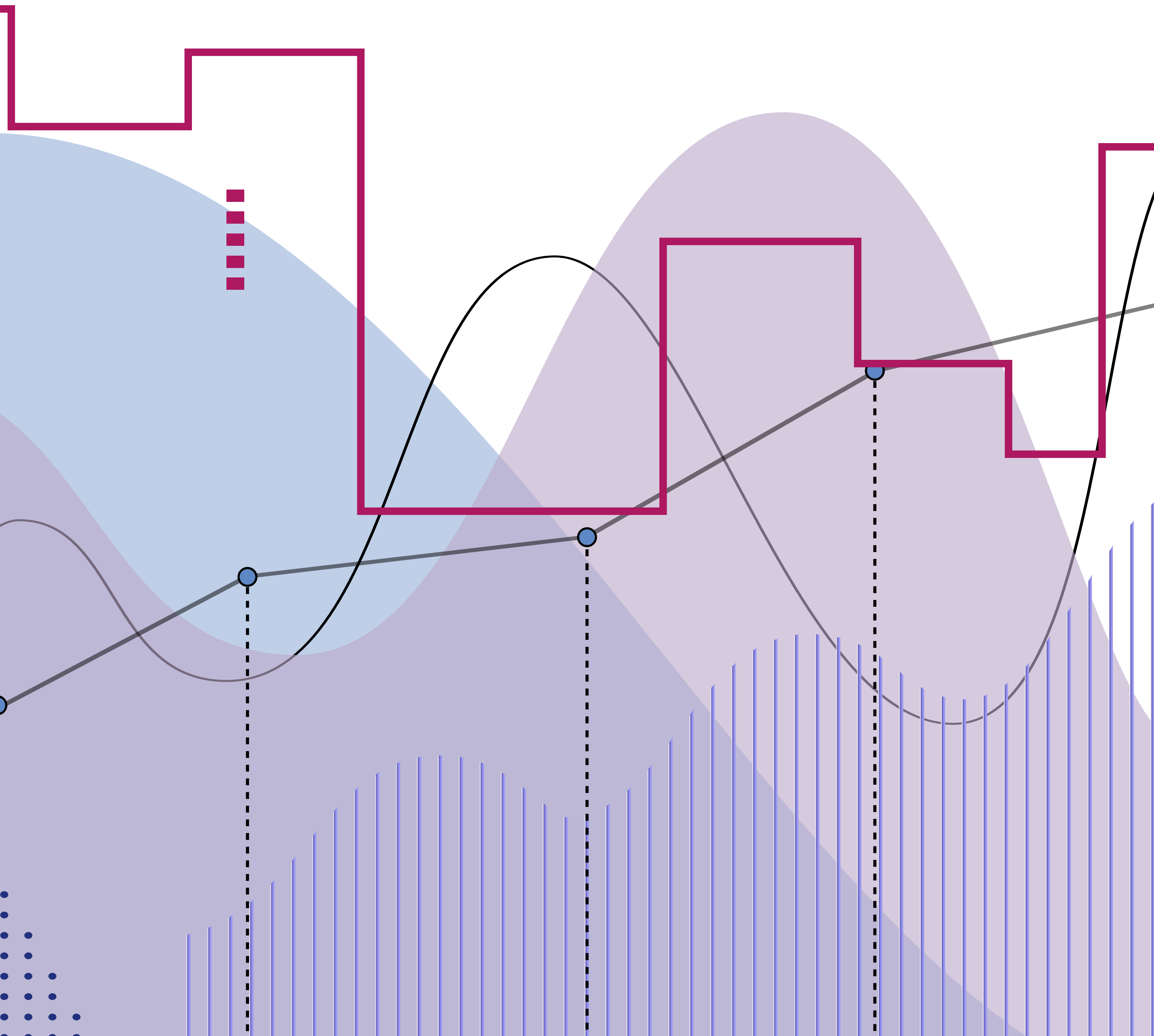
trowers & hamlins

# DELIVERING SERVICES DIFFERENTLY

## Public Sector Services 2021/2022



# Contents



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*"Thank you to all of those that took time to respond to the questionnaire, this has been a fascinating insight into how the public sector delivers services day to day. Although there are still obstacles and barriers that need to be overcome, there is a real passion and appetite to learn, to improve and to innovate. We look forward to carrying on this important conversation."*

Lucy Doran

# Introduction

In the Summer of 2021 we launched a questionnaire that sought to understand a bit more about the current landscape for public sector service delivery. As we noted at the time, there is no "one size fits all" approach and models adopted will differ depending on the organisations, the services in question and the individuals involved. Delivery models are not set in stone and will naturally evolve over time and change with new circumstances.

Through our questionnaire, we wanted to see if there was much common ground between different public sector organisations and whether there are themes emerging in how public services are delivered and lessons that could be applied going forward. We were delighted to see how many different organisations took time to respond and how many individuals provided candid feedback on their personal experiences.

In this report, we look at the responses received from the questionnaire and provide analysis on some of the themes and trends emerging. Clearly, this is an area which impacts on all public sector organisations and whilst some outsourcing to the private sector will always be appropriate, we see in the responses a real appetite for more in-house and shared delivery.

Whilst the majority of organisations in our survey tend to share services with other organisations in the same sector, there is clearly an interest in wider public-public collaboration. With the Government taking steps to encourage wider public sector collaboration (see for example Integrated Care Systems in the Health and Care Bill), the question needs to be asked what barriers there are in place restricting this on a wider scale and how we overcome these. The law (in particular vires and procurement) is often cited as being difficult to navigate when it comes to collaboration but with a number of reforms on the horizon post Brexit, there may now be a chance to make things simpler and remove some of the obstacles in the way.

We hope that you find the findings and analysis in this report interesting and we look forward to you joining the discussion and sharing your views over the upcoming months. We will be holding an event in early 2022 to explore the findings further, network and share views, please do register your interest if you would like to attend.

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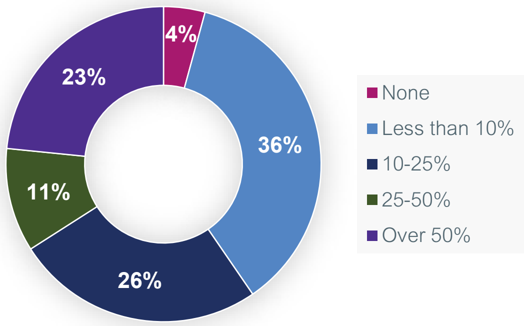
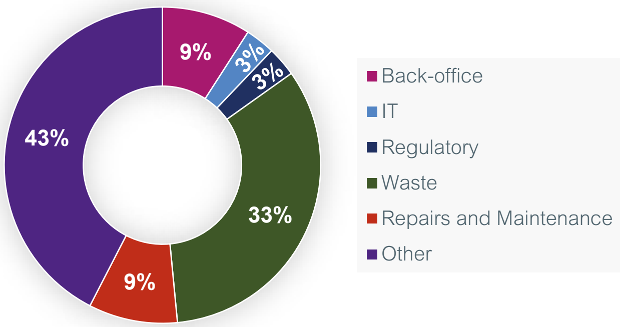
# Delivery of services by the Private Sector

## Findings

### Percentage of services currently delivered by private sector providers?

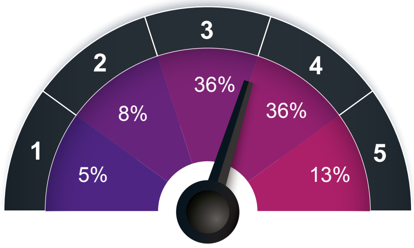



### Which services do the private sector deliver?




### Would you consider bringing these services back in-house?


### On a scale of 1-5 (5 being very successful) how well do you think your organisation currently delivers services in-house?




## Analysis:

There are some expected and some surprising results from the off. Given the nature of the government drive towards privatisation of local government services over the last 3 decades, it is not surprising that almost every respondent has services being delivered by the private sector. Almost a third of those are in the delivery of waste services. Whilst there have been some high profile examples of failure in the outsourced waste sector, it is largely regarded as one of the services better suited to outsourcing.

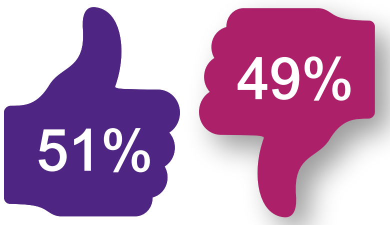
Where the responses spring a bit of a surprise is in relation to the potentially contradictory sentiments arising from the last 2 questions. On the one hand, half of respondents are contemplating bringing services back in-house, whilst on the other hand, only 13% regard their current performance of delivering services in-house as very successful. Does this demonstrate a degree of complacency in what is expected of in-house delivery or, possibly more likely, does it merely confirm that local authorities are realistic in the judgement of their own services against the backdrop of years of austerity and underfunding of local government.

The result that 50% of respondents are contemplating a return of outsourced contracts does tend to reflect our own recent experience of an increase in advice on Teckal and other “in-house” options for currently outsourced services.

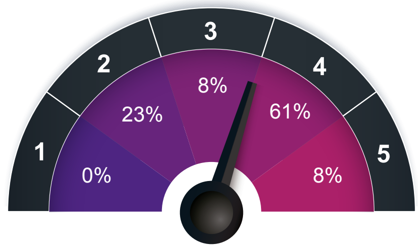
# Teckal Entities – nature of services and success

## Findings

**Has your organisation set up a wholly owned vehicle to deliver services (also known as a "Teckal" entity)?**




**On a scale of 1 to 5 (5 being very successful and 1 being unsuccessful) how well do you think that your wholly owned vehicle delivers?**




**What services does your wholly owned vehicle deliver?**

- Housing development, management and repairs and maintenance
- HR
- Waste
- Property management and maintenance
- Leisure centre management
- Security
- Regeneration and development
- Environmental enforcement
- Car park management
- Tourism
- Cultural and leisure including libraries and museums
- Cleaning
- IT

## Analysis:

These results confirm that half of the respondents have set up Teckal entities which is a relatively high amount. Although external outsourcing used to be the default option, our experience shows that a number of Teckal entities are set up directly in response to failing or underperforming outsourced providers. As a quasi-in-house option a Teckal entity carries with it some competitive advantages over the pure in-house model whilst retaining control within the public authority.

For those that had set up Teckal entities, respondents comparatively gave such entities higher satisfaction rating compared to in-house delivery. Whilst an impressive 69% of respondents gave Teckal entities a positive satisfaction score, in-house delivery only achieved 49%. However, the average overall satisfaction score was 3.58 for Teckal against in-house average of 3.48 – a much closer margin overall. A conclusion could be that although there are clear benefits from having a Teckal entity, there are additional costs and resource implications involved. In-house delivery could still be seen by some as a more reliable offering perhaps because those services have been retained in-house for a long time, whereas Teckal entities (depending on employment models) may not yet have the track record or established practices that local authorities do.

There is also a trend in the responses that there are some services that a number of organisations will not outsource to a Teckal entity. These are often more complex and often are services which must be provided under statute. It will be interesting to see if this division continues going forward or whether Teckal entities will begin to shoulder more and more of these more complex services. There should be very few vires restrictions impacting on these decisions so we can only infer that they are driven by other factors such as commercial considerations, political sensitivities and/or fears over service continuity.

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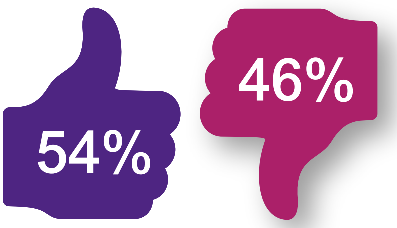
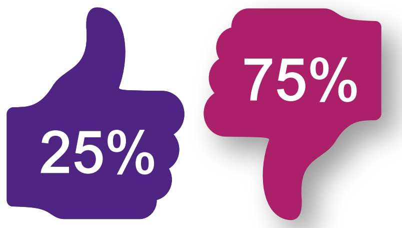
# Teckal entities – services to third parties

## Findings

**Does your wholly owned vehicle offer services to the open market or to other public authorities?**




**If so, is this more than 20% of the wholly owned vehicle's income?**




## Analysis:

The results demonstrate that slightly more of the respondents with Teckal entities offer services to the open market and/or other local authorities and 75% of these only do so up to 20% of their overall income. This is not surprising as the procurement rules prohibit more than 20% of the entity's income to come from third parties outside of the Teckal arrangement.

It may be the case that those 25% who provide more than 20% of their services to third parties no longer require their Teckal status or did not require it in the first place. It is not uncommon for the public sector to set up wholly owned subsidiaries which are established purely to raise revenue from third parties. Alternatively, an entity might have started out life as a Teckal entity and purposely lost that status over the years as the requirement to provide services back to the parent authority diminishes and third-party income increases.

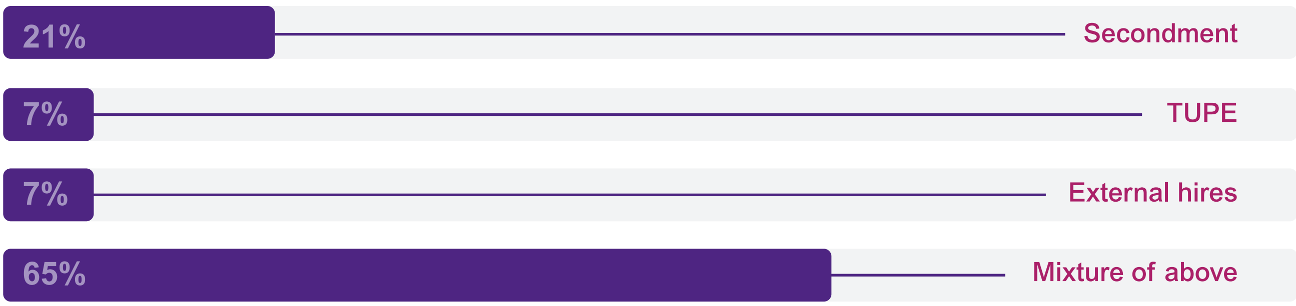
In our experience, the 20% rule has always been one which some public sector clients have been nervous of overstepping and this may have inhibited the entity's appetite to market services to third parties. This can be a missed opportunity for such clients to raise much needed revenue and with some simple mechanisms built into the entity's constitution, income levels can be monitored on an annual basis to ensure that the 20% threshold is not breached.

For those public sector bodies with more ambitious revenue generating plans, subsidiary entities can be established that work in tandem with the Teckal entity and allow that body to maximise use of the exemption and third-party trading opportunities. The important point to take away is that although there is a limit on trading activities with a Teckal entity, this need not hinder a successful service offer as any long-term business plan can accommodate this via a succession plan or alternative structures.

# Teckal entities - employment and staffing

## Findings

**How is your wholly owned vehicle staffed?**




## Analysis:

We would expect to see a mixture of the above, but it is surprising that the percentage of staff seconded is quite high. The secondment model (as an alternative to TUPE with the cooperation of affected employees) tends to be less legally certain than TUPE and involves complex agreements to deal with the management of the employees.

TUPE, on the other hand, provides legal certainty. The authorities' responsibility for the employees will end on the transfer and all risks and liabilities will pass to the wholly owned vehicle. As it will be the wholly owned vehicle providing the services, it is more straightforward if it manages its own employees.

However, secondments can provide commercial advantages, such as keeping cultural links with the authority, retaining key management skills and public sector expertise, and employees will retain their protected pension, other terms and conditions and career development options with authorities.

The small percentage of vehicles staffed solely by external hires are likely to be providing new services, where employee did not have a TUPE right, or potentially where the services are long standing and the originally TUPE'd workforce has now moved on.

The fact that nearly two thirds of vehicles are staffed by a mix of staffing models underlines the importance of identifying what is legally and commercially appropriate for the particular vehicle and services. One size really does not fit all.

# Teckal entities – services to third parties

## Findings

What are the notable benefits of having a wholly owned vehicle?

What are the notable challenges of having a wholly owned vehicle?

## Analysis:

When asked as to the benefits of wholly owned vehicles respondents cited them as a "hybrid" option, being able to have some benefits of contracting with the private sector (perceived costs advantage and agility of decision-making) without the resulting skills and profit leaving the public sector entirely. This highlights the unfortunate concept of a pool of talent unwilling or unattracted to the public sector persisting.

The word "control" features in quite a number of responses and overall features more as a negative aspect. This reflects our experience in establishing subsidiaries, where "control" and oversight are often sticking points often above any financing issues, not to mention these concepts cropping up in the more recent subsdiary failings in Croydon and Nottingham. The degree of independent personality that wholly owned vehicles can develop often will determine the direction of it as well as having knock on effects regarding procurement status and the sorts of personnel that it will attract.

How authorities exercise their control and carry out monitoring can be tricky. In some circumstances the level of control is clear - a Teckal subsidiary for example is mandated by law with regards to control similar to that over the authority's own departments (and monitoring that as well as the 80% activity threshold was noted as particularly challenging). Otherwise, respondents cited the lack of knowledge of what the company was doing and keeping a rein on their activities was a challenge. Also the difficulty of another layer of governance, for legal teams, was an additional challenge.

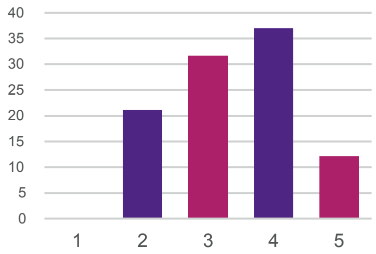
On the other hand, it is well versed that the governance and decision making processes can be more drawn out and less agile within public authorities. This is reflected in our responses which cite streamlined decision making as a key benefit. This matches our experience, where bolder authorities that cede a degree of decision making to a wholly owned company, with adequate safeguards and oversight, can take advantage of opportunities otherwise unavailable.

Income generation features frequently although we note that there are numerous examples of companies which are established on more of a "break-even" or loss mitigation basis, especially in scenarios where services are being brought "in-house" from an unsuccessful outsourced provider.

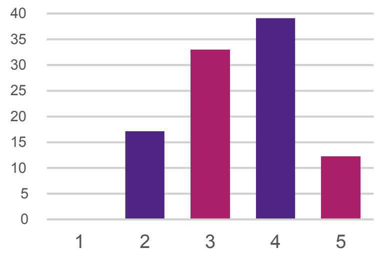
# Shared Services – cultural alignment and productivity

## Findings

**On a scale of 1 to 5 (5 being very and 1 being not at all) how culturally aligned do you consider that your shared service is with your organisation?**




**On a scale of 1 to 5 (5 being very and 1 being not at all) how productive do you consider the employees in your shared service are?**




## Analysis:

It's interesting to see that only 11% of those responding to the survey feel that their shared service is very culturally aligned with their organisation and that the employees in their shared service are very productive. Clearly the less aligned staff feel with the organisation they are providing services for, the less productive they are. This may be, in part, a result of secondment arrangements where employees are still employed by their organisation rather than becoming fully part of the wholly owned vehicle providing the services. It may then be hard for these employees to feel culturally aligned with the shared service they are working for and so they are not as incentivised to be productive as they otherwise might be. Alternatively, it may be that by being moved to a new vehicle potentially with new management, new practices and new branding means the staff feel disconnected from the authority. Sometimes this can have benefits such as attracting expertise and talent from outside the sector, but as this shows there is a balance to be struck.

The responses are particularly interesting because it seems that one of the advantages of shared services is not always being felt; that advantage being that because shared services deliver economies of scale and standard business processes, they are able to help improve productivity for public sector organisations, while also cutting costs.

Those responding to the survey are using shared services for a number of different operations. The benefits they see to a shared services arrangement are cost reductions, economies of scale and the fact that, without such arrangements they struggle to recruit qualified staff. Other benefits identified are shared expertise, especially for smaller authorities and commercial freedom (within limits) to innovate and agility to respond to change. One of the respondents to the survey stated that the biggest attraction to shared services was the improved quality of those services. The biggest attraction by far though seems to be costs savings.

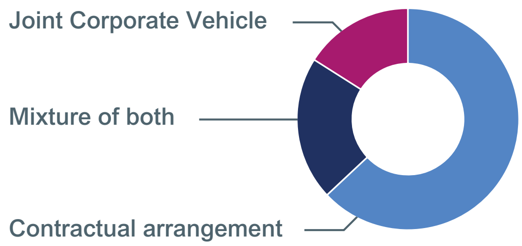
From the results of the questions on cultural alignment and productivity it seems that shared services do not always fulfil their promise as one of the purposes of such an arrangement is to improve the productivity of the services. If staff do not feel culturally aligned with the organisations they work for then it seems from the results of the survey, that they are less likely to operate efficiently and effectively.

# Shared Services – nature of services and success

## Findings

Does your organisation currently provide services in collaboration with another public sector organisation?

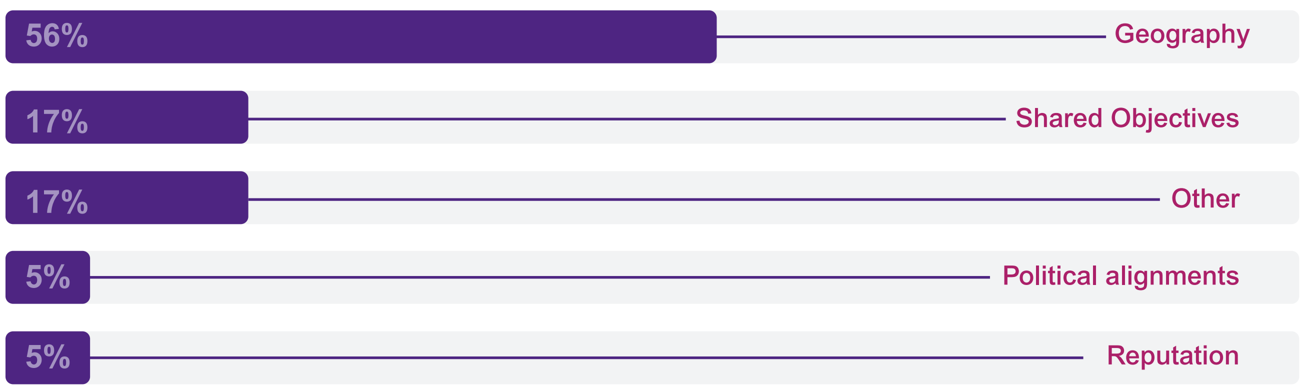

Is your shared service delivery through a joint corporate vehicle or a contractual arrangement?



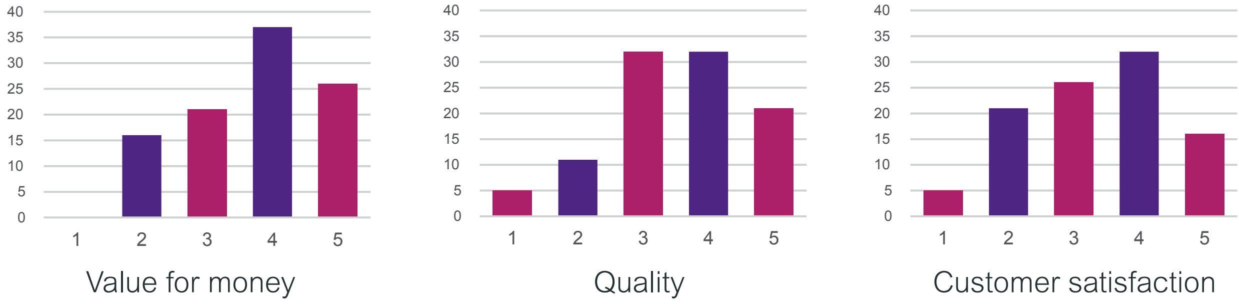

What services do you currently share with another public sector organisation?

Regulatory services | IT | HR and finance | Legal services | Payroll | Audit | Procurement | Surveyors and corporate landlord functions | Waste management

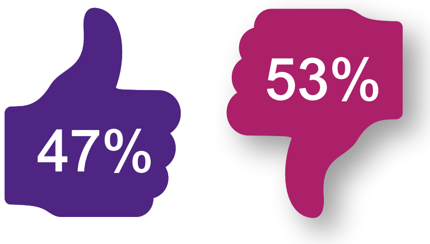
What factor mainly influenced how your organisation chose its shared services partner?



**On a scale of 1 to 5 (5 being very successful and 1 being unsuccessful) how well do you think that your shared service delivers?**




**Does your shared service offer services to the open market or to other public authorities?**




## Analysis:

Of our respondents, over half currently have shared service arrangements with other public sector organisations where they collaborate in delivering certain services. The vast majority of those shared services are delivered through contractual arrangements, but there is a mix of both contractual and joint corporate vehicles in use across the sector.

Our respondents demonstrated that there are a range of services currently being delivered under collaborative arrangements, including back-office services as well as specialist roles in areas such as legal services and finance. Interestingly, one of the benefits put forward by several respondents was access to specialists and qualified staff who the public authority would not otherwise be able to employ (citing issues with internal expertise and budgetary constraints).

It is clear that geography plays an important role in the selection of a shared service delivery partner, and this is borne out by our experiences where public authorities often collaborate with neighbouring authorities. Shared objectives and costs efficiencies are also an influential factor in selecting a partner and this is reflected in the feedback received that costs are often a driver in the areas where collaboration is particularly prevalent.

The views on customer satisfaction, delivering quality services and value for money vary across the responses. For the most part, it appears that our respondents find their collaborations to deliver value for money in the service delivery. That being said, quality and customer satisfaction were considered to be slightly less successful outcomes. Of note, there was a recurring theme in the responses we received that suggested it was sometimes difficult to ensure that a shared service can adequately serve both or all of the collaborating partners equally, and this, perhaps, goes some way to explaining the mix of views regarding customer satisfaction.

# Shared Services – Pros and Cons

## Findings

**What are the most notable benefits of your shared services from your perspective, as opposed to in-house delivery?**

**What are the most notable challenges of your shared service from your perspective?**

## Analysis:

Overwhelmingly respondents referenced the most notable benefits of shared services to be economies of scale. Respondents noted these efficiencies allowed organisations (particularly smaller ones) to have access to expertise in personnel who they could not otherwise attract, as well as IT system functionality that was otherwise unaffordable. It is clear that the drive for shared services often mandated by austerity has allowed in some cases for greater economies of scale in certain services.

Another benefit cited by some respondents is that shared services can foster shared learning across the shared service users. A particular example drawn out was audit functions, which allowed for best practice and pitfalls to be communicated by osmosis. This benefit it seems, is limited to certain specialised services.

It is encouraging that respondents noted positives of shared services outside pure economics. That pays testament to how public authorities have implemented what clearly were predominantly economically driven policies to start with.

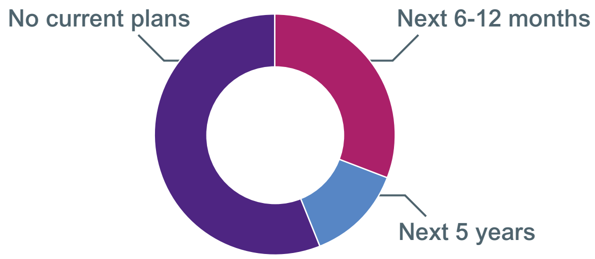
From the responses it appears shared service teams are often considered as “outsourced providers” more so than being “part of the team”. This appears to be driven by a variety of reasons, including the way in which shared services often organise themselves (ie. relationship governed by a contract and the interface being more client oriented). Some concerns were raised including that shared services didn’t in all cases have a contract manager or monitoring arrangements to ensure VfM which challenges some of the inherent assumptions of the business case for shared services.

Some common themes arose from respondents around the difficulties of forming collegiate shared service offerings when merging various teams. This included disagreements on forming uniform approaches. Some authorities also felt they didn’t get as dedicated a service as some other partner authorities. It is clear that from a reorganisation perspective it will always be difficult to create an umbrella service formed of different constituent parts and interesting to consider if a blank sheet approach – perhaps not financially driven - would come across the same organisational issues.

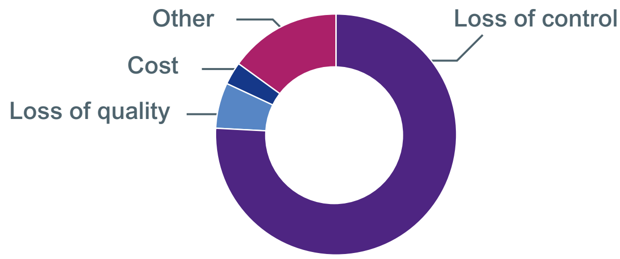
# Shared Services – future plans

## Findings

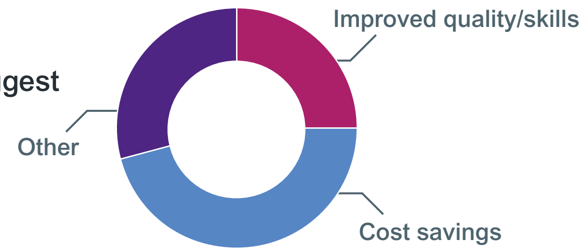
**Do you anticipate sharing services with another public sector organisation in the future, if so, in what timeframe?**




**What do you consider to be the greatest risk associated with shared services?**




**What do you consider to be the biggest attraction to shared services?**




## Analysis:

Less than half of our respondents currently have plans to share service delivery with another public body in the next five (5) years, with only 31% envisaging a shared service "going live" over the next twelve (12) months.

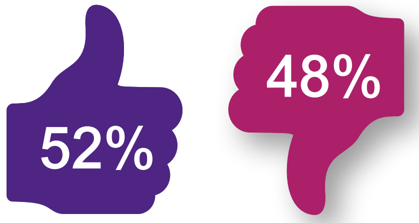
Perhaps unsurprisingly, an overwhelming majority of our respondents viewed a loss of control as being the greatest risk to a shared services arrangement. In our experience, concerns around controlling a shared service can often be overcome in the governance arrangements that are put in place to manage and oversee the service delivery (either through project boards, or by contract procedure rules), and public bodies may find that there are mechanisms to deliver shared services where this risk can be mitigated. A few respondents raised similar concerns around a loss of quality control, and such concerns can likely be mitigated through similar arrangements.

Almost half of our respondents viewed costs savings as the biggest attraction to shared services, whereas surprisingly only a quarter viewed improved quality/skills as the biggest attraction. Following the implementation of the National Procurement Policy Statement (the NPPS) which places great emphasis on the skills and capability of public authorities in delivering public service, and which lauds collaborative approaches to service delivery (such as shared services), we imagine more public authorities will consider making use of shared services in future where they identify skills gaps.

# Procurement reforms and Public sector service delivery

## Findings

**Are the procurement rules clear to you in respect of setting up wholly owned vehicles and shared services?**




**If not, what changes would you suggest the Government should make?**


## Analysis:

As can be seen, the respondents were divided as to whether the procurement rules were clear enough to follow. These two areas of procurement law (Teckal and shared services) have a long and sometimes complicated history woven through caselaw, legislation and guidance. Although the basic models are straightforward, some areas are still untested by the Courts which can leave those looking at more complex models grappling with a number of "grey areas" of law.

From the responses received, there is overwhelming support for keeping the Teckal and shared services exemptions and an appetite for greater clarity about what can and can't be done. More than one respondent suggested that model examples could be provided by Government so that the public sector can have more options and certainty going forward. At the very least, the public sector could share examples of successful models to avoid individual organisations from having to "reinvent the wheel" each time they look to new ways to deliver services.

With such clear appetite for more clarity, it is surprising that Teckal and shared services did not feature in the Green Paper: Transforming public procurement. No doubt, like many other respondents to the Green Paper consultation process, we highlighted this omission and suggested that this may be an opportune time to look again at the exemptions and seek to codify some of the caselaw into legislation and provide more guidance on structuring. Our understanding is that the fact that there is an omission does not mean that the exemptions will not feature in the new legislation, but time will tell whether they will be a copy of the existing rules or whether further thought will be given to the matter.

In the meantime, we continue to support organisations big and small in setting up delivery structures for their services and sharing experiences of what has been achieved elsewhere and lessons learnt. In our experience, public sector organisations have a lot to gain from exploring how to deliver services differently and procurement and administrative law need not be a hurdle to innovation and success.

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