board members that are highly committed to their organisation's mission, but will have to adapt to doing less with less. It will not be straightforward to maintain motivation and morale amongst staff and other stakeholders that have demonstrated commitment in building up areas of expertise and service provision and who are then required to let go of these services, scaling back their own sphere of influence.

The public service workforce is also facing a sustained period of public service pay restraint one aspect of which is focussed on pension entitlement. This is part of a familiar pattern of public sector pay ‘catch-up’ followed by restraint, usually accompanied by the emergence of severe staff shortages in key occupations. This often triggers the use of market supplements for hard-to-fill posts and other strategies such as grade drift, skill-mix changes** and the use of international recruitment. Despite these anticipated responses, an ageing public service workforce whose employment plans are little understood, high university tuition fees and less favourable pension arrangements can be expected to shape career intentions. Callender and Jackson (2005) note that debt aversion deterred people from lower social classes applying to university, and in the USA studies have indicated that debt leads graduates to choose higher-salary jobs and discourages entry into lower-paid public service jobs (Rothstein and Rouse 2011). It is too early to identify the

* ‘Survivor syndrome’ is the term used to describe psychological impact on employees who keep their jobs but experience guilt, a decline in morale, motivation, engagement, increased stress, higher sickness rates, and higher voluntary quit rates.

** ‘Grade drift’ refers to the process whereby jobs may be regraded or individuals appointed to a higher grade, with higher pay but without any significant change in their job content. The process may be used to undermine the impact of policies of pay restraint. ‘Skill mix’ refers to altering the mix of posts in a workplace and/or the specific blend of skills available in a workplace. It is frequently used to denote the substitution of less qualified for more qualified staff.
consequences of higher tuition fees in England, but evidence from the USA suggests it may discourage entry into lower-paid graduate professions, often concentrated in public services, leaving public services vulnerable to systemic staff shortages over the medium term. Although the public service ethos was fairly resilient in the recent past (John and Johnson 2008), the impact of public sector restraint and the erosion of long standing conditions of employment, especially pensions, risks undermining the public service ethos and could have serious consequences for levels of engagement and service standards.

**The Big Society in an Era of Austerity**

The current reforms in public services are taking place against the broader policy framework of ‘The Big Society’. Many commentators have dismissed the idea of the Big Society as a concept purely intended to legitimate and conceal reductions in public services. It would be a mistake, however, to underestimate the workforce consequences of the Big Society. In part this is because the Big Society is the defining narrative of the current government; an attempt to reinvigorate civil society, encouraging voluntary action, philanthropy, neighbourhood control and social entrepreneurship (Cabinet Office 2010). It has three guiding principles: community empowerment, public service reform and social action. (Cameron 2010). Related elements include a strong emphasis on localism and deregulation (eg limiting employment protection or ending national pay determination). Overall, it would seem that the policy pursued by previous governments of encouraging localism and diversifying service provision is being reinforced. However, for some commentators the big society is still lacking a clear definition, fearing this may result in cynicism and inconsistent policy making (ACEVO 2011).

**From the third sector to civil society**

Both the Labour and current government have encouraged the increased delivery of public services from the third sector, now rebranded as civil society organisations. In essence a key role has been assigned to voluntary organisations that are favoured in the delivery of public services and this sector has grown rapidly. Based on Labour Force Survey (LFS) data, it is estimated that in 2008 voluntary organisations, that comprise around a third of civil society groups, employed 668,000 staff in 171,000 organisations. Between 1999-2008 employment increased by 23 per cent (124,000 – headcount). The sector employs a slightly higher proportion of women (68 per cent) compared with the public sector (67 per cent) and around 38 per cent are educated to degree level (NCVO 2010). This data indicates that there is an association between a substantial public sector and a sizeable voluntary sector; indeed the former does not ‘crowd out’ the latter as is implied by some exponents of the Big Society (see Blond 2010). Instead the public sector has increasingly promoted and funded voluntary sector provision.

In 2008, just under £13 billion, over a third of total income, derived from statutory sources (NCVO 2010). Voluntary organisations are therefore vulnerable to funding reductions especially as statutory organisations may...
be more inclined to reduce funding to external organisations, prior to reducing their own staffing levels. Moreover, a significant proportion of voluntary organisations are small employers and even when they operate under a well-known national brand, local branches are often autonomous and expected to be self-financing. This has led many voluntary organisations to shut up shop, merge or form partnerships with detrimental consequences for the workforce. For example, all five Citizen’s Advice Bureaus in Birmingham are to close and Citizens Advice has also issued redundancy notices to 900 staff employed in debt advice roles (Wiggins 2011). The upshot is that structurally vulnerable organisations are reliant on precarious staffing patterns that generate high levels of employment insecurity for the workforce. An illustration of these constraints are that nine per cent of voluntary sector staff are employed on temporary contracts (a higher proportion than the public or private sectors) and around two thirds of these temporary staff are on fixed-term contracts.

As a larger role for voluntary organisations is promoted, relatively disadvantageous employment conditions may become more prevalent. In a context of partnership working between voluntary sector and statutory/private sector organisations, voluntary sector staff are aware of their relatively disadvantaged employment status. Concerns about fairness in terms of pay and conditions, uncertainties about career progression and development opportunities can create HR challenges for employers and the workforce. In some cases this can limit the scope for innovation. For example, voluntary organisations have found it difficult to sustain new user-orientated roles, compared to local authority employers, because of their precarious financial position (Kessler and Bach 2011).

Managing volunteers

A pressing issue not only for voluntary organisations but for all organisations that deliver public services is the role and management of volunteers. As organisations reduce employment but attempt to maintain service provision, many organisations are seeking to increase the role of volunteers and this may include substituting paid for unpaid staff. At the same time, volunteering is being actively promoted as a step towards paid employment and as an integral component of the Big Society. Jobcentre Plus and Volunteering England have signed an agreement ‘to break down unnecessary barriers to volunteering’ and are working together to ‘promote the benefits of volunteering and voluntary work within their respective organisations and with their customers and partners’ (Volunteering England 2010). This conception of volunteering focuses on developing transferable skills and enabling jobseekers to demonstrate that they have maintained their work ethic. However policy makers will need to maintain a distinction between aspects of compulsion and vountarism in relation to paid and unpaid work.

Several issues arise from the increasing prominence of volunteers. First, organisations have a duty of care towards volunteers, but their legal status can be contested. In a small number of Employment Tribunal cases volunteers have claimed the status of a worker, which would ensure eligibility for the
national minimum wage. It is likely that in a period of high unemployment, particularly amongst younger workers, this type of employment issue may arise more frequently because more people are feeling obligated to undertake voluntary work as a precursor to paid employment. Second, as volunteers have become more central to service delivery many organisations, especially large charities, have developed more extensive policies towards the management of volunteers. This has the benefit of setting out clear expectations, but it is sometimes hard to avoid the conclusion that volunteers are being treated as staff with the important caveat that they are not being paid. Although organisations frequently express a commitment not to let volunteers substitute for paid staff, in practice, this principle is not always maintained. Consequently it is possible that statutory and voluntary organisations will make increased use of voluntary labour to manage or partially manage services no longer provided on a statutory basis (eg school crossing patrols, libraries etc). Additional HR challenges arise in terms of the working relations between paid and unpaid staff, employees’ unease about the potential inappropriate use of volunteers, and difficulties in performance managing volunteers that owe little allegiance to these organisations.

Towards an ownership state?

Encouraging more diverse provision is not confined to the voluntary sector. The promotion of ‘an ownership state’ (Blond 2009) is also significant, whereby a variety of different providers will compete to run services. Emphasis is placed on combining the insights of frontline workers with the involvement of communities and the John Lewis Partnership is invariably identified as the ‘poster boy’ for this movement. Existing or proposed organisational forms with some shared characteristics include: co-operatives; social enterprises; mutuals; civic companies; community trusts and employee-owned companies. It has been argued that:

‘We will give public sector workers a new right to form employee owned cooperatives and bid to take over the services they deliver. This will empower millions of public sector workers to become their own boss and help them to deliver better services.’ (Cabinet Office, Building the Big Society 2010).

Interestingly, in the relatively lengthy list of ownership forms being promoted, private equity is rarely mentioned, but private equity has been one of the most rapidly growing investment classes. The basic model involves private equity funds investing in private companies, which are not stock market listed, and actively seeking to enhance value and generate a good return to investors, enabling the company to be sold for a healthy return after around 2-5 years. Private equity funds are very active in the health and social care industries and are likely to expand their presence as part of the shift towards more diverse, market-orientated funding of public services. The impact on employment relations of private equity is contested, but some commentators point to reduced employment in workplaces of firms taken over by private equity (Hall 2008). An illustration of the potential risks for the workforce is the case of Southern Cross the largest provider of residential care in Britain with 750 care
homes and 44,000 staff. Owned by US private equity firm Blackstone, Southern Cross expanded rapidly financed by the sale of nursing home freeholds, resulting in high levels of indebtedness and heavy losses, jeopardising the future of the company, its workforce and its 31,000 residents (Clark 2011; Wachman 2011).

There is undoubtedly considerable political momentum in promoting mutuals and social enterprises (Cabinet Office 2010). Some of the challenges such as under-capitalisation, achieving full-cost recovery and accessing necessary specialist legal, financial and HR skills may be addressed by the government via the creation of the Big Society Bank and related initiatives. Fundamental questions remain, however, about the extent to which employees are likely to want to move from traditionally relatively secure employment to the uncertainties of new ownership models that are imperfectly understood and may be viewed with scepticism by trade union representatives (McAuslan 2011).

Complex governance issues arise because the rationale of the ownership state is that employees gain a stronger sense of engagement with their employer. Yet distinguishing between their interests as employees as opposed to their interests as owners is not straightforward and may generate conflicts of interest. The workforce has to get to grips with an unfamiliar work context and despite the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), many organisations may not be in a position to maintain previous terms and conditions of employment such as employer pension contributions, sick pay etc (OPM 2010). There are not only risks for the workforce, but commissioners may be wary of contracting with vulnerable organisations that have a limited track record of service delivery. Consequently, large multinational enterprises that comprise part of the £79 billion public services industry (Julius 2008) are emerging as the key beneficiaries of the ownership state.

One recent illustration is the programme designed to encourage incapacity benefit recipients back into employment. Of 40 contracts awarded only two were granted to not-for-profit groups, indicating that voluntary organisations may become junior sub-contractors within joint ventures overseen by multinationals (Toynbee 2011). As in other complex supply chains, large firms may become dominant with sub-contractors gaining some work but also being expected to absorb risk and flex staffing patterns to accommodate changing requirements.

User involvement

An important component of the Big Society is the importance of ‘co-production’ and ‘personalisation’, with users taking a more prominent role in service delivery. This theme builds on New Labour’s encouragement of the service user to become a key actor in reshaping public service employment relations (Bach and Kessler, forthcoming). It is twenty years since the Conservative government launched its Citizens Charter initiative that stimulated consideration of the citizen’s role in reshaping public services. It would be unthinkable to return to an era in which public service professionals decided the main parameters of service delivery dictating who would receive a service, on what timescale, in which location, and
gauge its effectiveness. Instead, for more than a decade public service users have played an expanding role.

Service users have become employers, notably in social care as employers of personal assistants, and as co-producers and regulators involved in shaping service provision through governing bodies and trustees and management boards. At an organisational level many of these trends are at a rudimentary stage. Providing users with more control has often been associated with the use of personal budgets, allocating a budget to an individual to purchase their own support rather than receiving services allocated by a local authority or health trust. The Government has committed itself to the extension of personal budgets beyond adult social care, providing direct payments to parents of children with special needs for the purchase of health and education services and providing direct payments to support carers.

Several implications stem from this agenda. First, the workforce will alter with the continuing development of new roles and new ways of working (Bach and Kessler 2011). In social care, the workforce is expected to grow from 1.5 million to 2.1-2.5 million by 2025. A substantial part of this growth will occur amongst personal assistants (PAs), with a growing proportion of such assistants employed under forms of personal budgets (Cabinet Office 2008). This form of employment is fragmenting the domiciliary workforce, leading to the employment of female, often migrant, workers in largely unregulated, low skilled and low paid work (IFF Research 2008). Trade unions confront a massive challenge in organising a workforce employed in unregulated employment contexts by a myriad of small employers. Employers and policy makers will need to give careful consideration to the training, development, regulation and pay of these workers. Research on support workers in education, social care and health revealed the difficulties faced by such workers as their roles developed: the poor management of their performance, the limited training opportunities and the frustrated career aspirations. It suggested, however, that some aspects of working life had been enriched with new and extended roles generating high levels of job satisfaction and a strong commitment to the job and the organisation (Bach et al 2007).

Second, the shift from block contracts or grant funding to individuals purchasing support will create increased uncertainty and risk for statutory, voluntary and private sector providers. These organisations will need to find ways of adjusting without passing on all the risk of variable demand to the workforce. Moreover it is uncertain whether the resources transferred into personal budgets will be set at a sufficient level to ensure that voluntary sector and other providers can cover the running costs of their organisations, maintain specialist expertise and generate the data required by funders, as services move towards a payment-by-results model. This raises important questions about the type of commissioning and contract arrangements that can be devised to balance increased user choice and contestability alongside the need for some stability from a workforce perspective. As service provision shifts from institutional to community settings,
there may be pressure to adjust working practices to accommodate the requirements of individual budget holders. This may bring benefits to both parties – user and employee – but it also makes employees (and in some circumstances users) vulnerable to exploitation. There will be a need at both a public policy and a practical level to engage with these emergent categories of employers, who may not even view themselves as employers, to make them aware of their basic responsibilities and to encourage good employment practices.

The Future of Institutional Industrial Relations

Despite these changes a sizeable, if declining, proportion of public service workers will remain directly employed by the state. In general state providers have been large employers with highly developed procedures for dealing with employment relations matters, including sectoral systems of pay determination. Over the last two decades there has been a change in the landscape of public services with the establishment of more independent employers, including civil service agencies, NHS foundation trusts, academy schools and around 45 councils that have opted out of local government national pay bargaining (IDS 2010).

With the retreat of collective bargaining in the private sector and the shift towards company level bargaining for those organisations that remain covered by collective agreements, it has been inevitable that national pay determination in the public services has been questioned periodically. Conservative governments have been less committed to collective bargaining, especially at national level, and the last sustained attempt to shift towards decentralised pay determination occurred in the mid-1990s with the creation of individual bargaining units across the civil service. Can similar developments be expected under the current government? It should be remembered, however, that attempts to bring in local pay bargaining in the NHS were largely unsuccessful because newly created trusts grouped together informally at local, regional and inter regional level to avoid competing for a finite resource.

One argument being presented is that national bargaining makes it very difficult to respond to local labour market conditions, prevents change and undermines the quality of public services (Holmes and Oakley 2011; Wolf 2010). The House of Commons Public Accounts Committee (2011) in its critical report on NHS productivity expressed strong reservations about the 2003 Consultant Contract and Agenda for Change, suggesting that ‘national pay contracts have not yet been used to drive productivity’, although it did not elaborate on its concerns. Similar sentiments have been expressed in the Coalition agreement and in referring to teachers it stated: ‘we will reform the existing rigid national pay and conditions’ (HM Government 2011: 29). An early signal of intent was the abolition of the nascent School Support Staff Negotiating Body (SSSNBS) established by the Labour government to provide a national framework for careers and salaries for support staff. Devolution, too, has slowly resulted in a fragmentation of GB wide bargaining. Scotland recently settled with the Police Federation over pay, whereas England and Wales have not.
There are a number of factors that are continuing to impact upon the regulatory effect of national pay structures. Some of these are long standing, such as the growth of outsourcing, and others are more recent including the abolition of the ‘Two-Tier Code’ which extended coverage of public sector bargaining arrangements for new starters on public service contracts. The government stated that its rationale for abolition was that the Code prevented small and medium size firms bidding for public service contracts because they could not afford to adhere to the Two-Tier Code. With the increased use of private and voluntary sector providers the reach of collective agreements can be expected to retreat further. Within core public services, there are the ongoing opportunities for schools to convert into academies and hospitals into foundation trusts. Both have the scope to opt out of national pay and conditions, as will the newly emerging Free schools.

One institution that has fostered national pay and conditions has been the system of independent pay review. In 2001, a pay review body for the prison service was established. It was the first review body ever created by a Labour government. In addition, the review body for nurses was extended to cover all NHS staff except doctors, dentists and top managers and renamed the NHS Pay Review Body (NHSPRB). The extension of this system marked an important departure from previous Labour government’s ambivalence towards independent pay review (IPR). Although IPR is viewed with residual suspicion by some trade unions, because it precludes fully-fledged collective bargaining, it nonetheless can be seen as providing a forum to enable trade unions and employers to exert influence by the submission of evidence (a form of arm’s length bargaining).

At present, the pay review bodies have confronted difficulties arising from the staging of awards and their acceptance of the government’s pay freeze, making no recommendations for staff earning over £21,000 for 2011-2012. These recommendations have led trade unions to question their independence and role during a period of pay restraint (Clews 2011). Other signs of the waning official enthusiasm for independent pay review is evident from the recent independent review of police officer/staff pay and conditions, conducted by Winsor (2011), that made no mention of establishing a pay review body for the police, although this may be revisited in his forthcoming report on long-term pay arrangements for the police service. This is in marked contrast to the support for independent review identified in the Booth review of police officer pay arrangements in 2007. The system of pay review seems likely to continue but its impact on the pay and conditions of the public service workforce remains uncertain. Instead it is the shift towards payment by results and the establishment of national tariffs by regulators such as Monitor in the NHS that will increasingly set the key parameters for pay and conditions across the public services.

The overall picture in terms of pay and conditions is likely to vary significantly between sub-sectors as a comparison between the NHS and local government illustrates. In the NHS, despite long-standing criticism of Agenda for Change only one hospital trust (Southend)
remains outside the national agreement. There seems to be limited appetite amongst employers to move away from national pay and conditions. In fact, Agenda for Change provides scope for local flexibility and by no means resembles the rigid and ossified system portrayed by critics. In local government there is a longstanding tradition of local flexibility in the application of national pay and conditions and this is likely to accelerate, driven by fiscal constraints. National bargaining has been suspended due to the pay freeze and local authorities in response to financial pressures will continue to alter conditions locally. The regulatory impact of the national agreement on pay and conditions for local government services, covering 1.4 million staff, and often referred to as the single status agreement, can be expected to decline. National negotiations will be increasingly confined to the annual uplift.

In terms of the particular context of schools, these remain relatively small employers with limited HR capacity and capability and opting out of national pay and conditions is not a high priority for head teachers. Nonetheless, heads may seek to alter the school day and the school year and move away from the national contractual limit of 1,265 hours of directed time spread over 195 days. Instead, head teachers may look to increase contractual working hours and draw on the example of US KIPP schools that expect teachers to be in school for longer hours, require teachers to be available (ie online) in the evenings, and include some Saturday teaching. This may require increased salaries and other benefits for these teachers, negotiated locally. The effect of removing the most senior staff from collective bargaining can result in a considerable rise in their pay compared to those with less bargaining power.

There are significant risks in the dismantling of national systems of pay and conditions in a context of the emergence of a hybrid model of public service provision. The absence of agreed frameworks to guide employer and employee behaviour, including career structures, may generate difficulties in terms of labour mobility and encourage forms of market failure. An illustration of these problems arose with the establishment of the NHS internal market in the 1990s and the decision to delegate workforce planning to individual hospital trusts. There was evidence of significant failures in managing workforce supply as no individual hospital trust viewed it as their responsibility to ensure an adequate supply of trained healthcare professionals and there was systematic under-provision of healthcare professionals (Health Committee 2007). Regulatory authorities, such as the Care Quality Commission may need to play a much greater role, albeit indirectly, in guaranteeing national occupational standards.

**Challenges for public service trade unions**

A public sector characterised by diverse providers, market-orientated funding and more locally determined pay and conditions will reinforce the major challenges that already confront public service trade unions. The growth of the public service workforce under New Labour, some government concessions (eg the Two-Tier Code), and improvements in pay for many public service workers have partially concealed
significant difficulties facing public service trade unions. Although over four million public sector workers remain trade union members, Labour Force Survey (LFS) data indicates that in 2010, trade union density of public sector employees fell marginally to 56.3 per cent, a reduction of five per cent compared with 1995. Collective agreements covered 64.5 per cent of public sector employees in 2010, a decline of 3.6 per cent since 2009 and 9.7 per cent since 2000 (Achur 2011).

Public service trade unions confront a series of structural and organisational challenges. First, they must address the hollowing out of their structures at workplace level with a substantial reduction in the number of workplace representatives. WERS 2004 data indicated that in public sector workplaces with union recognition, 63 per cent of workplaces with 25 or more employees had a workplace representative, a marked decline on the figure of 71 per cent in 1998 (Charlwood and Forth 2009). Waddington and Kerr (2009), using Unison branch data, noted that about 30 per cent of Unison members reported the absence of a union representative at their workplace. It was not simply the absence of representatives, but the limited time available to union representatives and the increased workload that has inhibited union effectiveness. These difficulties are likely to be exacerbated in the future by the exit of long-standing workplace representatives from the workforce arising from retirement and redundancy.

Ongoing restructuring is reinforcing these difficulties. The fragmentation and outsourcing of public services requires unions to follow their members into the private and voluntary sector to maintain membership levels and to recruit new members. This is difficult as unions have to deal with a proliferation of more geographically dispersed – often small – employers, which is resource intensive. This places a large workload on local activists who also need to be competent and confident enough to deal with a variety of employers and adjust to a private sector with a less procedurally orientated culture of industrial relations. As Waddington and Kerr (2009) point out in relation to Unison, branches were originally conceived as being based on a single employer (ie a health trust or local authority) but 45 per cent of branches deal with more than ten employers and around 17 per cent handle in excess of fifty one employers. Existing public service workplace union representatives are sometimes unreceptive to recruiting outsourced workers, which risks creating an impression amongst potential members that these unions are not especially welcoming to private sector employees (Bach and Givan 2008). Consequently restructuring by encouraging a more dispersed and fragmented set of public service providers, a more variegated workforce structure and a more diverse set of employment arrangements is fracturing union membership and creating enormous challenges for trade unions in developing a shared identity amongst their membership.

In the short term trade unions are looking to respond to member concerns about the impact of budgetary reductions and planned changes to pension provision. There are several risks for public service trade unions, not least in being portrayed as the defenders
of ‘privileged’ public service workers, jeopardising support within their private sector membership.

For more than two decades there has been sustained analysis of the strategies that trade unions are adopting to revitalise themselves, focusing on the balance between social partnership and organising strategies with numerous variants and interpretations of each approach identified, but renewal remains elusive (Hickey et al 2010). Public service trade unions are wary of being viewed as only concerned with employee interests to the neglect of the concerns of service users and are seeking to develop coalitions with service users to combat budgetary reductions. As the coverage and regulatory effects of national collective agreements diminishes, trade unions can be expected to direct more attention to other regulatory mechanisms that can be used to safeguard working conditions. In particular it is likely that there will be more legal challenges and increased applications for judicial review, in association with service users and non-governmental organisations, to challenge government policy and employer decisions. Trade unions may direct less attention at traditional collective bargaining and look towards strategies that directly affect working conditions, such as minimum staffing levels (see Gordon et al 2008). Trade unions representing professional or semi-professional occupations with strong occupational identities are likely to fare better than general trade unions with a dispersed membership that is vulnerable to outsourcing and offshoring. A forthcoming paper in the series will examine the future of trade unions in more detail.

**Conclusion**

Public services have been subject to a continuous process of reform for more than two decades. Nonetheless, the advent of an era of austerity is forcing changes in employment relations that draw on earlier phases of reform but which are now being pursued with more vigour by the current government. The traditional model of a uniform pattern of public service employment relations was never fully accurate and has been ebbing away for many years. But the promotion of a smaller more restricted role for the state, the expansion of a variety of providers, market-orientated funding and more user-centred services is posing an increasing threat to institutionalised employment relations in the sector. This context provides challenges and opportunities for all key stakeholders. For policy makers the public services have always been cast in the role as a model employer especially in procedural terms, for example in relation to employee voice and equality provisions. The role of the state as model employer may be called into question given the anticipated reduction in publicly owned and managed service providers, the proliferation of voluntary and private sector providers, and by a reduction in central prescription as part of the localism and deregulation agendas. The erosion of long standing conditions of employment, in particular pensions, poses a significant risk to public sector ethos.

Employers not only face the challenge of maintaining staff engagement in a period of change but also ensuring that they have the right industrial relations and
HR capabilities within their organisation to manage change effectively. At the same time some employers may view budgetary constraints as providing opportunities to engage in wholesale re-engineering of the workforce. For trade unions it is uncertain if they have fully come to terms with the scale of the challenges, but adversity may provide the catalyst to fashion a more strategic response to the fundamental challenges they confront. Despite many uncertainties, it seems clear that public service employment relations will differ markedly from those prevailing in 2011. Such a rapidly changing agenda presents considerable challenges and opportunities for Acas as it seeks to fulfil its duties, both in relation to dispute resolution and promoting good employment relations in the future. An especially important dimension will be to engage with a far wider range of service providers to ensure effective employment relations practice across the sector.
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Acas policy discussion papers, including the Future of workplace relations series, can be found at www.acas.org.uk/policydiscussion.

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Endnotes

2 See for example the government’s Green paper Modernising Commissioning whose subtitle ‘Increasing the Role of charities, social enterprises, mutuals and cooperatives in public service delivery’ is self explanatory.
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