

**National Market Development  
Forum  
Building Constructive Market  
Relations  
Discussion Paper 5**

## **Acknowledgment**

The National Market Development Forum (NMDF), established in 2010 and resourced by the Putting People First Consortium, involves around fifty key individuals from a range of independent sector social care and housing providers and national umbrella bodies, as well as representatives from councils, government and CQC. Its purpose is to explore some of the challenges of market development in adult social care in the context of personalisation, and to propose practical ways in which partners can work together to address them in the future. The NMDF is supported by the Department of Health, the Association of Directors of Adult Social Services, the Local Government Association, and LGID (formerly IDEa). The Institute of Public Care (IPC) at Oxford Brookes University has acted as a facilitator of the Forum. This is one in a series of papers developed by IPC for the Forum.

## **Disclaimer**

The papers, prepared by IPC, do not seek to represent the views of any single organisation on the Forum, nor that of the Putting People First Consortium (The Department of Health, ADASS, LGA, and LGID). Equally, they do not represent the views of individual members of the Forum. Rather, they summarise the discussions and conclusions that arose during the course of the Forum's meetings. Where there was no consensus across the Forum about a particular issue, the papers have attempted to present a diverse range of views as objectively as possible.

# National Market Development Forum

## Building Constructive Market Relations

### Discussion Paper 5

## Introduction

The policy context of social care is changing rapidly, but the direction of travel is clear. In July 2010, the Secretary of State for Health, Andrew Lansley stated four principles upon which social care should be based:<sup>1</sup>

- Prevention - keeping people as independent as possible, for as long as they feel able, not least by providing earlier support.
- Protection - we have to ensure that people do not have to worry about becoming vulnerable - that the support they need is there, that they will be safe and secure.
- Partnership - we need a partnership between the family and the state, balancing collective solidarity with state support.
- Personalisation - we must give people control of their own care, so they can choose services that best meet their needs.

Of the four Ps, in terms of the social care market, partnership stands out as the most significant; not just in terms of partnerships between the individual and the state or between commissioners of services but partnerships between providers, service users and the local authority.<sup>2</sup>

Initially the impetus for change comes from the rapidly changing role of the local authority. As its functions as a direct provider and purchaser diminishes then a new task of ensuring sufficiency and diversity of supply in the social care market comes much more to prominence. Some of this was triggered by the Transforming Social Care circular<sup>3</sup> which suggested that local authorities should, *“Work to shape and develop local and regional markets with the capacity and the variety to offer the range of options the population demands”*.

However, the rationale behind change is not only driven by the local authority. Many providers recognise that an increase in self funders together with the increased use of direct payments and personal budgets will also influence the market. Some of the more innovative have begun to look at how they can diversify the portfolio of services they offer. Others have focused their energy on moving to outcome focused interventions rather than simply delivering volumes of service.

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<sup>1</sup> Speech to the 5th International Carers Conference, The Royal Armouries, Leeds, 9 July 2010.

<sup>2</sup> Recent ministerial comments have indicated a recognition of this by ‘plurality’ being included as a fifth ‘p’ - ensuring that there are a broad mix of services available from a diverse range of providers.

<sup>3</sup> Transforming Social Care LAC (DH) (2008):1.

Yet it is clear that change will not come about just through more service users having control over their own care budget. Transformation of the social care market will require constructive, mature relationships between purchasers and providers, an acceptance that innovation implies risk which incurs costs and a strategic approach to help the market change, adapt and survive in a very difficult financial environment.

At its workshop in September 2010, the National Market Development Forum members discussed the importance of mature market relationships built on trust and common purpose in dealing with the future care environment. A market based on effective engagement between partners was seen as crucial for the following reasons:

- No one body or individual has the knowledge or information to understand what is happening across the market - partners need to share information and intelligence.
- Service innovation and development will require financial and practical risk taking, but without providers being encouraged and willing to take that risk, greater cost effectiveness, efficiency and improved care quality will not be achieved.
- A fundamental requirement of the social care system is that it cannot fail and threaten the wellbeing of the most vulnerable in society. Good early communication and an understanding between partners of the market risks are crucial if this is to be achieved.

The remainder of this paper looks at the current context of market relationships and how they might be improved in the future.

## The challenge of partnership - what people say

It is clear that commissioners and providers alike need to build better arrangements for working together within the care market if they are to improve services, without falling foul of competition and procurement rules. Some of the challenges that have been raised within the forum are as follows:

**Tendering and procurement arrangements:** The single biggest concern from providers is that current tendering and procurement processes are too costly, bureaucratic, and too biased in their terms and conditions in favour of the local authority. There is even a suggestion that some of the new framework agreements offer little improvement, in that in bidding they have lost none of their associated costs and complexity yet offer no guarantee of take up even if the contract is won. Some contracts are seen as too short term to enable providers to get a reasonable return on any investment they might make. Smaller providers argue that they sometimes cannot respond to tenders because the cost of participating in bidding exercises is too great or the contract is not broken down into smaller parcels of provision which they could deliver.

**Regulation:** There is widespread concern about regulation. Some of these centre on the costs for providers of the process and the adequacy of inspection. Others are concerned about the growth of unregulated personal assistants directly competing with regulated home care services. In general there is a sense across the sector that the regulatory approach is too formulaic and focuses too much on the easily quantifiable aspects of care. There is also a suggestion that engaging with the regulator during service transformation or over new developments, tends to come after, rather than before, changes are made.

**Transparency:** An increasing trend in the social care market is for what were previously publically quoted companies to move out of that market and into being funded by private equity houses. Whilst the basis of funding should not necessarily influence the quality of the end product it does mean the financial viability of some significant providers is less

available for public scrutiny. Ownership is not the only issue. Within the forum there were debates about what constitutes a legitimate profit margin and whether voluntary organisations that are voluntary only in their governance are truly 'voluntary'.

**Fairness; the constant search for a level playing field:** There has been much discussion about what constitutes fairness in terms of who undertakes particular services. For example, where the local authority is a provider does this 'skew' the market unfairly? Are voluntary sector providers favoured over the private sector? Are preferred provider arrangements fair, especially if they are part of a time limited, closed, bidding process? Are too many unfunded expectations placed on small voluntary organisations in terms of their capacity to participate in consultation exercises? Equally, in some areas there may be an imbalance of providers with a danger of local monopolies of supply.

**Instability:** There are a range of concerns about instability in the market. In the residential care sector a number of major suppliers are experiencing financial difficulties and struggling to maintain sustainable margins. In the domiciliary care market new contracting arrangements are challenging the business models of existing providers. It is not certain what effect 'Big Society' initiatives, including the development of mutuals and social enterprises will have on the market, although it is possible that set up costs and development risks might make the speed of growth slower than the government might wish. If market conditions deteriorate or become more unstable the worst scenario could be that people with personal budgets have funding but either nothing to buy at a price they can pay, or can only buy inferior care that is not saleable to self funders, or care that does not meet their requirements. One hope would be that by developing 'Market Position Statements' as suggested in Paper 2 from the NMDF,<sup>4</sup> then this will help to encourage stability in the market by at least making the intentions of the local authority clear and permeable.

**The changed market:** In some parts of the country NMDF participants suggested that both providers and commissioners have failed to recognise the fundamental changes taking place in the market, and that there has been a lack of debate about the impact of personalisation and of the changing local authority role. In others the local authority sometimes has problems in recognising that they have not been significant providers of care for some time and that knowledge of about people with care and support needs has shifted from them to providers.

## Building the partnership approach

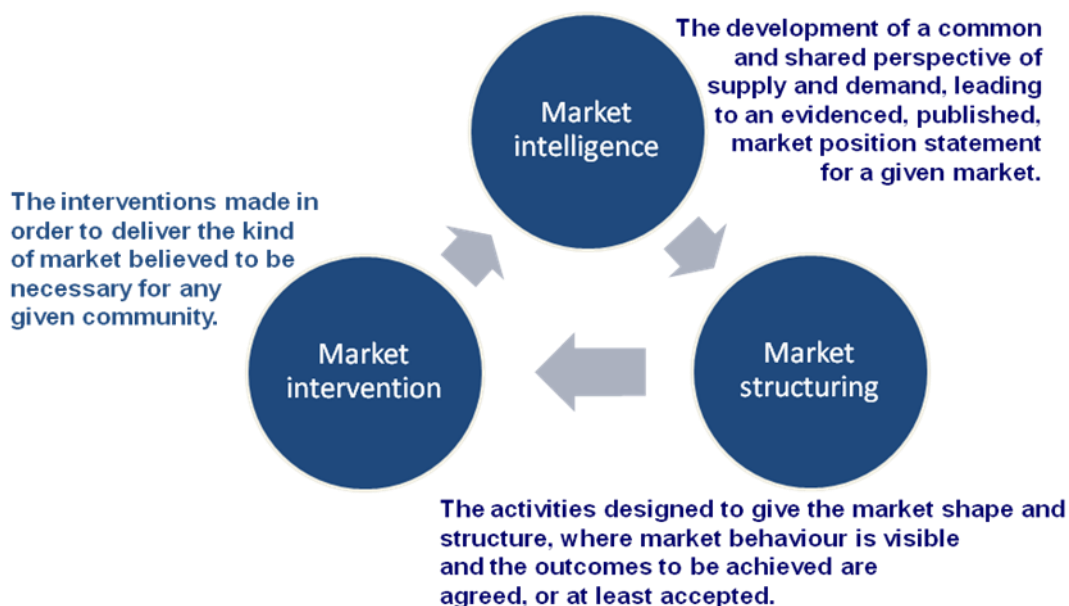
In improving market relations the need is not just for commissioners, providers and services users to 'get along' better. It requires conscious structured activities. Figure 1 suggests a framework for facilitating the Social Care Market under the three activities of developing market intelligence, structuring the market and intervention. This closely mirrors the activities described in the recently published Department of Health paper on market development.<sup>5</sup>

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<sup>4</sup> Paper 2 Developing Market Intelligence, NMDF

<sup>5</sup> *Practical approaches to market and provider development*, Department of Health 2010

Figure 1 Facilitating the Social Care Market



Market intelligence has already been discussed and described in Paper Two. Therefore, the following suggestions are offered as ways in which the market is structured and how the local authority and providers might intervene to ensure that a range of quality services are available in any given locality.

## Market structuring

- The local authority needs to develop its facilitative role, to inform all parts of the market about what is happening and what may be needed in the future. It needs to be a real resource for providers and service users (whether discussing local authority funded provision or not), offering information and intelligence about the whole market. Paper Two proposed the development of Market Position Statements. The local authority needs to use these as a 'calling card' for meetings and discussions with current and potential future providers.
- Providers should feel able, albeit in confidence, to discuss their long term business plans and where appropriate and welcomed, discuss whether support to strategic business planning is needed.
- There is a need to identify where there are barriers to market entry and work with providers on how these might be overcome. There is also a need to ensure that procurement arrangements do not hinder the development of creative solutions.
- If there is 'in house' service provision, there is a need for the local authority to be clear about where and why the local authority is a provider. It is important to diminish the differences between in-house and external systems where these potentially compete in the same market. When a decision is made to externalise such provision the local authority also needs to be realistic about the costs and consequences of providers taking on pensions and TUPE liabilities.
- A new approach to 'fairness' should mean that decisions and arrangements are:
  - Open - decisions are visible and open to fair challenge.

- Inclusive - designed to ensure diversity and choice and facilitate smaller providers to take part in any new forms of contractual relationships.
  - Negotiable - that terms and conditions whether individual, framework or block contracts are not simply given but are open to discussion and agreement.
- Trust will be encouraged if providers are more open about their funding and ownership sources and be willing to share service activity, impact and cost information within the bounds of reasonable confidentiality. Equally, local authorities in their market position statements need to be clear about their long term approach to the market. Providers and local authorities together should work on developing an open book accounting model to cost out new developments and innovations.
- Discussions with planning, business support and regeneration should be opened up. Business support initiatives should have a greater focus on the health and social care market. Where planning barriers exist social care managers could help broker how that process can be improved for providers. Planning departments will occupy a crucial role in ensuring there is sufficient accommodation suitable for older people in any given area and across different forms of tenure.
- Local authorities need to review tendering and procurement processes, evaluate their impact on provider communities and explore how improvements can be made that will help drive the market. Providers also need to be clear with local authorities what they consider is wrong with their procurement processes and how they could be improved. It is important not to get stuck with set tendering processes or framework agreements that are the same regardless of the value of the contract. Proportionality is vital if more providers are able to respond.
- Providers need to work with the local authority in assessing the impact that personal budgets and direct payments are having on the costs and availability of service provision.
- Providers need to be proactive in ensuring that their views are represented in assessments of demand such as the JSNA.
- It is important to agree good mechanisms for providing information about care services. Promote local 'Which type' care guides which emphasise a consumer perspective. Local authorities need to facilitate and promote the views of service users, whether commending services, or discussing why services are not being taken up or are not seen as helpful. Providers need to encourage and respond better to user criticism and feedback.

## Market intervention

- Where market intervention is needed, for example, in supporting user-led organisations or supporting local community organisations, the local authority needs to base its activities firmly on evidence, full analysis of social return on investment and the impact on the market and on those who use services.
- Where demand for a service exists and where a valued provider is vulnerable, then commissioners should identify how they might be able to reduce that vulnerability. Both providers and the local authority could encourage the creation of consortia across the voluntary and private sectors in order to offer more diverse services.
- The local authority needs to be more energetic in its pursuit of shared risk initiatives with the private and voluntary sector, to encourage innovation and new service models.

- The local authority could offer access to training that commissioners and providers agree can improve performance and promote a re-defined model of care. Identify the skills needed across the sector and how authorities and providers can work together in order to ensure that these are available. Encourage schemes of short term secondments from strategic commissioners to providers and vice versa.
- Given the difficulty of attracting investment the local authority could explore and develop mechanisms by which local projects can attract capital investment. Work with banks and local authority treasurers to look at how investments in care business can be supported.
- Providers need to look for potential diversification, eg, can Registered Social Landlords undertaking care and repair services; home care agencies delivering assistive technology. In the future there may well be demand for community based services straddling health housing and social care in a single unified service not just in management but in delivery.
- Providers could be much more proactive in promoting potential innovation and costed improvements in care, rather than waiting for tendering and procurement exercises to be undertaken. But they also need to be prepared for much more of an evidence based approach to funding provision. Be open to exploring how an outcomes based approach to funding could be developed.
- Progressive providers can help local authorities create a much more positive image to care and support. If care, support and specialist housing are promoted as good, beneficial and well designed people will want to buy it and value it. If it is seen as uniform, inevitable and a last resort, then it will neither be sought nor valued.
- There is a need for providers and commissioners to work together to develop a broad range of choices to suit people's requirements both within existing services and in the market as a whole - this should mean not only choice of provider, but choice of service, choice of worker and flexibility over how a service is delivered and when.

## Conclusions

Essentially improved relationships within the social care market are always going to be based on trust. Even within a new care economy, where the significance of the local authority as a provider and purchaser of services is less, the role of central and local government in influencing the social care economy still remains considerable. To the local authority, personalisation might feel like losing control. To the provider, tendering for framework agreements, negotiating planning arrangements, meeting the requirements of regulation and with authorities setting the level of personal budgets, it will still feel as if the hand of government is firmly on the tiller.

The social care market is entering a period of uncertainty and, in some cases, instability as the impact of the recession, of spending cuts and of demographic change begins to have an effect. The more local authorities retreat behind bureaucratic tendering arrangements, formal provider forums or arms length relationships with the sector the less likely care providers are to be responsive to change and innovation on the one hand or doing more for less on the other.

A shared approach to managing the money, a mechanism to fund and stimulate innovation, shared training, bulk shared purchasing are all approaches that can be used to help improve services. At a time when the choice and control of services by users is destined to increase, ultimately all parties in the care market have a vested interest in the quality and diversity of care experienced by those who consume it.