UNITED VOICES OF THE WORLD

11th November 2020

Dear Mr Shaw, Chief Executive at Great Ormond Street Hospital for Children NHS Foundation Trust (GOSH),

RE: The untenable continuation of outsourcing of domestic services at GOSH

I submit this claim, and the supporting case for it, to you and GOSH's Board Members in my capacity as an Executive Committee member of the trade union United Voices of the World (UVW), authorised to do so on behalf of GOSH's domestic workers, who are currently employed by Outsourced Client Solutions Group UK Ltd (OCS), and who are members of UVW. Representatives of OCS have been copied into this claim too, and we direct them to section 12 for their exclusive and urgent attention.

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The Claim

The current economic depression and pandemic precipitated by Coronoavirus necessitates the urgent reevaluation of the largely unchallenged assumptions about the efficacy of outsourcing at GOSH, and we contend that such a re-evaluation will lead to only one conclusion: the continued outsourcing of domestic services at GOSH must be ended with the utmost urgency.

The case for ending the outsourcing of domestic services, and all services covered by GOSH's Estates and Facilities and the Built Environment department, is overwhelming. Continuing to outsource is inimical to GOSH's interests, measured by almost any metric, including financial, clinical, reputational, technological, operational, and in respect of employee/industrial relations. Simply put, outsourcing is more costly, detrimental to staff health, morale, motivation, engagement and general well-being, discriminatory, financially risky, and leads to poorer patient outcomes than the in-house provision of domestic services.

UVW submits that the evidence and arguments contained herein demonstrates GOSH has the capacity to undertake and execute an ambitious insourcing programme which will place patient outcomes and staff well-being at its centre, and realign the provision of these services with GOSH's 'Always Values'.

We therefore request that GOSH confirm that the tender process in respect of domestic services will be halted, and that a decision will be taken at the next board meeting not to renew the contract with OCS when it expires on 31st July 2021, or to offer it to any other private contractor and that GOSH's domestic workers will be brought in-house at the latest by 31st July 2021. And that in the interim they will be accorded full parity of pay and terms and conditions with in-house staff on the relevant band on NHS Agenda for Change (AfC) contracts.

The case against outsourcing and for the in-house provision of domestic services at GOSH

1) The incompatibility of outsourcing with GOSH's "Always Values and Behaviours"

GOSH has proudly committed to 4 laudable values and behaviours, one of which is "Always 'One Team'", the others being "Always Expert", "Always Helpful" and "Always Welcoming". It is simply incongruous that GOSH should at once promote a "One Team" spirit in recognition of the benefits this brings, whilst excluding domestic workers by arbitrarily placing them in the employment of a private contract. In doing so, the essence of the "One Team" ethos is eviscerated, and its intended aims are rendered unattainable. In fact, the very values and behaviours GOSH's "Always One Team" commitment are designed to avoid, and those which are routinely experienced by the domestic workers. The list of these values behaviours, extracted from GOSH's own publication, are reproduced below

Not interested in keeping people informed and updated
Patronising, talk down to people
Not listening… "Tells me what I think"
Indifference to other people's opinions or views
Dismissive, treat other people as less important
Unwilling to involve people in decisions
Unappreciative of other people's efforts
Reluctant to give, or receive, feedback openly

These values and behaviours simply cannot be expected of OCS, or any other private contractor, as they do not exalt or enforce the same values in their own Employee Handbooks, or in practice. And even if they did, the domestic workers would still be and feel excluded and a fragmented, two tiered, racially segregated workforce would remain in place in which domestic workers were isolated, alienated, degraded, undervalued, overworked and discriminated against.

Nurses across the country have described how in-house cleaners are much more part of the NHS family and how proud they are to work on a ward where the cleaners are employed by the hospital. One such nurse was reported in the BBC as saying that, "I can say to Monica and Arnie, 'you are coming to our Christmas party aren't you? You're an essential part of our team'."

But aside from being excluded from Christmas parties, GOSH's domestic workers are also excluded from GOSH's "staff recognition scheme, in the form of a "monthly and annual awards

ceremony", and GOSH's "Culture Club", and all the activities offered therein. Including, "bespoke creative short courses in creative writing, drawing and photography at Central Saint Martins College of Art and Design", "GOSH's Singers" (a choir made up of staff from GOSH and GOSHCC) and GOSH's "Annual Photography Competition".

Excluding domestic workers from these groups and activities is not only obverse to a "One Team" ethos, it is also cruel.

To understand how domestic workers feel about being outsourced and excluded from GOSH, here are some anonymous quotes submitted by the workers themselves:

i) Working for GOSH would be a great opportunity for the majority of us to build a career path for ourselves and become clinical professionals we have long been craving for.

ii) It'll give us a sense of belonging.

iii) Despite us domestics working in the NHS, we work with zero benefit.

iv) Holding our wages 'in bank' for 10 big days. We domestics, cannot get paid in advance even at Chrstinas time. Unfortunately, most of us spend Christmas Day with empty pockets.

v) To have a sense of well-being at work. To be able to work without favouritism, without getting ransom increase in our workloads, without having problem with equipment, or neglect of our needs

vi) We, the domestics would have a sigh of relief working directly for GOSH knowing that we are finally free from "stick, stick and no carrot management". We have been enduring terrible treatment at GOSH for years, because we are outsourced to a company that sees us as nothing more than numbers.

vii) We'll also be glad that other GOSH staff both (clinical and non clinical) will no longer treat us like aliens. They would hopefully start to treat us as equals, as one of them.

viii) To go in-house at GOSH would put an end to the constant increase in workload we are receiving that has impacted negatively on the quality of service and increased sickness levels and health related absenteeism from duties.

ix) We are sick of Outsourcing bullies, harassment, and racial bias by outsourcing brought in-house.

x) We suffer too much harassment from others. Please we want that to stop. We want equality of rights and treatment.

xi) I was locked in a room by my OCS supervisors and was shouted at aggressively like I was a criminal or a prisoner. The supervisors excuse for treating me like this was that when they asked me to do a job I sent someone else in my place because I was in the middle of another job at the time. Being locked in a room and shouted gave me a panic attack and my GP said because of my medical condition I'm lucky not to have had a heart attack. I have now been signed off work sick for a long time. I'm sure that if I was employed by GOSH I would not be treated like this.

xii) I honestly feel that we are working in an institutionally racist organisation. The only way to end that institutional racism is to end outsourcing.

Examples of the treatment of domestic workers at GOSH can also be found in the *GOSH 2019-2020 Quality Report,* which reads as follows:

"February 2020 saw a significant increase due to the presentation of two petitions from OCS cleaning staff. One petition was about OCS not allowing sufficient time for Muslim staff to pray but the larger petition was about poor relations between OCS managers and OCS cleaners."

Furthermore, OCS has been the subject of several formal and informal grievances from domestic staff relating to bullying, harassment, trade union victimisation, discrimiation, excessive workloads, breach of contract, and a failure to comply with basic statutory obligations, such as the payment of an employee's full annual leave entitlements, amongst other issues. These complaints are not anomalies, but commonplace within OCS and other contractors. Furthermore, many grievances are barely remediable without structural change. Something the contractor is unable to bring about and which results in a series of perpetually unaddressed grievances.

Cultures of fear and bullying, including unjustified suspensions and harsh disciplinary proceedings for minor infractions, are frequent due to a combination of callousness, lack of training, the pressures of the contact, and the short life span of the contract which disincentives private companies from adequately addressing grievances, instead preferring to ride the contract out.

Despite the unfavourable UK employment law framework in which workers find themselves, and the difficulty and representational costs of bringing employment tribunal claims against employers, from February 2017, when employment tribunal judgements began to be archived online, OCS has been the named Respondent in around 58 cases. By contrast, GOSH has only been the named Respondent in 4, a multiple of around 15 fewer cases.

The insecurity faced by domestic workers at GOSH further contributes to the aforementioned sense of exclusion and precarity amongst domestic staff. By way of example, if an employer wishes to dismiss one of their employees there is an expectation that a fair procedure will be followed, be it provided by ACAS or the employer's employee handbook. If said procedure is not followed, or if one of the permissible grounds for dismissal cannot be established, then length of service permitting, a claim for ordinary, or depending on the circumstances, automatic unfair dismissal, may be brought in the employment tribunal.

However, we reasonably infer that there is a provision in GOSH's service contract with OCS which provides for client requests for removal of a domestic worker, either by providing a 'reasonable reason' or, and far more commonly, no reason at all. In such a situation, OCS would be contractually compelled to relocate that domestic worker to another site, uprooting them without due process from a workplace they may enjoy working in or wish to remain in, and separating them from colleagues who may also be friends or family. Whilst relocation may save them from unemployment, even if a financial loss is incurred due to inferior terms and conditions attached to the new contract, it is more common that unemployment will result. This is because if no alternative jobs are available, OCS will move to dismiss them on the catch all ground of, Some Other Substantial Reason (SOSR).

Were the domestic workers employees of GOSH, this precarity would soon disappear and they would rightly feel and actually be in a much more secure position.

2) Outsourcing of domestic services leads to poorer clinical outcomes

a) Existing peer reviewed research

There is now a wealth of independent evidence and research demonstrating a clear causative link between the outsourcing of cleaning services and higher rates of Hospital Acquired Infections (HAIs), such as Methicillin-resistant Staphylococcus aureus (MRSA) and C. difficile in NHS Trusts which outsource, rather than in-house, their domestic services.

We will reference in the following the findings of two recent studies which sought to assess relations of coupling and causation between outsourced cleaning services and rates of MRSA acquisition within the English NHS.

The first is a 2017 peer reviewed paper published in Social *Science & Medicine,* entitled, *'Outsourcing cleaning services increases MRSA incidence: Evidence from 126 english acute trusts'* ("Study 1"). It was co-authored by researchers from the University of Oxford, the London School of Economics and the London School of Hygiene and Tropical medicine. Study 1 sought using multivariate regression models to link 'data on MRSA incidence per 100,000 hospital bed-days with surveys of cleanliness among patient[s] and staff in 126 English acute hospital Trusts during 2010 - 2014' using Public Health England's annual reports.

The second is a 2019 peer reviewed paper published in *Public Administration Review,* entitled, *'Cheap and Dirty: The Effect of Contracting Out Cleaning on Efficiency and Effectiveness*' ("Study 2"). It was co-authored by researchers from the New York University School of Medicine, the University of Surrey, and the Office of Health Economics. This paper sought to empirically test, 'the contestability and quality shading hypotheses' - i.e. the hypothesis that (a) private provision ("outsourcing") of cleaning services within 'the English National Health Service' led to lower quality service provision, and that (b), this lower quality of provision was 'coupled' with increased rates of MRSA acquisition.

<u>Study 1 found the following:</u>

- **outsourced cleaning services were associated with greater incidences of MRSA** (data taken for Public Health England's annual reports, 2015)

- **outsourced cleaning services consistently provided fewer cleaning staff per hospital bed in comparison to in-house services** (data taken from Estates Return Information Collection (ERIC) for the period 2010-2014)

- **there was a worse patient perception of cleanliness and worse staff perception of availability of handwashing facilities** (data on patient-reported cleanliness were obtained from from the Picker Institute NHS Patient Survey Programme, while data on handwashing facilities were from the Picker NHS National Staff Survey).

Lead author Dr Veronica Toffolutti, from the Department of Sociology, University of Oxford, concluded: "*There has been plenty of anecdotal evidence but for the first time we have empirical data revealing a clear link between outsourced cleaning services and increased spread of MRSA. These findings are significant as efforts to reduce the infection of superbugs in hospitals become increasingly urgent."*

Co-author, Professor Martin McKee, London School of Hygiene & Tropical Medicine, said: *"The UK has been a world leader in the battle against antimicrobial infection, recognised as one of the greatest threats facing humanity. These findings suggest that what many had suspected is actually true. Outsourced services pose a risk to staff, patients and the wider population."*

Study 2 found the following:

In comparing rates of acquisition with Trusts using wholly in-house provision, the study found that:

-***Trusts with in-house cleaning services showed higher scores for cleanliness of wards and bathrooms;***

-***Trusts with outsourced cleaning services had a mean rate of MRSA acquisition of 0.94 whilst Trusts with in-house provision had a rate of 0.72 (a difference of 22%)***

b) Brevity of contracts acts as a disincentive for investment and innovation resulting in lower cleaning standards

The inferior levels of cleanliness and hygiene intrinsic to an outsourced cleaning service is further explained by the relatively short duration of contracts, usually averaging no more than 5 years, and 4 years in the case of GOSH. This brevity of contract length can serve as a disincentive to private providers to adapt and/or innovate service provision if it expects those adaptations/innovations could lead to increased costs, especially without a guarantee of contract renewal. The ability of GOSH to place effective pressure on service providers to innovate is also limited insofar as the contracts fix a specified service for a set period of time and variation can be costly and clunky.

In fact, private providers are incentivised to lower quality in order to minimise costs and maximise profits. Indeed, contractors derive all of the benefits of investing in cost-reducing

innovations but none of the benefits of quality-improving innovations. This leads to strong incentives to increase profits by lowering costs through reducing unobservable quality. The always short periods of defined contractual obligation insulate the provider from the pressure of having to execute long-term holistic service provision, as the contractor knows that it will be free of all obligations and liability within a relatively short period of time.

Further, continued reliance on outsourcing could potentially lock GOSH out from participating in future technologies and diminish sources for innovation as all such pursuits and opportunities would be abandoned and relegated to a private contractor. In comparison, an in-house team is capable of adapting and innovating in real-time in order to better respond to ever changing clinical and financial needs. In-housing is a way of future-proofing and as, confirmed by the *Association for Public Service Excellence*: "*Insourcing should be viewed as a form of innovation in both service delivery and resource allocation."*

b) The arbitrary division of 'core' and 'ancillary' services results in lower cleaning standards

Another contribution to the creation of lower cleaning standards is the arbitrary and clinically nonsensical division between 'core services' and 'ancillary services' upon which the outsourcing model is based. The false notion of cleaning in healthcare being a peripheral or ancillary activity, and an unskilled job, was the primary motive for outsourcing cleaning services and separating cleaners from the rest of the ward team, including clinical teams.

This division leads to a deleterious breakdown in communication between 'clinical staff', such as nurses, and domestic staff, such as cleaners, and impedes operational coordination and cohesiveness. It also leads to lower levels of integration between the domestic staff and infection control teams, with detrimental impacts on cleaning standards. This was empirically confirmed in a paper entitled, "*A Critical review of the Implication of Outsourcing in the National Health Services (UK): A Facilities Management Perspective"*, written by the School of Built and Natural Environment, University of Central Lancashire.

In effect, so-called 'auxiliary services' affect the quality of outcomes of core/clinical services, and outsourcing fails to recognise this fact. This is especially the case with respect to cleaning, which takes place not only to make hospitals a more pleasant environment for patients, visitors, and staff, but also to minimize the risk of HAIs.

Indeed, according to the *Committee of Public Accounts*, the lack of control and oversight with regard to the extent and cost of HAIs impedes the NHS from targeting activities and resources to best effect, both in respect of combatting HAIs and also in the execution of their clinical services.

c) Turnover levels inherent to outsourcing as a factor in lower cleaning standards

A further factor contributing to lower cleaning standards is high staff turnover. This often results from the poor treatment and terms and conditions many domestic workers face. This turnover creates disharmony and dislocations in the workforce, which is not only detrimental to any prospect of the establishment of GOSH's "Always One Team" ethos, but also contributes to poorer performance as teamwork, which is essential to the continuity and diligent execution of a cleaning contract, is constantly having to be rebuilt. Likewise, there is often a high turnover amongst the managers of the contractors and no ability for GOSH to determine who runs the contract. The contract can therefore be run by whoever the contracting company sees fit to deploy. This can often lead to a constant cycle of new managers repeating old mistakes.

The turnover on the domestic contract, both amongst cleaners and managers would undoubtedly be lower in light of better treatment they would receive and the superior pay and terms and conditions they would be afforded.

d) Targets vs Process outcomes and the relationship to lower cleaning standards

Evidence abounds that cleaning contracts are often misspecified, with the desire to monitor and enforce contract terms leading to the use of quicker and cheaper metrics. These are referred to in Study 2 as **"**process indicators" viz-a-viz "outcome indicators". Study 2 concludes the following on this point:

"The ideal outcome measurement for cleanliness in health care would reflect the impact of cleaning standards on the quality of care and, potentially, on the physical abilities and recovery of patients. Since such an outcome measure is hard to assess, policy makers resort to some performance standards that are more observable, such as how often a ward is cleaned or response times to requests for ad hoc cleaning. These indicators act as a benchmark for accountability and serve as a base for measuring performance; however, they do not necessarily reflect an ideal measurement of the final outcome. Contractors then face clear incentives to meet these targets (hitting the target) at the expense of good outcomes (missing the point).

Therefore, focusing on process outcomes, such as the frequency and speed of cleaning, or the number of inspections, will likely fail to reflect the quality of health outcomes.

e) Specific examples of issues with cleaning standards at GOSH

In GOSH's *2018/2019 Infection and Prevention Control Annual Report* a *"serious incident* [with cleaning]*"* was noted. Stating that *"in February 2018 there was a Pan-Trust concern with standards of cleaning"* and that it was necessary to carry out a *"performance review of OCS"*

and that *"an extensive action plan"* had to be *"formulated and implemented"*. This action plan was scheduled to remain in place as recently as March 2020.

And in the *2019/20 Infection and Prevention Control Annual Report* the following was noted:

"For 2017/18 there had been an increase in the absolute numbers of children identified with C difficile toxin, and the number of trust apportioned cases. Analysis had suggested this was in part due to cross-infection in a number of wards and may have been related to the drop in cleaning standards that led to the review of cleaning." And in an earlier*, Infection and Prevention Control Annual Report*, it was noted that *"a number of concerns were raised during the year regarding the standard of cleanliness by the senior nursing team."*

These incidents are just a few of the ones that were considered serious enough to be included in the Annual Report. However, it should also be noted that there are far more quotidian concerns around cleaning standards at GOSH.

f) Cleaning and Coronavirus

The clinical significance and importance of cleaning in the NHS has been made clearer than ever by the Coronavirus pandemic. A return to a holistic, integrated, 'One Team' responsive, future-proof approach to cleaning and one that is capable of adapting to clinical challenges as they present themselves, is essential in the current climate. In such uncertain times, GOSH requires flexibility and control, rather than being locked in long-term contractual arrangements which are costly to change and in which funds are leaking out in the form of profits to shareholders.

Whilst there are no studies yet which examine the link between outsourcing cleaning services and the spread of SARS-VoV-2 (COVID-19) in a clinical setting, it would not be unreasonable to assume a similar correlation may exist as that which has been proven to exist with regard to outsourcing and HAIs. Consequently, if GOSH is serious about providing the best possible patient care it is clear that the clinical evidence points squarely in one direction: bringing domestic services in-house.

3) Outsourcing *may* be cheaper but it is a 'false economy'

a) The false economy of outsourcing

It should be noted that both Study 1 & 2 found that the private provision of domestic services could prove cheaper than an in-house provision. However, it should also be noted that both studies qualified this finding in the following ways:

Study 1: *'conduct a full economic analysis because of an absence of comprehensive data on the nature and severity of the entire range of infections associated with poor cleaning, any additional deaths, the additional cost of treatment, and any associated costs, such as litigation. This is clearly an area for future research'*.

Study 2 noted that even if outsourcing were to continue it would be, *"(a) necessary for root and branch reform of current outcome measurement systems and, (b) that such reform was unlikely insofar as, 'the "carrot and stick" approach to bring monetary rewards such as bonus payments to private providers for meeting quality standards or imposing sanctions (for example, verbal warning, financial penalty, holding back contractor payment, or terminating the contract) for poor performance is rarely used by public managers in contractual relationships for fear of the administrative burden of these processes."*

In an interview on the findings of Study 1, co-author Professor David Stuckler, University of Oxford, concluded the debate on the economic consequences of outsourcing stating that:

"Our study finds that contracting out NHS services may save money, but this is at the price of increasing risks to patients' health. When these full costs are taken into account, contracting may prove to be a false economy."

b) Unintended consequences of outsourcing

i) The precarity and duplicity of contractors

In order to win contracts, private companies can and do regularly mislead NHS Trusts with regard to their financial solvency. UVW believes it ought to be noted that the withholding and concealing of information which places the veracity of companies claims to financial solvency in question is encouraged by the tendering process.

Indeed, in the June 2020 addition of, *The Outsourcing Playbook: Central Government Guidance on Service Delivery, including Outsourcing, Insourcing, Mixed Economy Sourcing and Contracting*, it was noted that:

"If a supplier becomes insolvent, services may be affected. Where these are critical public services, any interruption is likely to be unacceptable or create significant risk", and encouraged the inclusion *"of supplier insolvency as a risk when reviewing suppliers' Business Continuity and Disaster Recovery (BCDR) and exit plans for critical service contracts*".

However, the financial stability of a contractor is pegged to the vagaries of the market, where any given year the number and size of contracts a company holds may fluctuate, therefore making solvency forecasts unreliable.

ii) Hidden financial costs

Service changes and new needs or new public policy or public crises may emerge where these are not accounted for in the original contract costing. In an outsourcing arrangement meeting these new, unforeseen needs will take longer, will be more costly and complicated to realise due to additional enforcement and monitoring costs, restricted budgets, and disputes with the contractor as contracts often inflexibly lock-in a mode of delivery or a quality standard which is hard to rapidly or reliably vary and will inevitably impact on the contract

iii) Hidden performance costs

There is now a long history of private companies securing contracts through enticing promises which they are then unable to fulfill or are only able to fulfill at huge risk to the quality of service provision or at huge additional costs. In each and every case, the financial and reputational costs have been passed on to the Trust, and by extension to patients.

Furthermore, GOSH's Performance management can transfer management of day to day operational performance back to GOSH as an unintended consequence of managing a contractor, and this performance management can add costs as variations to meet performance expectations may be considered variations to the original contract. And if GOSH's client side performance management were ever weakened overtime orits capacity to monitor performance is reduced then serious operational consequences could ensue, and thus the tendency is to play an ever greater role in the day to day which creates additional costs, conflicts and burdens.

c) Case studies of outsourcing catastrophes in the NHS

Whilst dozens of examples of increased performance management and service failure costs could be provided, we believe the following few will suffice for the purposes of this claim:

i) Brighton & Sussex University Hospital (BSUH) NHS Trust

In 2013 Brighton and Sussex University Hospital Trust signed a five-year contract with Sodexo worth £15m. The contract covered catering, portering, cleaning and housekeeping at the trust's two main sites, Brighton's Royal Sussex County hospital, and Princess Royal hospital at Haywards Heath. Only 2 years later the early termination clause was triggered and services were brought back in-house.

It was clear the Trust and the company had attempted to make unsustainable savings, resulting in what management described as, *"inconsistencies in standards such as difficulties with maintaining cleaning standards, including the risk of cross-infection".* It was further noted that issues with staff were leading, *"to potential disputes including not giving staff their proper wages for four weeks over Christmas."*

The then chief executive of BSUH, Matthew Kershaw, stated at the time that, *"A transfer of this size and complexity is a huge undertaking and there will inevitably be some challenges along the way. It is, though, the right thing to do at this point in time for everyone involved, and for the organisation as a whole."*

ii) University Hospitals Leicester NHS Trust, Leicestershire Partnership NHS Trust and NHS Property Services ("Leicestershire Trusts")

Leicestershire Trusts signed a 7-year £300m contract with Interserve to provide catering, maintenance and support services to two NHS trusts and NHS Property Services. It was scrapped four years early in 2016 and around 2,000 staff were brought back into the NHS.

The catalyst for this decision was Interserve's drive to meet the expected £100 million savings on FM Soft services resulting in patients being brought meals 3 hours late and for which a public apology was required in 2013. Then in a bid to save more money, Interserve merged catering and cleaning services with cleaners heating up patient's meals. This caused 100 people to lose their jobs and led the Leicestershire Trusts to issue Interserve with a compliance notice forcing them to reverse the changes after complaints about a decline in services.

Then, two years later, the Trusts admitted that cleaning and maintenance required significant additional investment, requesting an additional £12 million, including an extra £2m in pay for the lowest-paid staff. In a joint statement, the Trusts and Interserve said: *"The original contracts were designed over five years ago and though they have delivered the intended savings, it has become apparent that the contracts are no longer appropriate to the needs of the trusts today."*

iii) Nottingham University Hospitals NHS Trust ("NUH")

In 2014, NUH signed a 5-year £200 million contract with Carillion to provide cleaning, catering, laundry, car parking and security services. Carillion employees in Nottingham complained of being short-staffed and lacking the right equipment to do their jobs. The Trust argued Carillion was employing about 70 fewer cleaning staff than required and nursing staff were undertaking cleaning tasks because they were not satisfied with the work of Carillion's staff. In 2017 the contract was terminated early, two years before the expiration of the contract, and 1,500 staff were brought back in house.

iv) NHS England and Capita Business Services Ltd (Capita)

The problems with outsourcing are not restricted to facilities services. The experience of NHS England's outsourcing of the delivery of primary care support services to Capita suffered many of the same inevitable consequences of outsourcing and is a useful reference for the aforementioned 'false economy' upon which outsourcing is based.

In August 2015, a seven-year, £330 million contract was awarded to Capita with a view to reducing NHS costs by 35% from the first year of the contract. The contract was also touted as leading to better quality and more efficient support services that would be easy to use. Predictably, none of the intended benefits were realised.

As detailed in the *Fifty-Seventh Report of Session 2017–19* of the House of Commons Committee of Public Accounts entitled, S*upporting Primary Care Services: NHS England's contract with Capita*, Capita's delivery of the contract was described in the following terms:

"[It] was a shambles. Its short-sighted rush to slash by a third the £90 million it cost to provide these services was heedless of the impact it would have on the 39,000 GPs, dentists, opticians and pharmacists affected. Capita recognises that the service it provided was not good enough. Its failures have not only been disruptive to thousands of GPs, dentists, opticians and pharmacists, but potentially have also put patients at risk of serious harm….[and] failure to deliver services led to disruptions and extra costs for doctors, dentists, opticians and pharmacists."

The Capita experience also provides further evidential support for the case that contractor's compulsively misrepresent their capability to deliver the contract specifications:

"NHS England's outsourcing strategy led to a short-sighted rush to achieve savings, heedless of the impact on patients or practitioners...NHS England incentivised Capita to close offices as quickly as possible but did not have the mechanisms to stop the office closure programme when it proved to be a costly mistake. Capita expected to make losses of £64 million in the first two

years of the contract, in order that NHS England could meet its objective to reduce its costs. Capita therefore had a financial incentive to close primary care support offices and reduce staff as quickly as possible, in order to minimise those losses and, between December 2015 and November 2016, it closed 35 of the 38 support offices it inherited. The office closures resulted in the loss of local expertise and meant that Capita did not have the resources needed to deliver the services required. NHS England raised concerns about the office closures in May 2016, too late in the day, and it did not have the contractual mechanisms to stop Capita from going ahead with its plans. Capita now acknowledges that it was a mistake to carry on closing offices and that in continuing to do so "we just made the problem worse as we went along…we should have stopped."

d) Summary of the hidden costs and false economy of outsourcing

The above case studies clearly illustrate that the outsourcing of domestic services can pose a high risk not only to the provision of domestic services themselves, but also to other inter-connected clinical and non clinical services. They also clearly illustrate that outsourcing can pose a risk to the reputation and finances of NHS Trusts. Furthermore, these examples demonstrate that outsourcing companies will seldom admit to the unviability or the hidden costs of meeting specifications in an undervalued contract and/or will seek to meet the contract price and KPIs by treating domestic staff like disposable work-horses.

UVW is of the position that GOSH is under the dual obligation to both safeguard the future viability of its finances and to ensure that patients are protected from the all-too real risks of service failure. UVW contends that the adoption of an in-house provision would allow the Trust to realise this dual duty.

4) In-housing as cost neutral or a cost saving move for GOSH

Further to the false economy of outsourcing described above, independent studies have found that in-housing may be a cost neutral or a cost saving exercise. For example, at St George's University of London, which provides almost identical T&CS to AfC contracts, an internal investigation examining the potential for an in-house provision of Soft FM Services including cleaning, security, reception and helpdesk services concluded that:

"It is anticipated that following one off capital costs for equipment and uniform, the University will be able to reduce the costs of its Soft FM services by approximately £200K per annum from November". We would be happy to provide you with this report upon request.

The cost neutral or cost saving of insourcing has been further evidenced by the *Association for Public Service Excellence*'s 2019 report titled '*Rebuilding Capacity: the case for insourcing public contracts'*. The report confirmed the following:

"The majority of respondents (58.82%) suggested that insourcing would not increase costs and of those that expected a marginal increase, up to £100,000, this represented less than 1% of respondents. Less than 2% suggested costs could increase by up to £1M but by contrast when asked about savings 4.90% suggested they would save up to £1M per annum with near to 3% suggesting that they would save up to £2M per annum. This data on efficiency and cost reductions is further correlated by the qualitative case study data; for example in Nottingham it was found that by achieving direct control of the supply chain there was an 'immediate reduction of 17% of costs' leading to in-house savings of some £0.5m."

a) The VAT burden of outsourcing for GOSH

Having reviewed GOSH's accounts of all payments exceeding £25,000 from September 2019 to September 2020, gross payments from GOSH to OCS totalled £10,277,010.31, with the corresponding VAT payments totalling £1,981,183.89.

If GOSH were to in-house its cleaning services it would save roughly £2,000,000 a year on VAT. The payments from which the total gross and VAT payments arise are broken down for ease of reference in the following table:

Date	Gross amount in £	VAT in £
Sept 2019	829,024.12	138,170.69
Oct 2019	0	0
Nov 2019	138,170.69 690,853.43	138,170.69 0
Dec 2019	853,701.68	142,283.61
Jan 2020	912,549.37 853,701.68	152,091.56 142,283.61
Feb 2020	0	0
March 2020	683,409.49 170,292.19 49,039.74 58,594.49 853,701.68	113,901.58 28,382.03 9,807.95 9,765.75 142,283.61
April 2020	71,748	11,958
May 2020	888,544.66 59,329.84	148,090.78 9,888.31
June 2020	853,701.68 59,329.84	142,283.61 9,888.31
July 2020	34,338.59 59,329.84 895,025.33 58,594.49	5,723.1 9,888.31 149,170.89 9,765.75
August 2020	897,114.71 59,329.84 895,025.33	149,519.12 9,888.31 149,170.89
Sept 2020	59,329.84	9,888.31

	£897,114.71	149,519.12
TOTAL	**10,277,010.31**	**1,981,183.89.**

b) Summary of costs savings of an in-house provision of domestic services

As well as the VAT savings, in-housing domestic services at GOSH would create further savings by:

- reducing the costs associated with the monitoring and measurement of the performance and compliance of the contractor, which is an increasingly resource intensive task in light of greater sophistication and details of service specifications and deliverables.
- reducing the legal costs associated with the contract and the costs of establishing and administering dispute resolution mechanisms.
- not incurring costs associated with future service changes (e.g. improved cleaning standards to meet HAIs regulations) that would be charged as a variation to contract.
- eliminating management fees on top of contract costs, or the prospect thereof
- improving cleaning standards and therefore reducing the costs associated with HAIs.
- reducing the costs associated with industrial disputes, which exist at a higher prevalence amongst outsourced staff.
- taking control of the supply chains
- being able to develop cost saving innovations and technologies.

In addition to actual cost savings, the financial risks inherent in outsourcing arrangements would also be eliminated by providing an in-house service.

And as ASPE's 2019 report concluded: "*The failure of outsourced contracts is not just about price or better contract management and performance but increasingly the changing dynamics of public sector management. As local councils continue to battle austerity the lines are increasingly blurred between the makers and the implementers of public policy; charged with continuing to provide services but with resources at a premium the implementers are responding in increasingly innovative ways".*

c) The financial capacity of NHS Trusts to provide domestic services in-house

Whilst there is a severe and seemingly unabting pressure on NHS finances across the UK, according to Study 1, only 39% of NHS Trusts currently opt for a private provision of cleaning, whilst 59% opt for an in-house provision, and only 2% for mixed provision.

UVW believes these findings are significant insofar as:

i) Study 1 covered a 3-year time span from the fiscal year 2011–12 to 2013–14, four-fifths of which coincides with the period in which the then Coalition Government implemented what were historically unprecedented reductions in real terms of annual NHS spending increases, which were significantly below the average yearly spending increase of 3.8% that the NHS has received since its foundation in 1948.

Despite Trusts facing the harshest and longest squeeze on funds in the NHS' then 70 year history, there was a 37% reduction in the contracting out of cleaning services between 2013 -14.

ii) they demonstrate that a majority of English NHS Trusts have both successfully maintained, and in fact increased, the rate of implementation of in-house provision during this period of crisis.

In other words, the findings above clearly contradict the protestations of those who argue that in-sourcing cannot be done because it is "too costly", "operationally risky" or simply "not the done thing".

d) The financial capacity of GOSH to provide services in-house

If NHS Trusts across England have been able to maintain and increase the prevalence of in-housing in the face of significant financial pressures, GOSH - who's financial standing is relatively strong - would comfortably be able to follow suit.

An analysis of GOSH's annual accounts from 2015 – 2020 demonstrates that its income reserves have increased on an annual basis from £226,809,000 to £356,197,000. This amounts to an increase of £129,388,000 or 57%, an average annual increase of £21,564,666. Similarly, GOSH's cash reserves between the same period have never dropped below £42,494,000 and currently stand at £61,314,000.

5) The inter-relationship between outsourcing and industrial disputes in the NHS

a) Outsourcing at the centre of disputes and strikes in the NHS and beyond

There is a direct correlation between outsourcing domestic services in the NHS and the likelihood of there being an industrial dispute. The same correlation applies in other sectors as well. While numerous strikes have taken place with outsourced domestic staff in hospitals across the UK, UVW is only aware of two disputes involving in-housed domestic staff, and in both cases strike action was taken due to the threat of being outsourced.

These two disputes involved The Princess Alexandra Hospital NHS Trust, and Wrightington, Wigan and Leigh Teaching Hospitals NHS Foundation Trust.

Four prominent examples, and by no means all of them, of outsourced domestic workers taking strike action in protest at the inequality and degradation of being outsourced in the NHS include:

i) **Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust** saw a strike in 2019 of catering staff outsourced to Sodexo.

ii) **NHS Teaching Hospitals, St Helens and Whiston** saw a strike of cleaners, caterers and porters who were outsourced to Compass.

iii) **Barts Health NHS Trust** saw a strike by cleaners, security guards, porters and caterers outsourced to Serco across 4 of its hospitals.

iv) **Imperial College Healthcare NHS Trust** ("Imperial Trust") saw a strike of cleaners, caterers and porters who were outsourced to Sodexo.

The strike at Imperial Trust was organised by UVW and was the subject of a documentary produced by the Guardian which you can find by searching on Google for '*United Voices: outsourced key workers fighting for equal rights'* or '*Fight for your rights: the trade union for outsourced workers.'*

b) In-housing in the interests of industrial peace

UVW contends that in-housing significantly reduces the prospect of an industrial dispute with domestic workers. It also reduces the prospect of strike action given that the workers would be incorporated into a bargaining unit covered by a collective bargaining agreement with dispute resolution procedures. While industrial disputes reflect a dissatisfied workforce and cause significant financial and reputational damage, industrial peace is key in allowing operations to

run smoothly and in maintaining a high quality service to patients. It would therefore be remiss of GOSH not to account for the multiple risk factors posed by industrial disputes when determining its operational and strategic decisions.

6) The legal and racial implications of outsourcing

a) The Public Sector Equality Duty (s.146 Equality Act 2010)

In September 2020 pursuant to the Freedom of Information Act 2000 the following question was put to GOSH:

On what date did the Trust undertake its most recent Equality Impact Assessment (EIA) with regard to the outsourcing of its cleaning and security services?

The reply received on 2nd October 2020 was as follows: *"There are no records available for this. Outsourcing at GOSH has been in place for over 15 years and the records are not available."*

We can therefore reasonably infer that GOSH did not carry out an Equality Impact Assessment (EIA) in respect of its original decision to outsource domestic services and it has not carried out an EIA in respect of its continuing decision to outsource domestic services.

As GOSH appears unfamiliar with EIAs and its Public Sector Equality Duty (PSED) we have taken the liberty to lay out the law for your perusal.

i) PSED duties

The PSED comprises three limbs reproduced below and as set out in section 149(1) of The Equality Act 2010:

A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality Act does not identify what is meant by the requirement to "have due regard". Thus, in order to approximate a definition of "due regard" it is necessary to look at the case law. One of the leading cases is *R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158* which established six principles, known as the "Brown Principles":

i) decision-makers must be made aware of their duty to have due regard to the identified needs; ii) the duty must be fulfilled both before and during consideration of a particular policy, and involves a "conscious approach and state of mind";

iii) it is not a question of ticking boxes, the duty must be approached in substance, with rigour and with an open mind, and a failure to refer expressly to the duty whilst exercising a public function will not be determinative of whether due regard has been had;
iv) the duty is non-delegable;
v) the duty is continuing;
vi) it is good practice for an authority to keep a record showing that it has considered the identified needs.

In the case of *R (Meany) v Harlow DC [2009] EWHC 559 (Admin)*, later approved in *R (Bailey) v Brent LBC [2011] EWCA Civ 1586*, it was noted that *"[g]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria."*

Further, in the case of *Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345,* it was stated that: *"The duty to have due regard concerns the impact of the proposal on all persons with the protected characteristic and also, specifically, upon any particular class of persons within a protected category who might most obviously be adversely affected by the proposal".*

The judgment in *Bracking* went on to say that:

"it seems to me that the 2010 Act imposes a heavy burden upon public authorities in discharging the PSED and in ensuring that there is evidence available, if necessary, to demonstrate that discharge. It seems to have been the intention of Parliament that these considerations of equality of opportunity (where they arise) are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude". It went on to say that, *"In the absence of evidence of a 'structured attempt to focus upon the details of equality issues' (per my Lord, Elias LJ in Hurley & Moore) a decision maker is likely to be in difficulties if his or her subsequent decision is challenged".*

By GOSHs' own admission, none of Brown's Principles, nor any of the other tests outlined above, have been met.

You may be aware that GOSH's failure to comply with its PSED "does not not confer a cause of action at private law" as per s.156 The Equality Act. However, aggrieved members of the domestic team at GOSH may bring a claim by way of judicial review (public law).

Further, the Equality and Human Rights Commission ("EHRC") may also issue a claim for judicial review against GOSH. And in the alternative, if the EHRC suspects that GOSH is not complying with the PSED, it has a power to conduct an assessment and, if necessary, serve a compliance notice on GOSH requiring it to set out in writing, steps it proposes to take to address the non-compliance. GOSH would then be obliged to give this written information to the EHRC

within 28 days of its receipt of the compliance notice. Lastly, aside from the legal and moral obligation upon GOSH to discharge its PSED, the EHRC confirms that doing so:

"*....also makes good business sense. An organisation that is able to provide services to meet the diverse needs of its users should find that it carries out its core business more efficiently. A workforce that has a supportive working environment is more productive. Many organisations have also found it beneficial to draw on a broader range of talent and to better represent the community that they serve. It should also result in better informed decision-making and policy development. Overall, it can lead to services that are more appropriate to the user, and services that are more effective and cost-effective. This can lead to increased satisfaction with public services."*

ii) Equality Impact Assessment obligations

An Equality Impact Assessment (EIA) is an evidence based analysis of a proposed organisational policy (including employment policies and strategic decisions), or practices, or a change to an existing one, which assesses whether the policy has a disparate impact on persons with protected characteristics. The Equality Act does not require public authorities to carry out an EIA *per se,* but the importance of collating and keeping documentary evidence to show that a public authority has discharged its Equality Act duties was stressed in *Brown* in the following way:

"*...it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they had actually considered their ... equality duties and pondered relevant questions. Proper record-keeping encourages transparency and will discipline those carrying out the relevant function to undertake their... equality duties conscientiously. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty…"*

Furthermore, an EHRC note on the judgment confirmed that whilst there is no prescriptive way to show compliance with the PSED and that an EIA was not explicitly and strictly required, public authorities nonetheless did have to assess the impact their proposed policies had on equality in some written, evidential form, including for example, reports, or research/data gathered from fieldwork and consultations.

iii) Summary of GOSH's PSED and EIA obligations

GOSH has evidently failed to discharge its duties under The Equality Act, a concerning omission which we trust will be remedied forthwith, failing which, GOSH's domestic team may feel constrained to bring a Judicial Review or to refer these matters to the EHRC.

c) Indirect race discrimination (sections 19 and 29 Equality Act 2010)

For the avoidance of doubt, GOSH meets all the elements of the definition of a "principal" under s.41(5) Eqaulity Act 2010. Equally, all of the domestic workers employed by OCS to work at GOSH meet the definition of a "contract worker" under s.41(7) Equality Act 2010. GOSH is therefore legally liable to the domestic workers for any discriminatory consequences of its decisions.

Indirect discrimination under s.19 Equality Act is defined as follows:

(1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
(a)A applies, or would apply, it to persons with whom B does not share the characteristic,
(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c)it puts, or would put, B at that disadvantage, and
(d)A cannot show it to be a proportionate means of achieving a legitimate aim.

It is clear that the decisions to outsource, and to set the terms comprising the outsourcing agreement, amounts to a PCP, a concept that is construed widely and was recently considered in *Ishola v Transport for London [2020] EWCA Civ 112.* The Court confirmed that a PCP will not always consist of a formal or documented "policy" as such, but can be inferred from a decision or series of decisions.

The PCP GOSH has used is the deliberate or calculated practice of adopting a double-standard or a two-tier approach to the acceptable minimum rates of pay for workers which vary depending on whether they are direct employees or sub-contracted workers. And a further PCP is GOSH's practice of adopting a double-standard, or a two-tier policy, as regards entitlement to pension, sick pay, redundancy pay, maternity pay, and other terms and conditions.

We are aware that GOSH has required OCS to pay the London Living Wage since January 2020. GOSH does therefore have an express policy in relation to the outsourced domestic workers' terms and conditions and those terms and conditions are influenced by the terms on which GOSH has contracted with OCS.

e) BAME workers vs. White workers at GOSH

The latest publically available data set published pursuant to GOSH's obligations under the Workforce Race Equality Standard (WRES) show that out of the roughly 4,100 full-time and part-time staff employed by the GOSH, 67% are White and only 29% BAME. While workers

employed by OCS to service GOSH managed sites are predominantly, and almost entirely, migrant and/or BAME.

We contend that because of these PCPs, BAME workers as a group at GOSH are put at a disadvantage when compared to non-BAME workers as a group at GOSH. The disadvantage is that the BAME workers are disproportionately less likely to benefit from the AfC pay and terms and conditions. Please note that once disparate impact is shown, there is no need to go further and explain why BAME staff are disproportionately affected by the PCP – see *Essop v Home Office (UK Border Agency) [2017]* confirmed in *R (on the application of Gullu) v Hillingdon LBC [2019].* In any event, there are cogent socio-economic reasons which explain why people from a BAME background are more likely to find themselves in outsourced jobs than in directly employed roles.

We cannot see any justification for this double standard beyond perceived cost benefits, which you will appreciate is not a complete answer to an indirect discrimination allegation in any event. We contend that had GOSH had regard to the need to eliminate indirect discrimination, a decision would have already been taken to bring these workers in-house.

As you are aware, indirect discrimination can be a standalone ground of Judicial Review, and can also be brought as an individual or group claim in an employment tribunal. We trust neither claim will prove necessary.

Lastl, we note with concern that the WRES data shows clear evidence of institutional racism within GOSH expressed through the following non exhaustive list of facts:

-the highest representation of BAME staff continues to be found at lower pay bands. In the most poulsou bands of 5 and 6 White staff ournuber BAME staff by 4 and 3 to 1, respectively
-BAME staff are nearly 3 times as likely to be involved in formal disciplinary action than Wihte staff
-BME staff personally experiencing discrimination increase by 7% on the previous year

Once the domestic service is brought in-house we would welcome the opportunity to work with GOSH in addressing the issue highlighted by the WRES data.

7) Pay, terms & conditions & benefits at GOSH: outsourced vs in-house

We have put together the following table to highlight how stark and unfair the differentials in pay, terms and conditions and other benefits are, between staff employed directly by GOSH on the lowest pay band, and staff employed by OCS to work at GOSH.

GOSH pay and T&Cs	**OCS pay and T&Cs (with some exceptions for the longest serving cohort)**
Minimum hourly wage £11.50	**DENIED** **Instead, they get...** Minimum hourly wage £10.75 ***£1,462.50 less per year on a 37.5 hour week***
Annual leave between 35 and 41 days inclusive of public holidays	**DENIED** **Instead, they get...** Statutory minimum annual leave entitlement of 28 days only ***Between 8 days (1.25 weeks) and 13 days (2.5 weeks) less annual leave per year***
Sick leave between one month's full pay and two months' half pay in the first year of service, up to six months' full pay and six months' half pay after 5 years of service **An employee of GOSH with over 5 years service who earned £11.50 an hour and took 12 months of sick leave would receive £16,817.75.**	**DENIED** **Instead, they get...** Statutory Sick Pay (SSP) only This provides nothing for the first 3 days of absence (except if Coronavirus related which commences payments from day 1) and then only £95.85 per week (£19.17 per day) for up to 28 weeks.

	An employee of OCS at GOSH with over 5 years service who earned and took 12 months of sick leave would receive £2,626.28. **OCS employees at GOSH get £14,191.47 less than they would do if they were direct employees of GOSH.**
Maternity pay - full pay for the first 8 weeks of absence, then half pay for the next 18 weeks, then Statutory Maternity Pay or maternity allowance for the next 13 weeks, then no pay for the final 13 weeks. **Full maternity pay allowance at £11.50 per hour would be £9296.85.**	**DENIED** **Instead, they get...** Statutory Maternity Pay only 90% of average weekly earnings for the first 6 weeks then £151.20 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks. Full maternity allowance at £10.75 per hour with SMP would be £7116.48. ***A mother on maternity leave employed by OCS at GOSH receives £2,180.37 less than she would if she were a direct employee of GOSH.***
Redundancy pay at one month's pay for each complete year up to a maximum of 24 years' service. *A GOSH employee on £11.50 per hour would receive £44,850 if made redundant after 24 years service.*	**DENIED** **Instead, they get...** Statutory Redundancy Pay only: -Half a week's pay for each full year you were under 22 -One week's pay for each full year you were 22 or older, but under 41 -One and half week's pay for each full year

	you were 41 or older. An OCS employee at GOSH on £10.75 per hour would receive £8,062.50 if made redundant after 24 years service. ***An employee of OCS at GOSH retiring after 24 years service will receive £36,787.50 less than they would do if they were a derelict employee of GOSH.***
Injury allowance - staff who have injuries, diseases or other health conditions that are wholly or mainly attributable to their NHS employment, will be entitled to an injury allowance for a period of 12 months.	**DENIED** **Instead, they get...** Nothing
Annual pay progression possibilities based on satisfactory performance and demonstrable knowledge and skill	**DENIED** **Instead, they get...** Nothing
A new pay system with faster progression to the top of pay bands through fewer pay step points	**DENIED** **Instead, they get...** Nothing
Single harmonised rate of time-and–a-half for all overtime, with the exception of work on general public holidays which is paid at double tie	**DENIED** **Instead, they get...** Nothing

Staff may request to take time off in lieu as an alternative to overtime payments.	**DENIED** **Instead, they get...** Nothing
High cost area supplements	**DENIED** **Instead, they get...** Nothing
Reimbursement of travel costs, subject to conditions	**DENIED** **Instead, they get...** Nothing
A recruitment and retention premium	**DENIED** **Instead, they get...** Nothing
Annual personalised development reviews resulting in the production of a personal development plan.	**DENIED** **Instead, they get...** Nothing
The standard hours of all full-time NHS staff will be 37.5 hours, excluding meal breaks.	**DENIED** **Instead, they get...** Nothing
Child bereavement leave - all bereaved parents will be eligible for a minimum of two weeks of child bereavement leave irrespective of the age of the child at death.	**DENIED** **Instead, they get...** Nothing
A range of subsidised and free benefits.	**DENIED**

These include: • massage • physiotherapy • interest-free season ticket loans • help with childcare • a wide range of sports and social activities • help with finding accommodation • a staff counselling and advice service • a staff recognition scheme, in the form of a monthly and annual awards ceremony	**Instead, they get...** Nothing

a) How much do outsourced workers lose at GOSH

Based on current figures, if an outsourced female worker at GOSH is made redundant after 24 years within which time they took 12 months of sick leave and maternity leave, they would be **£88,229.34** worse off than they would have been had they been a direct employee of GOSH. And if we calculate the value of the annual leave that she could have had, that would add a further £26,910, which brings the total to **£115,139.34.**

The total figure of **£88,229.34** is worked out from the following:

Over a 34 year period they would earn £35,100 less in wages, £36,787.50 less in redundancy pay, £2,180.37 less in maternity pay, and £14,191.47 less in sick pay.

8) Why parity of pay and terms & conditions between outsourced and in-house staff won't suffice

Continuing to outsource domestic staff even if providing them with parity of pay and terms & conditions with in-house staff is not the answer for two reasons. The first is that none of the current problems intrinsic to outsourcing detailed herein would be fixed. These include problems arising from the fragmentation of the workforce, inferior clinical outcomes, a sense of discrimination & exclusion, low morale and motivation, the private contractor's inability to work holistically or flexibily, and the private contractor's lack of incentive to make any long term investments, amongst other issues.

Secondly, the European Court of Justice in the case of *Alemo-Herron v Parkwood Leisure* held that employees who transfer to a new organisation are not entitled to benefit from collectively agreed terms where; (1) those terms are agreed to after the date of the transfer; and (2) the new organisation was not a party to the negotiations of those terms.

This means that if the domestic workers at GOSH remained outsourced to a private contractor they would have no right in law and no guarantee, save for successful industrial action, that they would benefit from any future collectively bargained pay increases or other improvements in terms and conditions, as a new contractor and employees would not be party to GOSH's collective bargaining body.

Consequently, this means that true parity of pay and terms and conditions can only ever be temporarily legally guaranteed and that the risk of industrial and legal action would linger.

9) The rising tide against outsourcing in the NHS and the wider public sector

The tide is turning against the continued use of outsourcing in many public sector institutions, including hospitals, councils and universities, many of which have already moved to in-house provision and report favourably on this decision. In fact, the tide is not only turning in the public sector. A study by Deloitte - one of the Big Four accounting organisations and the largest professional services network in the world - has uncovered widespread dissatisfaction with outsourcing, as 7 out of 10 of the firms surveyed reported negative experiences with outsourcing projects, with dissatisfaction with cost savings and reduced flexibility being the primary problems encountered. This led to 25% of the firms surveyed - which combined spent $50 billion annually on outsourcing - to bring functions back in-house after realising they could be addressed more successfully and/or at a lower cost internally while almost half failed to see cost savings materialise as a result of outsourcing.

Richard Punt, strategy partner at Deloitte, confirmed that, "*In the short-term, outsourcing may become less appealing for large companies because it is not delivering the value as promised, and its appeal as a cost-savings strategy will also diminish as the economy recovers from recession."*

Returning to the public sector, the rationale of this turning tide is neatly summarised in a report by the *Association for Public Service Excellence* (APSE) - a not for profit local government body working with over 300 councils throughout the UK - which identified 4 core reasons why councils are bringing services back in-house, though the rationale applies to other public bodies, and particularly NHS Trusts.

These 4 core reasons are:

1) Poor performance provided by the outsourcing company: *"A primary reason for insourcing services appears to be related to poor performance of the service area against key local and national targets and low levels of service user satisfaction."*

2) Drive for quality and value for money: *"service reviews, Performance Indicators and benchmarking have enabled local authorities to prove an in-house team can provide better value for money in service delivery than an outsourced contract. Additionally, it was felt that there was a degree of inflexibility on the part of private sector contractors to deliver new, added value and quality improvements to service delivery."*

Without exception all of the primary case study interviews in ASPE's 2019 report referenced 'quality' as a driver for insourcing.

3) Strategic governance and local policy drive: *"Services have also been insourced as a result of factors such as local political support and the need for a more strategic, holistic approach to public service provision as part of an integrated service delivery model. This is particularly so in the case of street scene services. Local authorities have also brought services back in-house as a result of changing national and local policy agendas and a belief that in-house delivery would enable greater flexibility to respond to emerging policies."*

4) The workforce: *"Services have also been insourced as a result of unmotivated workforces contributing to poor performance. Poor terms and conditions, and poor career development opportunities would appear to impact upon the quality of service delivered"*

Further to the examples already provided, you will find some additional examples of in-housing in the NHS and universities. Whilst UVW recognises that there are clear differences in terms of the pressures faced by different NHS Trusts, councils and between NHS Trusts and universities, it also believes that the evidence shows insourcing is the evidence based policy choice and perfectly praticable.

a) Examples of in-housing in the NHS

i) NHS Colchester Hospital University Foundation Trust (East Suffolk and North Essex NHS Foundation Trust)

NHS Colchester, which was a 660-bed acute provider and had an income of £225m, managed to insource all of its 3,500 facilities and estates staff within a 16-week period from the decision to insource on the 9th of June 2011, to the successful start date on 1st October 2011. In an interview with Health Service Journal, Nick Chatten who oversaw the project, said the following:

"In reaching the decision to bring estates and facilities services in-house the board considered three main objectives: Patient focus, to provide the opportunity to re-engineer the service model to one more suited to meeting current clinical needs. Future proofing, to deliver flexibility for future requirements, providing a greater degree of control in the process of change management at a pace set by the trust. Financial control, to achieve the required efficiency savings target in 2011-12, and to establish the context in which savings could be made in subsequent years.

The board considered that in delivering its overall objectives, the contribution of the estates and facilities services - for which the outsourced contract cost the trust £13m each year - could not be ignored. If we got these services right, they could make a significant contribution to the future success of the organisation. Entering a period of significant change in the NHS, the trust

needed to be responsive and nimble to the challenges the changing NHS landscape would throw up; in-house support services would allow for such a response.

In reaching the decision to come in-house it was increasingly apparent that the output-based specification that had been in place over the past 14 years gave the trust little control over how services were delivered and how they were aligned to support clinical care. This made it difficult for the trust to achieve added value and efficiency from the contract.

The board felt that at a time when financial pressures on the organisation were expected to increase, it was appropriate to gain greater direct control over its estates and facilities services and to integrate them into the overall approach the trust was taking to redesigning patient pathways and improving the patient experience" (ibid).

ii) Imperial College Healthcare NHS Trust ("Imperial Trust")

Following a decision made on 31st January 2020, the Board of Imperial College NHS Trust decided to in-house all of its 1,200 facilities workers, including cleaners, caterers and porters across its 5 hospitals.

Whilst this decision was made under the mounting weight of an ongoing industrial dispute organised by UVW, the decision was needless to say made in full recognition of its benefits. The dispute merely helped the Board to see and understand those benefits.

Following the announcement, Imperial Trust said the move would *"help ensure our hotel services staff are able to play their full and fair role within our care teams and enable us to improve service quality collaboratively*".

Chief Executive Professor Tim Orchard commented on the decision to in-house in the following way: "*We went into the hotel services contract re-tendering process knowing we wanted significant improvements in quality and for our cleaners, porters and catering staff to feel properly valued and part of our wider team. We thought we could achieve that through a new contract but it became apparent that our amended specification was not enough. We have looked at different models for managing hotel services, all with successful examples. We now have an opportunity to make a real step change - for our patients and our staff - that best suits our circumstances.*

"These changes will create additional cost pressures next year but we are confident that there are also benefits to unlock, arising from better team working, more coordinated planning and improved quality. The pace of change will be challenging, but I am confident we will achieve our first test of better team working to meet the 1 April 2020 timescale. To help us manage the

transition, we have appointed Retearn, a specialist company with a strong track-record in supporting organisations temporarily to 'insource' as well as 'outsource' facilities management."

iii) University Hospitals Plymouth NHS Trust ("Plymouth Trust")

On 30th September 2019, a 10 year contract with Serco came to an end and all cleaning, housekeeping, portering, postal service and patient catering duties were brought 'in house' as 'Hotel Services'.

Stuart Windsor, Director of Estates and Facilities of Plymouth Trust said the following:

"We are really pleased to welcome our Hotel Services staff to the Trust and to the NHS; the only noticeable change to the general public will be a change of uniform and the replacement of equipment.

"Welcoming such a large intake of staff is a major piece of work and the smooth transition is testament to the hard work of our Site Services team and a large number of support services staff to ensure everything goes seamlessly."

In recognition of Stuart's successful navigation of the in-house move, the Health Estates and Facilities Management Association (HEFMA), which represents Estates and Facilities Professionals Operating within the NHS, won the HEFMA Leader of the Year Award in 2019, citing *"his inclusive, open and honest leadership style, which embeds the core NHS values of 'patient first' across his team and empowers them to make a difference."*

b) Examples of in-housing in higher education

In 2017, the London School of Economics (LSE) University decided to in-house all 300 of its then outsourced cleaners. This decision was made on the back of a dispute with UVW. Following the LSE's decision a wave of other British universities, such as SOAS, Goldsmiths and King's College London, to name but a few, followed suit and began to insource their cleaning and other Soft FM services.

A statement from the Principal and President of King's College London following its decision to bring all outsourced staff in-house reads as follow:

"I'm delighted to announce that King's has made the decision to bring its cleaners and security staff in-house at the end of our current contracts with Servest and CIS in 2019. The process of making these teams King's employees is complex, and will take time. However, our Revenue and Expenditure Review Committee (RERC) and College Council agree that this should be done as soon as practicably and legally possible. Bringing the people who deliver these vital services onto our payroll and properly into the King's community is the right thing to do. I would like to acknowledge the heartfelt campaigning by everyone who felt so strongly that King's should make sure these service-providers are part of the King's family. I also want to

acknowledge the people who worked so hard to produce proposals that could make this possible. In our Vision 2029 document we said that King's, like all great universities, should make a full contribution to society. Our decision to discontinue outsourcing these services is fully aligned with that ambition and our mission to make the world a better place"

Likewise, a statement from Goldsmith's University reads as follows:

"Cleaning provision is now in-house at Goldsmiths, University of London, with some 95 cleaners transferring from a third-party employer to direct employment by the College on 1 May 2019. Making the cleaners employees of Goldsmiths, based in Estates and Facilities, gives them better employment terms and conditions in line with equivalent staff employed by the College. It also provides wider training and development opportunities, with the College developing a range of support to help the new employees further their skills and experience….Having completed the transfer, the College is now focused on ensuring the cleaners settle into life as direct employees of Goldsmiths".

At Queen Mary's University, one of the first universities to bring it's cleaning force in-house, it found that after ending outsourcing 83% of staff reported services had demonstrably improved as a result of insourcing, and that amongst academic staff there was increased "positive comments related to cleaning standards, the availability of cleaning staff and cleaners' behaviour".

Surveying the cleaners the university also found that 68% cited working more productively as a result of insourcing, whilst another 63% cited improvements in relations with managers and quality of supervision. A further 61% cited an improved ability to complete a broader range of tasks as an additional benefit. Indeed, the Executive Summary of the report, entitled, *The business case for the living wage: The story of the cleaning service at Queen Mary, University of London*, concluded with the following:

The research has revealed that the move to [...] bring the cleaning service in-house has stimulated improvements in job quality, productivity and service delivery, with very little increase in costs. In addition, the decision has strong support in and beyond the wider community at QMUL'

In a poignant reflection of Queen Mary's story, Guardian journalist Aditya Chakrabortty wrote: *"This is more than just a great story. The cleaners of QMUL are the living rebuttal of some of the most repugnant hypocrisies in Britain today – over who is entitled to what, over what kind of work matters, over who counts as part of a working community."*

10) The vested interests and ideologies in defence of outsourcing

The contracting out of cleaning services within the English NHS first took effect in 1983, following the publication of the eponymous Griffiths Report - commissioned by Margaret Thatcher and authored by Roy Griffiths, the then Director of J Sainsbury's plc. The report's recommendations were implemented in the Department of Health and Security Circular HC (83)18 entitled, *Health Services Management: Competitive Tendering in the Provision of Domestic, Catering and Laundry Services*, and thereafter competitive tendering of cleaning services was made compulsory.

The justification for such a drastic change in the service provision of cleaning, which was only provided by private contractors in 2% of hospitals at the time, was that it would drive down service costs, management costs, improve the quality of service provision, and control staff numbers whilst allowing Trusts to focus on and improve their "core" clinical services. Needless to say, the report and the legislative changes which ensued were the product of ideology, not evidence. And unsurprisingly, those who continue to advocate the private provision of cleaning and other facilities services with the same old hackneyed and discredited pitches - innovation, efficiency, expertise, quality, flexibility and cost savings - do so disingenuously, as ideologues in protection of vested interests.

Conversely, APSE noted that 67% of all councils surveyed who returned to an in-house provision of services included a high proportion of Conservative and No Overall Control authorities which suggests there is no specific ideological preference for in-house services, and that the decision to insource is taken for pragmatic and sound business reasons.

APSE also noted in its 2019 report that: *"...insourcing is not confined to any one particular service area; nor is it confined to any ideological or party-political allegiance. It is increasingly viewed as a pragmatic means to address service improvement, service efficiency and to recalibrate local services to local needs. As public policies change and as budgets are reduced the inflexibility and inefficiencies of outsourced contracts are increasingly exposed…."*

Unsurprisingly, the most vociferous advocates of a continuation of outsourcing are the cleaning contractors themselves and their representatives, such as the UK Cleaning Sector's employer's association, the Cleaning and Support Services Association (CSSA) whose sole raison d'etre is to represent the interests of private contractors in public and other institutions by advocating and lobbying for their continued and increased use. Indeed, the Chairman of the CSSA is himself the founder of a lucrative cleaning company.

Ironically, the same arguments that were originally used to drive and defend outsourcing, are now being used to end outsourcing, the only difference being that the arguments employed today are evidenced based, rather than ideologically based. And clearly peer reviewed studies

and actual examples of NHS trusts and other public bodies that provide domestic services in-house are a far more objective and accurate voice of authority than the voice of ideologues and vested interests.

11) Timeframe for the transition in-house

We understand that the contract between GOSH & OCS is due to expire on 31st July 2021 and that the transition to an in-house provision of the domestic services ("the transition") currently provided by OCS would require careful planning. In the case of Imperial Trust, all 1,200 outsourced workers across its 5 hospitals were successfully brought in-house within a period of 2 months whilst NHS Colchester brought 600 outsourced workers in-house within 4 months. These examples give some idea of the kind of timeframe we would expect GOSH to be able to emulate.

We would therefore expect a decision to be made on the continued use of private contractors at GOSH's next board meeting, or emergency board meeting if none are scheduled for the near future, so that the preparations for the transition can commence in a timely manner to ensure the transition takes place in an orderly manner.

If the decision to bring domestic services in-house cannot reasonably take effect until 31st July, then we would require that all domestic workers are afforded GOSH NHS AfC T&Cs as soon as practicably possible, and within a timeframe to be agreed with UVW.

However, if it is felt that the transition could and should take effect before the expiry of the contract, then you may wish to explore one of 4 possible ways to bring about early termination: 1) invoking the termination 'for cause' clause which most outsourcing contracts contain i.e if there has been a severe material breach which causes a significant operating problem and additional costs and OCS has not fixed it within a specified period; 2) invoking the termination 'for convenience' clause (i.e. without cause) which well negotiated outsourcing contracts will often contain; or 3) invoking the 'step-in' clause; or 4) my other mutual agreement. GOSH's legal advisors would be best placed to advise on this.

12) For the attention of representatives of OCS only: potential trade dispute and recognition

You will appreciate that we recognise that GOSH is solely or principally responsible for the pay and terms and conditions of employment of the domestic workers at GOSH. However, as OCS is the current legal employer of the domestic workers at GOSH we are legally bound to make any requests to you directly for any changes in the pay and terms and conditions of employment of the domestic staff and declare any trade disputes with you.

Therefore, for the avoidance of doubt, we request that OCS provide all domestic workers employed by OCS on the contract at GOSH with complete parity of pay, terms and conditions and other benefits with those enjoyed by staff directly employed by GOSH on the equivalent band of the NHS Agenda for Change scale. For ease of reference, the pay, terms and conditions and other benefits requested can be found listed in section 7 of this document. Failure to confirm agreement to this request within 7 calendar days of receipt of this claim will automatically trigger a formal trade dispute situation between our organisations as defined by section 244 Trade Union and Labour Relations (Consolidation) Act 1992, following which notice of intention to ballot our members for industrial action will be provided.

Furthermore, we request that OCS recognises UVW for the purposes of collective bargaining in respect of the bargaining unit comprised of all domestic workers employed by OCS at Great Ormond Street Children's Hospital, London WC1N 3JH. This request is made under Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992. You may be aware that you have 10 working days to reply to this request.

13) Consequences of ignoring this claim or refusing to engage with UVW

UVW wishes to avert a trade dispute situation at GOSH and any attendant legal or industrial action that may ensue and escalate if a dispute is declared. Instead, UVW is keen to work with GOSH to ensure the transition is as ordered and streamlined as possible. We already have experience in working with Imperial Trust and believe we can make a valuable contribution to the success of the transition. Working with UVW would be in keeping with one of the recommendations of the *Association for Public Service Excellence* which states that: "*Trade union and workforce involvement in insourcing discussions are both essential and helpful and should be encouraged*."

However, if GOSH chooses to ignore this claim, or otherwise refuses to meet with UVW, then we would regrettably be left with no choice but to not only commence employment tribunal and judicial review proceedings, as detailed above, but also declare an official trade dispute with OCS as defined by s.244 Trade Union Labour Relations Consolidation Act 1992, which would be followed, in accordance with the statutory procedures, by a notice of intention to ballot our members of industrial action.

In the interests of transparency, UVW represents in the region of 100 domestic workers at GOSH, with more joining every day, and a consultative ballot has already returned a unanimous decision to vote to strike if a negotiated settlement is not reached.

14) Deadlines

We require an acknowledgement of receipt of this claim from GOSH within 48 hours of receipt. We further require a response from GOSH within 10 calendar days of receipt confirming their agreement to meet with UVW within the following 10 calendar days (latest 20 days from receipt) in order to discuss the next steps.

15) Closing remarks

Whilst we believe you were cognisant of the imminence of this claim, and have already committed in principle to considering bringing domestic services in-house, we nonetheless appreciate that you may not have been expecting anything as resolute or exigent as that which is before you. However, we hope you receive this claim in the spirit it was intended which is an invitation to GOSH to work cooperatively and amicably with UVW - in keeping with GOSH's 'One Team' ethos - in order to ensure the well-being and dignity of the domestic workers and the best possible clinical outcomes for patients.

We look forward to your response,

Petros Elia

PETROS ELIA

Executive Committee Member of UVW