



A response to HM Government Green Paper:

Modernising Commissioning:

**Increasing the role of charities, social enterprises, mutuals and cooperatives
in public service delivery**

INTRODUCTION

The Survivors Trust ("TST") is a confederation of over 130 voluntary and charitable organisations, all of whom provide comprehensive counselling, emotional support/help, information and advice to victims/survivors of rape, sexual violence/sexual abuse, including childhood sexual abuse. We are the largest network of agencies delivering rape, sexual violence and sexual abuse support services within the UK and possibly Europe.

We have represented our members on the National Stakeholder Advisory Group, working groups at the Home Office and through the joint Home Office and Department of Health Victims of Violence and Abuse Prevention Programme. We advise and work alongside the UK Home Office; Department of Health; Her Majesty's Prison Service; Association of Chief Police Officers; National Policing Improvement Agency and the Child Exploitation and Online Protection Centre to establish best practice in dealing with the needs of victims/survivors and our members.

We wish to respond to the Green Paper "*Modernising Commissioning*" by illustrating some difficulties and problems encountered by our Member Agencies in relation to commissioning and making suggestions as to what might be included in the new legislation.

ENGAGING WITH STATUTORY HEALTH SERVICE PROVIDERS AND LOCAL GOVERNMENT AUTHORITIES

The Problem:

Our Member Agencies provide counselling, support services and general help to survivors of rape, sexual violence/abuse and childhood sexual abuse. They deliver services in the most cost effective way possible by using a mix of paid and volunteer staff. Despite this, they very often find it very difficult to engage with statutory health service providers or local government authorities because these bodies are reluctant to make the effort to understand: (i) the prevalence of rape and sexual violence/abuse in their geographical area; (ii) the amount of specialist help that is available from local third sector organisations; and (iii) the many benefits to survivors and savings to the public purse that can be achieved by ensuring that a survivor receives appropriate counselling help and support when she/he needs it.

Statutory health service providers and local government authorities often choose to refer survivors of rape and sexual violence/abuse to a specialist third sector organisation but rarely do they show any inclination to provide any financial or other support to or display a wish to engage meaningfully with a specialist third sector provider. Third sector agencies are left to source funds from national government, philanthropic organisations and corporate or private donors. The insecurity and problems that arise from such a scenario include over-emphasis on short-term, project-based funding, favouring new projects as opposed to existing service provision, gaps in funding and chronic financial instability.

Suggested Solution:

We hope that as part of the new commissioning process that those responsible for commissioning services will be encouraged or have a duty to work with third sector specialist service providers to assess: (i) the needs of vulnerable members of their community; (ii) the priority needs and outcomes that could be provided as part of a commissioning arrangement; and (iii) the many advantages and savings that would accrue from vulnerable people receiving the counselling, support and general help that they deserve to receive when they need it.

It would be particularly helpful in many cases if commissioning authorities could collaborate with each other on a local and pan regional basis so that larger and more effective commissioning arrangements could be completed with individual or groups of third sector organisations.

UNDERSTANDING THE SCOPE AND SENSE OF WHAT IT IS PROPOSED BE COMMISSIONED

The Problem:

We understand the need for a commissioner to ensure that her/his authority is getting full value for the monies paid to a service provider. That is fair and reasonable. Unfortunately, we are aware of situations where it would be impossible for a service provider to provide the scope of services requested by a commissioning authority for the amount of monies available. For example, we have seen situations where a scope for a sexual violence counselling service has also included a requirement to provide a helpline, website, online forums, training for staff and external agencies, representation and networking. It could be argued that this is not really a problem given that no one is forced to tender and organisations could simply choose not to do so if they felt that the monetary rewards were unrealistic. However, the consequences of tenders being negligently priced are serious.

Local organisations already delivering specialist services may feel unable to tender meaning that their expertise is not being used to help develop sustainable local service delivery. If the scope is unrealistic, no one might tender so that a lot of time, effort and expense would have been wasted without any benefits accruing to those who need the service which is to be provided. On the other hand, an organisation without direct experience of delivering specialist services might see an opportunity to tender and use the project as a loss leader or to improve its cash flow. Commissioning arrangements concluded in these circumstances often result in services being provided in a haphazard and unsatisfactory manner and to the detriment of the intended beneficiary.

Suggested Solution:

We acknowledge that commissioners cannot be expert in every area and that there are considerable challenges involved in setting a tender price which is fair and reasonable. However, in relation to most specialist sectors, there are umbrella or similar organisations that could be approached for advice and general guidance as to whether the intended services and intended financial rewards matched up and were fair and reasonable. Consultation with experts in the third sector at a very preliminary stage must be encouraged. Tenders which are unrealistic or inappropriate in terms of the services provided and financial rewards given lead to all sorts of problems in the short, medium and long term. These problems can be avoided with careful planning and appropriate consultation at the outset.

COMMISSIONING ARRANGEMENTS : GENERAL MATTERS

Below we have identified and commented on a number of matters that need to be carefully considered if the third sector is to be encouraged and able to participate in a commissioning process, complete tenders and provide services effectively and to a high standard. These are as follows:

- The proposals outlined in the Green Paper which have as their aim increasing the number of commissioning opportunities available to the third sector (for example, by legislating for a right to challenge local authorities if it is believed that services could be provided differently, more efficiently and more cost effectively) would if they are to be effective need to be: (i) clearly expressed/unambiguous and capable of being easily understood by everyone; (ii) widely publicised; (iii) be mandatory in the context of commissioning authorities; and (iv) easily enforceable. If they are not, in our view, commissioning authorities will choose to ignore them.
- “Contracts Finder” would need to be free, very widely publicised and easy to use.
- A standard minimum time must exist between the publication of tender documents and the deadline for their completion and submission to the commissioner. We would suggest a mandatory time span of 8 weeks.
- We welcome the plan to introduce a standard PQQ. However, it is important that the standard PQQ introduced is: (i) relevant; (ii) easy to understand; and (iii) easy to use. In our view, it would be appropriate for several standard PQQs to be introduced which varied in terms of complexity by reference to the value and/or complexity of the proposed tender.
- The terms of the contract giving effect to a tender must allocate risk and responsibility fairly between the parties. Trustees of small and medium sized charities, particularly those charities who are not companies limited by guarantee, will not expose their charity and themselves to unrealistic risks and responsibilities.

It would be helpful to smaller service providers if the contract was accompanied by a booklet which explained in easy to understand terms the intentions/meanings of each of the clauses contained in the contract. This would be particularly helpful in relation to key contractual terms such as failure to perform services, expiry/termination of the contract, insurance matters, warranties and indemnities.

- Contracts completed pursuant to a commissioning process must provide at least full cost recovery for the third sector service provider in relation to the service provided. This aim can be achieved by appropriate consultation between the commissioning authority and a few specialist service providers when the commissioning project is being planned and the tender documents are in throes of being compiled. Furthermore, the notion that it is wrong for a commissioning arrangement to provide a profit to a third sector service provider must be dispelled particularly as profits achieved are re-invested in service provision.
- Contracts should as a norm have a term of at least 3 years. This will provide a period of security for the third sector service provider which should result in the quality of service provision improving. It will also provide consistency of service provision and delivery of service to customers. This is particularly important for instance in relation to the provision of counselling services to vulnerable people.
- Service Providers should not be required to sign the contract at the tendering stage and on the basis that the contract terms must be accepted as prepared and they cannot be negotiated. It must be accepted by the commissioning authority that the contract will be negotiated as part of the commissioning process.

We suggest that: (i) the contract is submitted to potential service providers for their consideration with the tender documents and at the initial tendering stage: (ii) a tender is awarded to a service provider conditionally and subject to a suitable contract being agreed and completed between the commissioning authority and the service provider within 6 weeks of the date of the award of the tender to the service provider; (iii) a clear duty is imposed upon the commissioning authority to negotiate the contract with the service provider fairly and diligently within the 6 week moratorium period; and (iv) in cases where a tender is withdrawn from a service provider by the commissioning authority due to the failure to agree/complete a contract, that there is a right for the service provider to have an audit conducted by an appointed local/volunteer auditor as to the conduct of the commissioning authority when negotiating the contract. It is important that the commissioning authority is placed under a duty to take account of the findings of the local auditor in terms of its future conduct.

Consideration should be given to the introduction of rules which enable meaningful and appropriate sanctions to be imposed by national government on commissioning authorities who: (i) continually fail through their unfair and unreasonable conduct to complete contracts with service providers; (ii) continue to use contracts which are held to be unreasonable and unjust

- A tender document should clearly set out the obligations and responsibilities under TUPE that a service provider would assume upon completion of a contract pursuant to a tender. It should also explain the obligations and responsibilities that the service provider might assume under TUPE when it ultimately ceased to provide the services the subject of the contract completed pursuant to the tender.
- Consideration should be given to providing adequate funding to umbrella organisations representing third sector organisations who themselves are charities to enable the umbrella organisation to employ staff who can provide relevant advice and guidance to its members in relation to commissioning and tenders, including entering into the tender contract negotiating process on behalf of a member. The funding provided to an umbrella organisation should in addition to staff employment costs include a sum for appropriate indemnity insurance for the umbrella organisation and its staff in respect of the advice and guidance provided to a member.
- The advantages to a third sector charitable organisation and its trustees of the third sector charitable organisation being a company limited by guarantee should be widely publicised. The Charity Commission, Companies House and the Law Society should all work together to establish a system which made it straightforward for a charity which was an unincorporated association to become a company limited by guarantee.
- Payment by results is potentially an innovative way of promoting good service in relation to commissioning arrangements. However, it is important to recognise that not all commissioning arrangements will easily lend themselves to this manner of payment assessment. We must be careful to avoid worthy commissioning arrangements being abandoned simply because they do not fit into a payment by results scenario. We must also be mindful and ensure that proper account is taken of the hidden and less obvious but nevertheless very important benefits that often accrue from the successful delivery of a service. For example, the wider social and community benefits that result from securely funded specialist rape and sexual violence services might include increased public awareness, improved community safety programmes, improved child protection processes, increased and appropriate information sharing across agencies and sectors.

- Many third sector organisations have limited free reserves. Therefore, it would be extremely awkward for them to agree to a “payment by results” tender arrangement which provided that payments were made retrospectively and on the achievement of specified targets. Therefore, in relation to payment by results tender arrangements, payments should always be made in advance but on the basis that there was a settling of account at a future date. We accept that such arrangements may lead to other problems if targets were not achieved and monetary penalties could not be paid. Nevertheless, we still believe that advance payments are a necessity. The problem of the inability of a third sector service provider to pay penalties levied for non achievement of targets can best be resolved by appropriate and realistic targets being set when the commissioning arrangement is formulated.
- The Government has acknowledged that many benefits and improvements will arise from civil society organisations managing local authority services. Therefore, there is no reason why the “right to challenge” should not be extended to all local state run services save for those which, for specified and very good reasons, must be excluded from the general rules.
- In our view, it is important that third sector organisations have the same rights as public sector workers to take over the running of a particular service. Furthermore, we feel that when a group of public sector workers exercises its option to provide rights, there must be a mechanism which ensures that appropriate local third sector providers are also consulted and given the opportunity to provide the service in question. These arrangements might in turn encourage collaborative working between groups of public sector workers and local third sector organisations.
- Commissioning arrangements should be Compact compliant, for example contractual arrangements should: last for a minimum of 3 years; provide full-cost recovery to the service provider; allow for payment in advance to the service provider etc.....

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