

# Modernising Commissioning: increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

## Action for Children response

January 2010

Action for Children supports and speaks out for the most vulnerable and neglected children and young people in the UK. We tailor our work to local circumstances, in partnership with children and young people, families, communities and local organisations. Through our community based services we support children and young people to break through injustice, deprivation and inequality, so they can achieve their full potential. Action for Children currently helps nearly 156,000 children, young people and their families through nearly 420 projects across the UK.

Action for Children is committed to providing evidence based solutions and to understanding what works. The common strands we have identified as having the greatest impact are:

- Use of an effective professional relationship over time, including outreach, to work successfully with the most vulnerable and excluded
- Commitment to both intensive and long-term support where necessary
- Flexibility to provide services to meet need through intensive contacts
- Sound basis in safeguarding principles and procedures
- Commitment to ensuring the achievement of qualitative outcomes over and above success in meeting timescales and other process measures
- Stable staffing within services albeit contracts are often too short-term to guarantee services

In responding to this consultation we have therefore restricted our comments to those public services which seek to support the most vulnerable children, young people and families. Given our experience, we would be keen to offer support and advice and are already engaged in strategic conversations with a number of local authorities and partners thinking about how we can work together to come up with solutions, whoever ends up providing the service.

### **Q1 In which public service areas could government create new opportunities for civil society organisations to deliver?**

Our evidence tells us that a stable professional relationship based on trust is what makes the difference in delivering successful public services to vulnerable children, young people and families. To help those most in need, intensive, services need to provide personalised support based on sustained relationships with highly trusted, skilled workers. Revisions to the commissioning process must be based upon the principle of supporting these positive relationships (not undermining them) and building the capacity of services to achieve improved outcomes (rather than rewarding narrow process measures).

*as long as it takes*

Commissioners must be in a position to commission services that operate seamlessly at universal, targeted and specialist levels. As such, commissioning arrangements need to ensure that service provision is equitable and enables children, young people and families who do not find it easy to access services to get the help they need. One option is to free commissioners so that they can invite providers to assist them to problem solve, and help design, not just provide a service.

To truly open up new opportunities for civil society organisations to deliver, in-house provision by public sector organisations must be subject to the same level of scrutiny/challenge as that commissioned from external providers. There remains an assumption that in-house is both cheaper and better quality but there is no provision for this to be tested. If the government is committed to establishing a level playing field then there needs to be some mechanism for testing the value/quality of in-house provision.

A key question for this consultation to address is: how can commissioners achieve a fair balance of risk which would enable civil society organisations to compete for opportunities? The commissioning process includes formal contractual arrangements which can be onerous on organisations as they are generally weighted in the favour of the commissioning organisation. These clauses are often related to the risks associated with TUPE, particularly pensions and redundancy, Data Protection, Freedom of Information and transfer of assets.

In general terms the winning provider will need to provide indemnities to the commissioner to cover these clauses. With the contracts failing to provide indemnity to the provider in equal measure, this means that the commissioner is transferring all of their liabilities to the provider, which particularly in respect of matters like pensions, can involve risks out of all proportion to the size of the contract and so could result in severe financial distress if a claim is made. Commissioners are often reluctant to negotiate on specific clauses during the tendering process, and subsequently at contract award stage. There needs to be a balance achieved in the contractual arrangements.

### **Payment by results – modernising commissioning to support long term impact**

Action for Children wants to see a robust framework introduced that supports the delivery of services which demonstrate the greatest impact and thereby achieve the greatest savings in the long term, rather than commissioning being based on the lowest unit cost. Depending on how it is introduced, Payment by Results could look very different to Outcomes Based Accountability. For example, the numbers of people taken off benefits can be very different to numbers of people assisted to get back into employment. It seems that commissioners often use a 'this is what we want' approach, which by definition assumes they know exactly what they need. This can place disproportionate emphasis and weighting on cost rather than effectiveness.

It is clear that any system in which funding is directly linked to the results delivered will have to be highly sophisticated and transparent to function effectively. There will be many 'results' that are difficult to measure in the systematic way that 'payment by results' contracts might require. Impacts such as reducing offending behaviour can only meaningfully be measurable after a long period of time. Unless a sophisticated system is adopted, which looks at reach, medium indicators of success and longer term measures, the reform will cause problems as most voluntary sector organisations are only issued with contracts on a short-term basis.

Since Payment by Results could also increase the uncertainty of final payment as well as its timing, the risk will also be higher than alternative arrangements. In normal transactions, this would be expected to result in a higher price and this needs to be accepted as part of a shift towards this method, accepting of course that the risk will cut both ways with some services failing to deliver and thus not being eligible for the full expected price.

Recognition also needs to be made that many charitable organisations are thinly capitalised and are unable to, or find borrowing difficult. Moving to a Payment by Results approach is likely to increase the time before payment is made and thus will increase the amount of working capital that will need to be available. This will also lead to an increase due to the cost of servicing the working capital. Will financial

support be available to enable such organisations to be able to bid as a result in such fundamental changes to their business models?

How, and to what extent, will Payment by Results will be applied to in-house services?

### **Contract stability to deliver results**

Local authorities are being given increased autonomy and independence. Those who deliver services also need the freedom and autonomy to deliver the greatest impact. We know what works – we now need the stability to deliver this. Action for Children is calling on local authorities to offer long-term (five year) service contracts to ensure cost effectiveness, retention of staff, local/community service impact and to secure the delivery of payment by results.

We need to learn from the mistakes of past short-sighted approaches. The impact and benefits of interventions will necessarily take time to be realised. We cannot afford to continue the cycle of rapid commissioning and decommissioning of services, with all the bureaucracy and waste this entails. Action for Children would urge against a new industry to collect and disseminate promising practice which is not cemented within a long term vision.

Structures like the Comprehensive Spending Review, operating on a three-year cycle, should mean that people delivering services feel more financial stability today than in previous generations. Unfortunately, despite the rhetoric regarding longer contracts, this has not been delivered. This means that a children's service has barely enough time to be set up and begin to deliver before its staff have to plan for reconfiguration or even closure. The security of long-term funding is key to developing high-quality services. Longer-term (five-year) contracts are essential to ensure cost effectiveness, the retention of staff, local/community service impact and delivery of payment by results.

### **Action for Children recommends:**

- Results must be based on real 'outcomes' as experienced by children, young people and families
- In order to enable the best providers to come forward, introduction of payment by results must incorporate a front-loaded payment for delivery and bonuses for results achieved which are then reinvested. This would help address the working capital issue noted above.
- Calculations must take into account the reach of services, so that for example services for vulnerable individuals reach their intended recipients (and to remove any perverse incentive in terms of cherry picking less needy individuals who might therefore achieve better results)
- The system should consider incorporating medium term indicators of success for annual returns (direction of travel indicators) learning from the work which has already been undertaken by Action for Children and other civil society organisations
- Local authorities must offer long-term (five year) service contracts to ensure cost effectiveness, retention of staff, local/community service impact and delivery of payment by results.
- Infrastructure support for providers (see later section) and evaluation requirements that are proportionate to the nature of the service being provided and do not stifle innovation are also required.

## **Q2 How could government make existing public service markets more accessible to civil society organisations?**

### **Consultation periods**

One way of making existing markets more open to civil society organisations would be through the introduction of a consultation period before a contract notice is issued. It is all very well providing a free contract finder service, but if the due date for submitting a tender is relatively short, that does not allow organisations enough time to link together if they want to submit a joint bid.

### **Support for consortiums/working together**

Allied to this, more help around consortiums / subcontracting / working together for the not for profit sector would be useful. Potentially this could include a greater number of small and niche organisations

coming together into larger contracts, adding value and reach to services. Thought will need to be given to the additional costs associated with establishing consortia arrangements and the risks/liabilities issues would also be increased. One solution is to learn from the safeguards and protections that have recently been put in place by the DWP for the work programme with prime and smaller sub-contractors.

Action for Children would like to see a requirement on commissioners to publicise lists of all those requesting information about a tendering opportunity. This could then give organisations the opportunity to speak to each other about working together to submit joint bids that are stronger and will deliver better services. If the publication was issued externally (i.e. not just to interested bidders), it would give smaller organisations (that feel they can add value to the service being tendered) the opportunity to approach other more mainstream bidders with a view to working in partnership. This could build on the bidder information events, which do currently provide bidding organisations with a less formal way of knowing who is interested in a particular contract. There would need to be a change in the tendering rules to allow organisations to talk to each other without the fear of being accused of collusive tendering.

Action for Children believes that the contract finder service should be universal. There are currently various regional / country specific portals, e.g. NEPO, SCMS, Public Contracts Scotland, all of which should feed into this national service. In addition, local authorities should be required to use their regional contract portal (currently many do, but there are still one or two local authorities who do not). Given the wide range of contract finding services which are already available, adding yet another one to the list will not necessarily be that helpful unless it is a truly comprehensive service.

### **Standardised Pre Qualification Questionnaires (PQQs)**

At least 80% of the information requested in a PQQ is the same regardless of what is being tendered for or who is commissioning it. A unified approach to this would be very useful and make life easier for everyone – both small and large civil society organisations. Initiatives such as OGC frameworks and NHS SiD have gone some way to make things more consistent, but local commissioners often seem reluctant to use these, so that suppliers are still stuck with completing PQQs that have been provided to them in a variety of formats, styles and media (a variety of paper forms and e-tendering tools). A standard PQQ form which is used by all local authorities would be of huge benefit in reducing the cost and pain of bidding. In our experience, even if only 50% of the sections in a PQQ were always consistent, that would be of real benefit. There should also be a mechanism for “passporting” of PQQ’s.

For smaller, less experienced civil society organisations, ITT and PQQ instructions could be more helpful in providing some guidance on what commissioners want to see. For example, a simple statement following a question saying something like: *“To gain maximum marks during evaluation, please ensure that you provide specific examples, case studies and resources to illustrate your approach...”*. The inclusion of some top tips for tendering in all PQQ/ITT documentation packs would also be helpful. Many local authorities already have useful guidance on their websites but often this is hard to locate and under-promoted.

The Merlin Standard (which the DWP uses) does go some way to addressing the issue of PQQ’s having to be continually repeated. We believe that this standard, which sub-contractors (and contractors) have to be assessed against, does have the potential to be built upon, but would require some re-working to make it fit for purpose. We would recommend that a revised standard should then be applied more widely than just to central government departments.

### **TUPE**

There is an issue in relation to the TUPE information supplied in tenders. Commissioners often do not supply all the necessary information up front, so it has to be requested by bidders, which takes time. And, there are examples of local authorities who have made the decision that they will not pass on any TUPE data because of previous litigation. Commissioners also vary in their understanding of what is required for bidders to assess TUPE risks/costs. For example, a recent bid where the commissioner would not issue information about the age of staff. Issues of this nature while unusual, do create enormous problems as well as uncertainty in bidding.

Consideration should be given to reviewing the TUPE legislation in the light of its application in a public service market. It is very difficult for existing providers as well as commissioners and potential providers to be clear about whether TUPE applies or not, and it is often at the point of contract award to an alternative provider that the decision is made. Information shared during the tendering process can be wrong, for example one service tendered only provided TUPE data for staff in post and information on vacancies were not included. This resulted in a lower cost being submitted than would have in reality applied to the actual staffing involved.

A general issue across all markets is that incumbent suppliers often do not supply accurate/complete data, which then puts them at an advantage. Commissioners often do not seem to have a realistic idea of what the TUPE risks/costs to suppliers are, particularly if the existing provider is a local authority or NHS provider, they fail to cost accurately for their own provision and will often refuse to indemnify new providers against substantial risks, e.g. pensions. In some cases this means long and expensive tendering periods are undertaken, only for the commissioner to abandon the tendering exercise because all the bids have come in much higher than they had expected.

### **Freedom of Information**

Commissioners currently have very different views on what can be released under the FOIA. This is particularly the case in relation to unsuccessful bidders seeing copies of winning (competitor) bids. We would urge greater transparency and national work to broker a more consistent understanding.

### **Q3 How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?**

Action for Children has for some time now voiced our concerns about the current commissioning process and the hidden costs that voluntary sector providers too often have to bear. In particular, depending on the accounting structure of individual local authorities, significant costs are hidden/invisible from both the department commissioning the service and the department offering the in-house service, so what appears to be a lower or equivalent in-house bid may in reality be more expensive.

The cost associated with premises is a frequent issue for the voluntary sector. One example Action for Children has encountered occurred around the specification for the maintenance of a Children's Centre which required two full external decorations in five years. In light of the fact that the building was a three story Victorian school, full scaffolding would be required and the quotes obtained for this element alone were in excess of £10,000 for each decoration. The in-house cost comparison showed no maintenance costs on the basis that this would be picked up by another internal department.

The tendering and commissioning process only begins after a decision has been taken to offer out the opportunity to run a service. In-house provision can occur without the need to market test. Even services previously offered can be taken back in-house without any formal process. In view of this there needs to be a consistent process for cost scrutiny to ensure that local authorities really understand the true costs of taking a service back in house. We appreciate that there will be a more complex range of factors involved in a "take it back in-house decision", but given common concerns that some local authorities underestimate TUPE and other costs, we wonder how consistent and comprehensive their cost evaluations are. Could a consideration be given to adopting a standardised assessment which is then published and therefore open to challenge?

One factor that helps the voluntary sector in the commissioning process is when the tender evaluation is based on "Most economically advantageous tender" (MEAT), taking into account value for money, with price being no more than 30 - 40% of the score. This also helps to overcome the barrier of loose specification of requirements, enabling organisations such as Action for Children to use our expertise and experience to build in elements with demonstrable positive outcomes (linked to long term financial savings).

We believe the costing/pricing sections of tenders need to be more thought out with stronger guidance setting out what information commissioners want to see. Some pricing tables have very little detail,

others give headings which bidders are likely to interpret in widely differing ways. Commissioners could do with being more prescriptive and asking for more detail in order to be able to evaluate suppliers on an equal footing.

### **Commission on the basis of value**

We need to move to a system where by we commission (and decommission) children's services on the basis of value rather than cost. Commissioners need to be encouraged to move away from counting the quantity or number of services given; to measuring the impact that those services have achieved. Commissioners need to use definitions of value for money that incorporates the long-term social and economic benefits of a service. Unit cost information is meaningless if it is detached from its relationship to outcomes. It is only by making outcomes visible and assessing them on the same terms as traditional financial indicators that we can ensure that they are not-squeezed out of decision making.

Within this, in-house provision by public sector organisations must be subject to the same level of scrutiny/challenge as that commissioned from external providers. If the government is committed to establishing a level playing field then there needs to be some mechanism for testing the value/quality of in-house provision

### **Social Return on Investment**

Tenders are often focused only on issues relating to the service being tendered, rather than the broader context and benefits. Action for Children believes the commissioning process must incorporate some element of Social Return on Investment (SROI), which is factored in to cost/quality evaluations.

SROI is a rigorous measurement framework designed to help organisations or services to understand and manage the social and economic value they are creating. It is essentially a form of adjusted cost-benefit analysis that puts a value on some less tangible outcomes, such as improved family relationships. It considers the benefits that accrue from services to a range of stakeholders, like children, their families and their wider communities, as well as the state.

These evaluations encourage greater transparency and necessarily bring stakeholders together to agree priority objectives and outcomes. They also attempt to measure value and impact rather than just unit cost. What is now needed is greater support to centralise existing learning from SROI evaluations – both in terms of data collection requirements and the rationale behind some of the assumptions made when undertaking the calculations. Some work to standardise proxies and to understand issues such as displacement would be very welcome.

Action for Children would be very happy to share the learning and results from the Social Return on Investment evaluations we have commissioned to look at our services for vulnerable children and families. These four external evaluations graphically set out the benefits to society as well as to individuals and communities of effective early intervention services to address social problems. So, for every £1 invested annually in Action for Children's targeted services designed to catch problems early, society benefits by between £7.60 and £9.20. By the end of year three, the state has recouped its investment in the project.<sup>1</sup> A breakdown of benefits by stakeholder is available.

We would recommend replacement of conventional cost-benefit analyses with techniques able to show the full public benefit of interventions, like SROI. Consideration will need to be given as to how SROI type performance can be captured when commissioners evaluate bids (i.e. is it "cost" or "quality"?). A pro-forma could be used, perhaps, similar to those used in existing tenders where organisations are asked to show what issues are being addressed by a service; how they are addressing those issues; how they will assess the difference they have made; and, what the outcomes will be. Given our experience with SROI evaluations we would be very happy to contribute to this process.

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<sup>1</sup> Action for Children and nef [2009] *Backing the Future: Why investing in children is good for us all* [www.actionforchildren.org.uk/content/561/Backing-the-future](http://www.actionforchildren.org.uk/content/561/Backing-the-future)

## **Package of support**

Voluntary sector organisations and other service providers need infrastructure support to help them to measure outcomes in a systematic way. We would also like to see increasing support from the research community to enable providers to measure and understand impact in a practical way. Currently, there is still a gap between the extensive output data required by service commissioners, the outcomes data service providers are struggling to understand, and the sometimes rather removed academic narrative produced by the research community.

Investment in independent evaluations is extremely expensive for small voluntary providers, who need greater guarantees of the return from this investment. More help is needed for service providers – especially when it comes to finding a proportionate and simple way of demonstrating impact and agreeing priority outcomes across local areas. We would suggest that in demonstrating impact, providers are supported to use the range of tools which are already being developed. These must look at impact and outcomes (not just cost savings).

We would also support some standardisation in the use of financial proxies and the measurement of outcomes (such as the use of the Goodman's Strengths and Difficulties questionnaire). Providers, such as Action for Children will always measure impact according to local criteria and need, but on top of this would welcome a reduction and standardisation in the different monitoring arrangements currently demanded by commissioners.

## **Personalisation and co-production**

The values of personalisation have long guided Action for Children's work. We see personalisation as a way to give individuals more choice and control over the services they use, shaping tailor-made responses to help children, young people and families to achieve better outcomes.

Service users should be able to make informed decisions based on high quality support and information, with a range of flexible and responsive services available for people to choose from. As such contractual arrangements need to support arrangements whereby service-users can work with staff to shape the solutions to their needs; with on-going service-improvement based upon service-user experiences.

Parents of disabled children often want to take control of their lives. For many, this will mean having the option of individual budgets or personal health budgets and helping to shape the services they receive through participation in parent forums. Others however will need the support of key workers or brokers to help them to navigate the system and to ensure that the co-ordination of services does not become a full time job.

There has also been increasing interest in co-production as a mechanism for embedding more participatory approaches to service delivery in recent years. Action for Children would like to see embedding of a co-production approach into a reformed commissioning framework that supports professionals to put mechanisms in place to encourage children's active participation and engagement in service delivery.

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