TRANSFORMING THE MARKET FOR SOCIAL CARE

Perspectives on market facilitation – commissioner/ provider views

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One in a series of seven papers on market facilitation

institute of public care

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PREAMBLE

Government activity since the publication of the 2006 White Paper *Our health, our care, our say* has increasingly focused on the demand side of the social care transformation equation. It has done this by encouraging better estimates of demand through the new local joint strategic needs assessments (JSNAs) and through promoting a shift in who acts as the purchaser of care via direct payments and personal budgets.

However, recognising that accurate estimates of demand are important and giving people greater control over the services they receive can be both empowering and ethically sound, it also needs to be recognised that if social care is to be transformed then the supply side of care also has to change. Some believe this will occur through users flexing their new purchasing muscles, others argue that this has not been true in the past and in a market where increasingly demand is chasing static or diminishing supply, combined with diminished government funding, then this is unlikely to be true in the future.

Consequently, the importance of local authorities influencing supply is increasingly recognised. The government circular *Transforming Adult Social Care* lays down a requirement that authorities develop a clear approach towards the social care market.

"Councils will also be expected to have started, either locally or in their regions, to develop a market development and stimulation strategy, either individually or on a wider regional basis with others, with actions identified to deliver the necessary changes."

This set of papers lays out an approach designed to underpin the market development and stimulation strategy sought by the transformation circular, and in the context that the future role of the local authority towards the market should be one of 'facilitation'. The seven papers outline the following.

- The background to market facilitation.
- A model of market facilitation.
- The views of local authority commissioners and providers towards the market and current policy issues.
- An exploration of whether the focus of the relationship between commissioners and providers within the market should be on outcomes or outputs.
- An improved approach to contracting where the local authority still acts as a purchaser.
- A set of principles by which individuals may contract for services.
- An annotated bibliography detailing some of the key documents relevant to the development of the social care market.

Each of the papers is designed to be free-standing but contribute overall to a new approach to facilitating the social care market.

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We are particularly indebted to managers from local authorities in Bath and North East Somerset, North Yorkshire, Thurrock, Hartlepool and Somerset and Care UK for their involvement and the contribution they made to the development of the outcome-based contracting material in Paper 4. We would also like to express our thanks to the managers who contributed to the discussions outlined in Paper 3.

The views expressed in the papers are entirely attributable to the Institute of Public Care. They are not necessarily the views of the Care Services Improvement Partnership or the Department of Health or those of the local authorities that participated in the activities that have led to their publication.

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Care Services Improvement Partnership CSIP

INTRODUCTION

This paper reflects commissioners' and providers' views of the market and how to promote constructive relationships.

It seeks to show that in many ways commissioners and providers may have much more in common with each other than they often suggest and that engaging in dialogue outside normal negotiations about contracts can prove beneficial. Hopefully a redefined relationship between commissioners and providers can be stimulated by the discussion here as well as by the development of a new set of relationships as outlined in Paper 2: A model for market facilitation.

What is also clear from the discussions described in this paper is that the new role of commissioner of social care requires a much wider range of skills than simply around contracting. Understanding how the social care market works and operates and what can drive care businesses towards change may be vitally important if services are to be transformed for service users.

The paper is in three sections.

Section A: MANAGING MARKET FACILITATION
- A transcribed discussion betweeen directors of adult social services and chief executives of provider organisations.

Section B: CHANGING THE MARKETPLACE
- Report from a set of commissioner and provider workshops of the benefits of constructive relationships and some of the current barriers to achieving them.

Section C: THE CHECKLIST
- A checklist of constructive behaviours at each stage of the commissioning and purchasing process.

This section offers an edited transcript of a discussion about market facilitation between three directors of adult social services and two chief executives of provider organisations. The discussion was chaired by Professor Andrew Kerslake of the Institute of Public Care and took place in January 2008.

Participants:

Andrew Kerslake *(AK)* Director of the Institute of Public Care

Bill Mumford *(BM)* Managing director of Macintyre, a charity providing care for people with learning disabilities

Roger Booker *(RB),* Managing director of Care UK's home care and community care services division

Ray James *(RJ)* Director of health and adult social care for the London Borough of Enfield

Jean Daintith *(JD)* Executive director for housing, health and adult social care for the Royal Borough of Kensington and Chelsea

Sarah Pickup *(SP),* Director of adult care services for Hertfordshire County Council and co-chair of the ADASS Resources Network

The market

AK **A range of government publications in recent years (the White Paper, the Commissioning Framework etc) have talked about the role of the local authority towards the market as changing from one of straight purchaser to market manager and more recently market developer or facilitator. Yet it strikes me that very few of us really understand what we mean by that role.**

JD I think the reason we talk about markets is because in many local authorities, including mine, most of the services are outsourced. Any change we want to make or facilitate or enable has to be through the independent sector, the voluntary sector or other providers. So the reason we talk about working with the market, whether it's facilitating, enabling, managing etc, is because we can't do our jobs as directors of adult care in local authorities without working with providers who are out there delivering care.

BM However, it is difficult to talk about one market because there is a divide between the health economy on the one hand and the social care economy on the other. The purchase and the provision of services are often handled by two very different types of organisation. This makes talking about developing a market actually quite difficult to achieve.

RJ Thirty to 40 percent of most of the care that is purchased within our authorities is not actually purchased by the local authority. It is either purchased by individuals or other public bodies. Therefore, even in our own 'fiefdoms' we have only got reasonable degrees of influence, certainly not absolute influence. Some of the words that get used to describe the market are quite telling. To be asked to 'manage' markets I think is an inherent contradiction and one doesn't 'manage' markets. I think to be asked to seek to shape, to influence, to facilitate is a much more meaningful proposition.

SP The issue here is about the extent to which the personalisation and choice agenda becomes a market reality because if it does that will have a major influence on what we understand by market facilitation and the provision we look to stimulate.

Personalisation and market facilitation

AK **So interpreting how personalisation might run is a key part of how you facilitate the market now and in the future?**

JD As we start to put individual budgets in place we start to get intelligence about what people want. We have got to make sure we've got the feedback right between what our teams are being asked to put in place for people and what our strategic commissioners are working with the market to develop. It may be that feedback gives us information on things that the social care markets do not provide at all.

The point of individual budgets is not to say "here you are, here's some dosh, off you go", it's actually to say "we are going to work with you to put together the best possible set of arrangements to meet your needs and to provide knowledge and advice". For example, you may not have thought of Chinese satellite television for someone isolated from their community the first time round as a viable spend, but when you have done it once then you think of doing that sort of thing again. So it is building the knowledge base of the workforce and making sure that's shared within and between authorities.

RB But how do you stimulate choice because part of the problem is that choice is very limited sometimes? You put money in people's pockets, how do they have that collective power to actually get a major change of provision in their area? I have seen examples within the learning disability field where money has gone into people's pockets and all they have had to buy is a place at the local college or the local day centre. There wasn't anything else.

RJ I thinks it's true. One of the most powerful things that we can do in terms of facilitating future markets is to try and influence the expectations of service users and their carers because nothing drives markets like customer expectation.

BM I can see that enablement and empowerment are fundamental to personalisation but they are still not easy to achieve. The government's solution is that you put the money and the power into the consumer and then the consumer has the power and the rest us will ultimately respond whether it be with commissioning structures or whether it be as providers. I worry about that because I am not sure how empowered all of us are as consumers. The Commission for Social Care Inspection report *The State of the Nation* said that even the most confident self-funders are not particularly empowered in terms of purchasing their own outcomes, often tending to choose quite institutional options. They don't feel empowered; they don't feel they have much information and so forth. So how confident do non-self-funding service users feel that they can get exactly what they need?

Overall, I think the answer comes from how the individualised budget or individual choice agenda is delivered by the responsible authority, how the information is collected and used from a feedback point of view and then brought together as a bigger population analysis on the kind of choices people are making. Then providers can see the light of opportunity for what they could provide and local authorities will manage the marketplace in such a way to facilitate better delivery. Providers can say "right, we will move into an area that says we will offer you the choice that the local authority and you are looking to get and we will need to reconfigure our services in such a way to deliver that gain".

I take an optimistic view, that potentially we have now got an opportunity in the market to actually develop and improve it.

The JSNA and market facilitation

AK **Talking about population needs analysis brings us to the joint strategic needs assessment (JSNA). If you look at the JSNA guidance most of that focuses on the needs side of the equation. There is mention of supply but not a great deal, it's almost tagged on as an afterthought. When you ask authorities about supply they tend to see it as simply a market map, where things are located and how many placements there are. It feels to me we've got to be much more sophisticated in terms of making judgements about our local market, who's going to go to the wall, who's really strong in the market, where might there need to be expansion; it's having that kind of picture isn't it?**

JD Well with regard to the JSNA it is our job to work out what's needed and once we have a picture of that, we share it with providers then, almost regardless of whether people are self-funders or local authority-funded, they have got a better picture of the likely demand in their area.

RJ Yes, it's about gathering up as much information as you can to inform the judgements that you make, but it's not easy. The rate of population change, certainly in most inner London local authorities, suggests that you need to have reasonably considerable margins of tolerance on your population data and what's going to be happening. National demographics show people are living longer with more complex needs. If you seek to make some commissioning decisions in the context of individual budgets, again, you're making assumptions based on what you know now. You have the further complexity of assessing what and how much individuals will choose as different from current trends.

This might lead you to say "why do a joint strategic needs assessment if it's so different and so many factors will change?" Actually what I think it does is make the argument for JSNAs more compelling

because getting hold of the best information that you can in this ever more complex future is going to be critical to making the most sensible judgements that you can to shape the future.

AK **But how much do your providers participate in assessing need?**

RJ One of the things that we've thought to do is to have seminars with our providers, grouped around care groups, in order to have a discussion around a couple of points and the JSNA is one of them and to be candid that's partly because some of the providers' markets are very well developed and it's something we can learn from. But market facilitation is about trying to say to providers "this is our future, what do you think and how can you help us refine it?" It's also beneficial to providers as they need this information if they are going to develop services to meet what's being identified through the JSNAs.

AK **So, two providers here – have your organisations been involved in thinking about JSNAs anywhere?**

BM I'm not aware of that, no. But we are very niche though, so within our own little population it's often not one of the big agendas.

AK **What about Care UK – involved anywhere to your knowledge?**

RB Not in discussions about the JSNAs. The difficulty that we experience as a provider is that the engagement is typically at a local level, as it should be, and I would say that we suffer from a strategic gap in terms of how people engage locally in terms of service delivery and how we engage strategically at a business level. There are key people in the organisation who we need to get sufficiently involved at a local level and we are addressing that, because it is a key issue for us. For example, it is the person who has their own business locally, whose livelihood depends on it, who often has effective engagement with the local authority and will be much more aware about the issues that are going on with that authority than we are as a large provider. This is a real challenge for us.

AK **And there's a cost to that involvement, isn't there? If you were doing that on your own as a private company you might be looking at putting several thousand pounds into those type of activities. But there has to be a real gain for you as company, doesn't there?**

RJ I think there is a very tangible gain as you've got early insight into what local authorities are going to be wanting, needing, purchasing and buying. Also you have a chance to influence and inform future development before it's written into the plan and signed off by members.

Procurement and market facilitation

AK **So how do you square that kind of involvement with the rules about not giving companies unfair advantages? How do those two things sit together?**

SP This isn't a problem; you can involve a range of people. You can do it on different levels, you can either engage with your current contractors, quite legitimately, or if you are tendering, you can engage with the full range of people that are bidding. I have people coming to meet me about our future plans for learning disability provision, for example, who don't contract with us and want some intelligence and we'll talk to them about what the general picture is and how much more accommodation we need for different groups in Hertfordshire. I'll talk to anyone as I want to make the best possible choice and get the best possible arrangement I can.

AK **And nobody is going to cry foul to you?**

SP Why would they?

RJ I think there is always a risk that someone will cry

foul and we have some exceptionally talented lawyers and accountants in local authorities who are good at reminding us of those risks. While those balances remain in the system then we will do the things that we need to do in order to be seen to be even-handed in our approach. But what we must not do is become so risk averse that we don't develop anything; that's the risk of large public sector bureaucracy.

BM The whole procurement process, I think, is an obstacle to smaller providers; the paperwork, getting on preferred lists and the costs. It is such a laborious process and we all know that nobody actually reads tender documentation in full. It is a phenomenal amount of work and how small organisations can cope with it I can't begin to understand.

SP I don't think the same. We will probably continue to use the traditional tender process if we have big contracts. However, the key will be that those contracts are flexible so that we and the providers understand that this isn't a fixed thing we are buying, it's a fixed volume over a period of time but it's a kind of partnership deal which says you are going to work with us to deliver the things that people need.

However if you are going local and if you are looking at, for example, African Caribbean meals in Borehamwood, you are not going to go through that same kind of process. You may do some competitive bidding but in a much different way, in a much more simplified way. You may not even do that if there is really only one potential provider you can use. I think there are some rules around innovation and a new model which you can actually use to do some things that test the market.

So there are, if you talk hard to your lawyers and procurement people, ways in which you can innovate without going through a load of bureaucratic processes. You've still got to have the evidence and the trail of how you have decided to do what you have decided to do, but it doesn't have to be the *European Journal* and endless documents and £100,000 worth of process.

RB The other thing about the procurement process is about risk sharing. The more that there is a feeling that the risk is shared then I think the more innovation and better outcomes will be achieved rather than when the Town Hall puts all the risk on the provider. What we then get is provider behaviour that is not innovative, which will actively seek to find the holes in the contract and then an adversarial type of relationship develops. This particularly happens with very short-term types of contract, when every three years there is a whole retendering process which is very, very expensive and is not going to generate investment or innovation. You are going to get traditional services, albeit slightly cheaper, but ultimately you are not going anywhere regarding transformation.

BM For me there is also an issue about specifications, because part of procurement is the expertise, not just around commissioning, but around specifying what you want to buy as an authority. I think too often providers are not included, not just in terms of helping to create but drafting that specification. There is an enormous amount of provider expertise that goes untapped. Part of the arrangement could be that the provider develops a specification with the knowledge that they will be bidding for it. This would work in my instance because all too often I look at a specification and think, I wouldn't start there, but by then it's too late because by this point you have got into an arm's length type of procurement process and you know that no one will be entirely happy with how it ends up. I don't know how easy that is to build into the procurement process.

Defining market facilitation

AK **So we have looked at personalisation, at the JSNA and at procurement as all being part of the market facilitation process. Let us suppose you**

have a bright new shiny assistant director of adult social care just starting with you, all scrubbed up and ready to go. They have their job description, which says a major part of their role is market facilitation. What would you be saying to them about this and what would you be expecting them to do as part of that role?

SP I would want a new assistant director to be engaging with local people and finding out what people in their 60s and 70s will want when they are 80, not just what people in their 80s want now. I think the market takes a long time to be stimulated, it doesn't just come about overnight. There needs to be medium and long-term planning, not just short-term planning

RB I think the new assistant director needs to differentiate the market in terms of which provider organisations are actually going to invest for the future as opposed to those who will simply concentrate on a bigger share of the existing market in terms of the core services they already provide. You can think of it in terms, for example, of the retail market. You want to move from mass manufactured vegetables to organic vegetables and ten years ago you had very small niche providers doing organic farms but that's not going to feed a nation. At what point do you stay with them to encourage them to develop and move more into the mainstream?

What I don't see enough of is the commissioning arrangement whereby you can go to small niche providers, whether they be local or whoever they might be, and say how can we encourage you to develop your supply or innovation that might ultimately roll out into the big numbers and have commissioners who feel comfortable in doing that?

Providing incentives

AK **So is one of the jobs of the market facilitator, to go out there with a crock of gold and look at which bits of the market they want to develop and say "we will help fund or we will subsidise this because we recognise that it's innovative, it's too big a risk for a provider to take on their own so we will support this until you can get it up and running"?**

RJ It's difficult, because of the scale of change that's required to alter an entire system and all of our existing ways of doing things. To change the arrangements in respect of large numbers of people we tend to concentrate on process and some of our investment will go that way. But some of it very definitely has to go into piloting, testing and beginning to see in which ways we can deliver content change. One of the things I would like to see happen in Enfield is place-shaping. Seeking to transform the physical environment, structure and nature of parts of the borough at the same time as doing things to improve the health, well-being and opportunities for much of the population. If there are ways, through social enterprise, addressing unemployment and workforce training in the market or engaging in wider things, which will do this, we can achieve transformation.

SP In Hertfordshire we have just facilitated the set-up of social enterprise for meals on wheels. We have taken on the risk and it is quite a big risk for us because the districts have been providing the meals on wheels in Hertfordshire for ever so we have virtually no budget for it, but we have needed to change that and gone out and I have underwritten the risk with the backing of my members.

We are actually aiming to work with providers and change doesn't always require a crock of gold so a really good example, I think, is enablement home care. How many self-funders would know to ask for a service that re-enabled them after hospital? This is a real issue about information and yet some social care clients coming across are now starting to access those kinds of services because we have worked with providers like Care UK and others to say, okay we don't want to just commission from you traditional home care we want you, and we will help train your staff, to actually re-enable people.

Our role in developing the market is about developing an understanding about the art of what is possible, because people don't necessarily think to ask for things that they don't see as being within our gift to offer so we need to change that.

BM The key to this is the word incentive – for providers in particular. If you are seeking to improve the service offered through the commissioning process maybe an element of the crock of gold needs to be kept aside for incentives to the provider. For example if a provider delivers on a contract and achieves improved key performance indicators, or good customer satisfaction results, or whatever it may be, should that money be made available as an incentive for that change?

More than that I think there is the opportunity for the procurer to perhaps link that reward of extra money around the specifics of delivery by the provider, which for me would be around workforce development. Things such as pay levels, which are a huge impediment to bringing in and retaining staff. There is also training and development as well, which would enable us to improve the delivery of the service. I think that most providers would take the view that as long as their return is an acceptable one and not diminished in any way, all they want to do is keep delivering the service to a high level. At the same time they need to receive sufficient incentive to do this, which is all about paying for the resource underneath it.

RJ I'd agree with that very strongly; I think the advent of individual budgets makes it more important that we do that. The reason I say this is that for all of our fine words nothing characterises the quality of the care that a vulnerable older person will receive in their home more than the dignity, respect and skill of the frontline worker. We should all be keen to try and ensure that society recognises that frontline carers need to be remunerated more appropriately. We also need to make sure the investment is there in terms of development. Overall, I think local authorities, by and large, have been very slow to commission in a way that incentivises improved performance.

RB One of the opportunities under the system for rewarding performance is annual reviews. Currently, they are used as blunt instruments. An authority may say our budget allocation is going south so therefore there are no uplifts this year available or it's restricted to 2%. They are applied very much across the board and fail to differentiate between the good service provider and the poor service provider. Yet they provide an ideal opportunity to differentiate between the quality service and the standard service and this is exactly where you should be.

RJ I think that as we are moving towards a world in which individuals will be making commissioning decisions for themselves we need to make some of those qualitative measures or standards much more explicit. For example, making clear simple things like registration scores or categories, percentage of staff NVQ-trained to a particular level, customer satisfaction scores or whatever they may be. If we can bring together information on some of the things that services users or carers think are important we can use this en route to individual budgets to incentivise providers to deliver in these ways. However, it's a challenge for local authorities with 3% efficiency targets, put in by central government, in our budgets annually for the next three years. But I think part of market facilitation is that candid dialogue with service providers that says this is both of our aspirations, this is our reality, what is it with your expertise as providers that you can bring, and can we move to a relationship that is about agreeing a mutual set of outcomes?

SP Just reflecting on what's been said, the task of market facilitation is enormous because we are not only concentrating on the existing big providers and the smaller specialist niche providers, but generating quite new markets too. And one of my concerns is do we have the capacity within local

authorities to do that? Is the skill set there, what's the experience in other parts of the local authority in doing this, especially when local authorities are being pushed more and more into the rules you've already referred to around procurement.

I think we need to bring in a group of people quite quickly who are able to articulate with the voluntary sector and users and carers in a different way. A new sort of dialogue in order to generate the new services and I don't know that we have the capacity in many of the smaller authorities to do that. I imagine that we are going to have to group together as local authorities to get these commissioning arrangements right. And yet at the same time we mustn't lose the local dimension, so I think the task is a very complex one.

The skill set for market facilitation

AK **So do we need to ask the question; is your average local authority commissioner, who may have come up through the social care route, skilled and experienced enough to deal with a major home care provider funded by venture capitalists for millions of pounds – a seriously big business? How do we get the necessary skills, or do we need some poachers turning into gamekeepers?**

RJ We would certainly acknowledge that there is a skills gap there and some of the work that we are trying to collaborate on across London is to identify where the expertise does lie, whether it be in our sector or beyond it.

JD My local authority is looking at setting up a training company to develop different sorts of markets for older people. In fact the people that are working on that project are not our employees and coming up against VAT and areas of taxation that even ourselves at our level have not had to deal with before. So I think this is not just a new skill set for commissioners and middle managers, it is also a new skills set for directors as well.

SP We had a similar experience in trying to set up social enterprise. I had one of my commissioners who is from a social care background leading on this with a consultant and it was really, really difficult, every obstacle you could imagine came up – VAT, tax issues, lawyers saying we can't do it like this, government people saying you can do it like that, etc. You actually have to be tenacious – you just don't take no for an answer. If someone says "we can't do it" you say "Well, how can we do it?" Now the service is really up and running. So I've now got someone who has done this once and we are in a position to do more social enterprise. But it was jolly hard the first time and actually there wasn't a lot of knowledge out there to draw on.

AK **Does this mean you may have to step outside the kind of social care environment and look at picking up information and skills from other areas? For example, from regeneration and small business development? Also, maybe thinking of people that do manage markets – town planners are a good example of this because they've got quite a good idea of who they facilitate, the kind of the design and shops that they want within a particular shopping centre. Do we need to be picking up skills from other areas of the local authority?**

SP Well, I think that we learn a lot from what we already have in place such as our Supporting People team. Although there is a difference in the commissioning arrangements that they are involved in, they are actually able to generate some of the smaller services that are local and meet individual and group needs in a way that I don't think I ever have in social care.

RJ This is why I think the expression market facilitation is a better one because we won't be doing a great deal of the commissioning; yes, we will be doing some in all probability, but that may well taper off and reduce over time. So market facilitation skills are crucial to ensure that the right range of services is available at an appropriate price, for local

authorities to understand, access and benefit from, as opposed to traditional buying arrangements. This is a very different role and yes, perhaps the town planner analogy is quite a useful one in terms of the master planning they do around the area that you are trying to shape and regenerate. That means they won't be able to absolutely control that but they will have a local development framework and a set of policies to influence the market to get the right mix of provision. It is also about providers providing services that people want, of the right quality and at the right price, that will be the major influences on the choices that people make in the future.

AK **Going back to our new assistant director – are there any other insights we would wish him or her to have?**

RJ In a diverse future market with a range of key players coming into play, the issue of safeguarding becomes very important. We will need to build in the kind of control systems around safeguarding that will help us to manage risk proportionately and for the very vulnerable to achieve good outcomes.

SP I think they need to be wished a great deal of luck don't they? I think we need to say there is a lot of learning by doing the job. There is lots of stuff out there and lots of advice we can offer but actually some of this is new territory. Our environment is going to constantly change.

RJ My closing thought for the new assistant director would be probably to look after their own well-being because they are going to need it given the size of the challenges ahead. Also to give some thought to commissioning for well-being with the population. What is it that we can do now that may actually help inform some of the lifestyle choices that will reduce the level of need or challenges that people face in future years as well?

BENEFITS OF, AND BARRIERS TO, CONSTRUCTIVE RELATIONSHIPS

This section has been developed from both national research findings and from the three workshops with commissioners and providers that contributed to this project.

Strategic engagement
In the workshop discussions, it was identified that if providers and commissioners could engage with each other early, at a strategic level, the care sector would be stronger for it. Providers, if involved at the beginning of a commissioning strategy, can give unique insights into demand, for example from their detailed knowledge of service user need, and also invaluable information regarding supply. Providers have the incentive to know their market otherwise they go out of business, and commissioners can benefit from this knowledge.

Early involvement with providers in developing a commissioning strategy then improves relationships further on in the commissioning and purchasing process as this dialogue can:

- develop respect for each other's knowledge and skill bases
- provide clarity of vision and direction
- recognise capacity issues of providers and lead to shared responses to meet these gaps
- recognise specific areas of joint ownership such as risk sharing and incentives
- raise morale and direction
- cast the planning net wider (diversity of providers ie small business enterprises, voluntary organisations etc.) and further (longer term planning) thus offering real potential for responsive and innovative service development
- effectively invest and create value for money for local authorities and providers.

Despite the directions from central government, providers still feel that they are excluded from honest discussion with commissioners about strategic purchasing intentions. Providers can feel that they are not engaged early in the strategic commissioning process, knowing little of the commissioner's business plans and feeling that they are consulted after decisions have been made[1].

At the workshops, some providers felt there was no consultation between commissioners and providers and that commissioners approach providers with a fait accompli:
"When something is afoot and when the council are planning something… everything goes quiet – you don't hear from them for months."

Smaller organisations, particularly from the third sector, can find it even harder to engage with commissioners and be part of any strategic discussions; many simply lack the capacity to spend time in activities that have no guarantee of leading to work. This could advantage larger providers and lead to further consolidation of the sector.

National research indicates that commissioners have expressed a lack of confidence in the quality of provision and motivation of independent providers, which impedes willingness to engage with them. At the workshops there was some residue of mistrust over motivations (for many providers too) for the large national firms that are beginning to dominate the market and to be felt locally. However, there was an implicit and explicit acceptance that independent providers are part and parcel of the social care market.

Research has also indicated that commissioners feel that there is not a place for strategic planning with provider organisations due to potential conflicts of interest with objective procurement. Providers can find this an inappropriate response where councils are themselves providers[2]. At the workshops for this project, commissioners were quite open about the idea of liaising with providers to inform their strategies. However, how this could be achieved was not so clear.

A major block to strategic dialogue can be the bureaucratic and sometimes inflexible functions and systems of local government. Many of the providers we met thought that commissioners who they liaise

1 | Building Bridges Department of Health 2005
2 | Hearts and minds: commissioning from the voluntary sector Audit Commission 2007

BENEFITS OF, AND BARRIERS TO, CONSTRUCTIVE RELATIONSHIPS

with have good intentions and vision but their hands are tied due to the following factors.

- Unable to plan long term due to short-term budget forecasting.
- Not having the authority to actually negotiate and make decisions without going through a chain of command in the local authority.
- Being preoccupied with achieving partnership with commissioning partners.
- Being too busy 'fire-fighting', dealing with the day-to-day mechanics of contract monitoring and compliance to find time and energy for strategic dialogue.

Many commissioners recognised the validity of these comments, and also found their position frustrating.

Both commissioners and providers also recognised that there is a skill gap for many commissioners. They have often simply 'moved across' from operational management with few formal opportunities subsequently to develop specific skills and knowledge. This is exacerbated by the fast-changing commissioning picture. Commissioning is a strategic activity, but can often be interpreted as an operational one, again due to a gap in skills and knowledge. This is equally evident in single service-centred providers who lack knowledge of the wider market.

Confusion also appears to have risen from the language and terminology used in titles, which then filters into role uncertainty. Contracting officers are often known as 'commissioners'. Clarity of role and function is important in order to avoid misinterpretation and to develop competent relationships.

Where there are conversations between commissioners and providers it can sometimes fall well short of effective engagement. It is particularly frustrating for providers if there has been apparent consultation but with no action taken on points raised by providers. In these instances some providers doubted the motivations behind early consultation exercises ie to tick the right box. This can lead to cynicism on the part of providers and potentially worsening relationships.

Fair purchasing

Procurement

Whatever service is to be purchased, the decision should be based on evidence from market intelligence that has come out of a dialogue between the local authority, providers, and service users; contracts should acknowledge and protect the interests of all parties. This is essential, not only in facilitating supply, but also in ensuring the quality of supply. Again this was noted as good practice by the groups but there were still many difficulties in making this happen.

Providers have also complained that the procurement process does not allow for diversity of providers in terms of size and sector. This is due to the procurement process being expensive and overly bureaucratic, making it difficult for smaller organisations to compete, particularly those in the third sector, who may have little capacity. It was expressed in the groups that procurement processes create an uneven playing field, which dissuades new market entrants (especially so if the contract is short term).

Bureaucracy in general is not just irritating, but provides major barriers: *"Rigid processes get in the way of the type of imaginative place-shaping … and inhibit the development of services that are genuinely responsive to people's needs"*[3]. This in turn creates low morale and worsening relationships.

Most providers at the workshops wanted to be more involved in terms of helping to write service specifications and contracts with the local authority. The very essence of outcomes means that providers have to work with service users to reach set goals; to be party to developing processes, inputs, and outputs to deliver the desired outcomes. This in turn means the local authority relinquishing its prescriptive models of care and leaving the development and details to providers. This cannot be done without good relationships based on trust. It is in the interest of the authority to ensure that there is a diversity of providers that are up to the task and able to do this effectively so the local authority is still meeting its duty of care. Getting the contract right is very much in everyone's interest.

3 | Relentless Optimism: Creative Commissioning for Personalised Care Commission for Social Care Inspection 2006

BENEFITS OF, AND BARRIERS TO, CONSTRUCTIVE RELATIONSHIPS

Commissioners in the workshops felt that the local authority had protected many independent providers from high risk, especially with the historical prevalence of block contracts, and that providers had taken this security for granted. Personalisation will lead to different contracting arrangements, which will naturally shift the balance of risk. This shift will potentially threaten the survival of providers previously dependent on block contracts who may not have the capacity or flexibility to respond to a multiplicity of individual service user demands. It was recognised that moves towards personalisation will need the contracting authorities and providers to do shared, effective risk assessments, have identified risk control measures and put in place contingency plans to avoid market instability.

Providers and commissioners recognised this basic mutuality of interest, yet some providers and commissioners felt 'hard done by' in the risk stakes. Both sides referred to 'risk shunting' as opposed to 'risk sharing'.

All agreed that adversarial 'legalistic' relationships between commissioners and providers are a major blocker to mature relationships[4]. These dysfunctional relationships perpetuate blame and 'covering your back' in terms of accountability. This creates distrust and resentment in dealings with each other, stifling innovation and again the service user and their families losing out. Within the workshops most could recount examples, locally, where relationships had broken down to a very poor state.

Relationships are particularly vulnerable to breakdown if commissioners want to see specific improvements in service delivery or where models of service need to change. This is an area that needs sensitive handling and where it is reasonable for the providers to expect commissioners to share some of the commercial and financial risks associated with this transition.

There was a general feeling that both commissioners and providers were 'in this together', both were heading fast into the unknown and only via collaborative working could they respond to shifts in demand and national drivers.

Contracting

Fair prices are crucial to market stability as they enable businesses to provide and maintain quality provision without inappropriate demands on the public purse. Fair prices, essentially, mean that all the key players succeed.

- Businesses are viable and incentive/motivation is high.
- Local authorities are meeting their legal duty of care.
- Populations are getting good quality services.

The above was theoretically understood by the workshop groups but providers felt the working reality was of price not being negotiated fairly and fees being systematically driven down. The two major blockers identified to fair price negotiations (at a strategic and operational level) were:

- distrust from commissioners about independent providers' financial motivations
- lack of financial freedom of commissioners to enter into price negotiations. The price set for social care provision is very often based on budget availability[5] instead of a calculation on the real cost of delivering a service.

Both of these issues can lead to a whole chain of further misunderstandings. For example, if the price paid genuinely does not take into account reasonable costs of provision it can have serious consequences for the quality of services. The increase in the frequency of 15-minute time slots being purchased may also be detrimental to the quality of care received. To survive, businesses may have to 'cut corners' by way of pay or training, which in turn affects the care industry's biggest problem of staff retention[6]. This can then reinforce commissioner views that providers are complicit in bad practice or in it 'just for the money' and not for the service user. Some providers suggested a role for care regulators in reviewing the impact of these issues on the quality of care.

4 | Knapp M Domiciliary Care Providers in the Independent Sector Department of Health Research Findings Register 2002

5 | Relentless Optimism: Creative Commissioning for Personalised Care Commission for Social Care Inspection 2006

6 | There was a view from some Welsh providers that there is the potential for more central support to the issues of workforce development and management.

BENEFITS OF, AND BARRIERS TO, CONSTRUCTIVE RELATIONSHIPS

Providers felt that commissioners did not always recognise the needs of their businesses. For example, in very rural areas where there may be one service user who needs care, it is simply not financially viable, at least on a long-term basis, for a smaller private firm to take on a care package. This can be perceived by commissioners as the private sector 'picking and choosing' its customers. Commissioners were seen as having no real understanding of the costs of running a business which had to be fit for purpose. Providers are governed by many central government 'must-dos', such as additional holiday requirements, and employer obligations such as keeping lone workers safe.

Providers thought this lack of understanding was not necessarily the commissioner's fault. Due to the structure of the local authority the commissioner could not engage as a buyer with their supplier as they would in a more pure market or business setting. Participants were very cynical about win-win negotiations, feeling that commissioners could not be true negotiators as they did not control budgets and had to jump through countless bureaucratic hoops to secure funding that may not even be there. However, despite provider recognition of the wider constraints on local authorities there was still significant frustration on behalf of providers towards such practices as late payment of invoices.

Workshop participants raised the concern that unfair cost setting could lead to struggling care home owners selling off their business altogether, especially with high land/property prices. Effectively this could lead to less provision in the market, endangering supply overall and reducing diversity, with larger commercial organisations buying up smaller businesses.

However commissioners can also feel, especially where there is a low volume, high-cost 'sellers' market' that providers are setting prices unjustifiably high, and they can be cynical of provider motivations at times. Examples were given of providers being proactive about letting commissioners know if a service user becomes less able, and asking for a higher price for their care, but not informing of a service user's improved abilities, when the cost should go down.

It was felt that meetings across the commissioning and procurement spectrum could easily slide into 'mud slinging' over cost because of the above issues. All parties theoretically wanted to move beyond this.

Independent providers felt that in-house services were in a privileged position. They saw them as not subject to price competition in the same way[7] and having the freedom to offer more favourable terms and conditions of employment, the result being that the independent sector is losing staff to the local authority.

It was also felt by independent providers that in-house services would always be financially bailed out and therefore could not go out of business, unlike those in the private sector. This was an essential imbalance of power and the independent providers felt they were always on the back foot.

Monitoring and review

Measures and monitoring should be clearly allied to commissioners' requirements of providers as set out in a contract. It should be clearly identified what is being measured and how this relates to expected outcomes, outputs or processes. Monitoring should also clearly identify whether these measures are being achieved. Contract monitoring should not duplicate information which the provider needs to supply to the regulator of registered provision. National discussions on this issue are in hand in England and would be welcomed by Welsh providers of regulated services. Where possible, commissioners should make use of data already collected, and be informed by the provider's own quality assurance systems.

Although there were examples of good practice, it was mentioned by both commissioners and providers that monitoring could be cumbersome, ad-hoc, inflexible and unnecessarily time consuming. It was estimated by one commissioner and agreed by others that 80 percent of their time is spent contract monitoring. Monitoring approaches were criticised as being ultimately ineffective due to the amount of information required and the lack of analysis of that information. It was felt that data collection was a 'stand alone' issue and did not relate to

7 | 2006/07 personal social services expenditure and Unit Costs indicate an England adjusted average unit cost in the independent sector at £12, an average unit cost in-house was £21 http://www.ic.nhs.uk This type of information is not systematically gathered and reported in Wales.

BENEFITS OF, AND BARRIERS TO, CONSTRUCTIVE RELATIONSHIPS

services in a meaningful way.

Some providers felt that monitoring intervention was conducted in such a way that they were made to feel as though they were untrustworthy, despite good performance in the past. However, it was recognised by all the key players that it was in everyone's interest to approach monitoring openly, honestly and developmentally, especially so with the move towards outcomes.

Again, monitoring requirements were made all the more irksome by what was perceived as in-house bias. It was expressed by independent providers that their in-house counterparts are not subject to 'over zealous' monitoring in the same way as they are.

CHECKLIST OF CONSTRUCTIVE BEHAVIOURS AT EACH STAGE OF THE COMMISSIONING AND PURCHASING FRAMEWORK

Engaging

The following are likely to further develop constructive relationships.

- Local joint protocols on good practice in relationships – agreements might include frequency of meetings, attendance, agendas, fee setting, timescales and processes.

- Clarity about levels of engagement, to avoid inappropriate expectations and frustration.
  - Communication: activities involved in providing information.
  - Consultation: activities involved in securing ideas, suggestions and feedback.
  - Negotiation: activities involved in securing agreement to commissioning decisions.
  - Participation: activities involved in working together to make commissioning decisions.

- Specific meetings between commissioners and providers for 'blue sky' thinking to avoid constant reversion to the nitty-gritty of contract and price.

- Provider forums actively engaging and informing smaller organisations of what is going on, eg publishing minutes of meetings.

- Providers developing within their own organisation, or sector, specific representatives to engage with commissioners at a strategic level.

- Specific commissioner representatives with the role of liaison with providers.

- Provider representation on local service boards in Wales and local strategic partnerships in England.

In considering provider forums, representation etc it is important to ensure that they operate within a framework of transparency and fairness.

GOOD PRACTICE: Turning Point has developed Connected Care, a model for service delivery that integrates health and social care services as well as providers and commissioners to provide more responsive services to local communities in the most deprived areas in England. Connected Care is currently being run in Bolton and Hartlepool.

The model provides capacity to local people and communities to have a direct say in what services should be provided in their areas. This is done via:

- A Connected Care audit shaped by community representatives alongside commissioners to establish if needs are being met locally. This information is used to inform a Connected Care service specification that reflects the outcomes to be achieved as defined by the local population.
- Maintenance of these links with commissioners to redesign and shape future provision around bespoke outcomes and work together to re-shape the market accordingly.

GOOD PRACTICE: Sefton Council include service users in their commissioner-provider meetings, and find that this focuses discussion effectively on outcomes.

GOOD PRACTICE: Surrey Care Association, a provider organisation, is funded by the county council but left to operate independently. This has helped providers move from purely transactional discussions to strategic engagement. A range of providers are represented, not just the bigger players.

CHECKLIST OF CONSTRUCTIVE BEHAVIOURS AT EACH STAGE OF THE COMMISSIONING AND PURCHASING FRAMEWORK

GOOD PRACTICE: Powys has an independent sector liaison officer. This post was created and funded by the local authority due to the need to improve partnerships with the independent and voluntary sector and create efficiencies based on effective relationships. It was also a direct response to the guidance set out in *Promoting Partnership and Care.*[8] The post works with independent and voluntary providers from residential and nursing care, domiciliary care and supported tenancies.

The officer is a named link for the independent sector from within the council and acts a bridgehead between the commissioning authority and providers through various activities.

- Liaison and support for independent and voluntary sector providers. This includes scheduled visits to providers to sort out any problems that may arise from social services, inspectors, or by invitation from providers themselves. This dialogue is designed to sort out any issues early in a collaborative way.
- Organising and facilitating four quarterly provider forums in the areas of domiciliary care, care homes and supported tenancies (learning disabilities). This information is fed back to the commissioning authority and informs their commissioning strategy.
- Regular attendance at meetings of, and liaison with, partnership/membership working groups, such as All Wales Brokerage Forum, contracts and commissioning officers groups, and feedback to providers and other appropriate stakeholders.
- Review, collection and dissemination of national news/information to providers and publication of a regular bulletin for providers.

Planning

The following are likely to further develop constructive relationships.

- Commissioning intentions that signal new market directions clearly, so that providers can see business opportunities, rather than this being lost in large strategies.

- Providers raising their own profile; being proactive in sharing business plans and discussing how to deliver with commissioners.

- Providers reassessing their own businesses – are we able to compete effectively in the new markets? If not, why, and how are we going to change systems so that we can?

- Commissioners undertaking further training to improve expertise in skills and knowledge around the different elements of their role, possibly through the National Occupational Standards in commissioning and procurement. Training could include the following areas:
  - understanding roles of commissioner, contractor and contract monitor
  - the expanding role and importance of commissioning
  - training in market intelligence, dialogue and shaping
  - basic to advanced business training and associated skills.

GOOD PRACTICE: The Social Workforce Partnership in Denbighshire is doing joint work in developing a skilled, motivated, and qualified workforce to meet the current and future demand challenges by stimulating workforce supply.

Their groups have representatives from the independent sector in domiciliary care, care homes, representatives from the children and young person's partnerships, local college providers, Voluntary Sector Council and service users.

8 | Promoting Partnership and Care: Commissioning across health and social services Welsh Assembly Government 2003

CHECKLIST OF CONSTRUCTIVE BEHAVIOURS AT EACH STAGE OF THE COMMISSIONING AND PURCHASING FRAMEWORK

The training sub-group is responsible for devising an annual business training plan and a five-year training and development plan across the social care sector in Denbighshire. The independent and voluntary sector is very active on the regional group, and takes the lead in promoting the sector in job fairs and linking in with health trade days.

The Social Care Workforce Partnership is currently involved in a number of projects to improve capacity within the sector:

- link in with schools and Career Wales to promote the social care sector as an attractive career option ie careers in social care taster days for local schools
- running a pilot with Conwy and Denbighshire NHS Trust to train six domiciliary workers to develop core essential skills to deliver both health and social care support tasks within the community.

The above projects were nominated for the Social Care Accolades awarded by the Care Council for Wales.

Doing

The following are likely to further develop constructive relationships.

Market facilitation

- Commissioners being mindful of their local market – while larger organisations offer economies of scale and market stability, diversity should be maintained.

- Commissioners giving support (such as how to tender) to small businesses/voluntary organisations once they have identified that such providers will be needed to deliver their strategic intentions, but outside any formal tender process.

- Commissioners discussing their intentions with providers from the focus of business opportunities. For example, rather than, “we won’t be buying residential care in the future”, the emphasis being “we will be looking for more extra care housing. This gives you a business opportunity to reconfigure your existing care homes.”

- Commissioners considering where and how they could provide incentives to shape the market (not just higher fees), for example, reduced monitoring to good providers, offering support in kind such as staff training.

Procurement

- Commissioners understanding the commercial drivers of suppliers.

- Testing out through discussion with providers how easy or difficult requirements are to deliver and whether there is an established market.

- Engaging early and widely with the supply side; giving providers an opportunity to shape requirements and scope.

- Working with the supply side on an equal basis; ensuring openness of access to staff and information, establishing good communications channels and keeping bidders informed.

CHECKLIST OF CONSTRUCTIVE BEHAVIOURS AT EACH STAGE OF THE COMMISSIONING AND PURCHASING FRAMEWORK

- Not leaving bidders in the competition if they are not capable of winning the contract.
- Being transparent about the procedures and top-level criteria for evaluation of bids.
- Offering good quality feedback – a provider may not meet the requirements this time but with help may be able to do so in the future.
- Being open to alternative means of achieving the same ends – particularly important when moving to an outcomes-based approach.
- Applying rigorous project management procedures to the procurement exercise, and making these visible to the supply side.
- A deliverable and 'stickable to' timetable for the tender process that suits both parties.
- Developmental approaches to risk, ie more risk with the commissioner initially, to launch providers in the direction of travel needed, then planned opportunities to reassess and realign risk as the service develops.
- Incentives to minimise or make risk more manageable for providers such as offering guaranteed volumes of work or time-limited premiums on the cost of care to offset additional costs.
- Testing for 'myths' – what is really binding through EU or national requirements, local procurement regulations and standing orders. What really 'can't be done' and what just hasn't been done before.

Contracting

- Jointly built specifications and contracts with stakeholders (population, service users and providers), shaping and identifying ways to meet outcomes.
- Fair and agreed mechanisms for setting and reviewing price – ie costing models, national salary and price indexes, the use of open book accounting – with clear agreement on contentious issues such as gross or net payment.
- Invoices paid on time.
- Differential payment for specialist care or specific services (operationally and strategically).
- Jointly identifying the most effective use of limited resources rather than just offering a restricted fee uplift.
- Contracts that reflect joint risk assessments and risk control measures.
- Contracts that give all parties a reasonable and equal opportunity to negotiate amendments, terminate, extend, or renew, if appropriate.
- Agreed contracts across commissioner boundaries to assist providers working with a number of authorities.
- Evidence-based fees and prices.
- Use of outcomes as the basis for contract negotiations.

GOOD PRACTICE: Housing 21 use open book accounting with all commissioners to demonstrate real costs. This allows for transparency in contract discussion and helps commissioners' longer term learning. They can then understand what the service really costs, and can see the impact of new requirements on providers, such as additional extra leave.

CHECKLIST OF CONSTRUCTIVE BEHAVIOURS AT EACH STAGE OF THE COMMISSIONING AND PURCHASING FRAMEWORK

Reviewing

The following are likely to further develop constructive relationships.

- Meetings set aside to discuss what is going well with the contract, not just meeting when there are problems.
- Clear communication mechanisms for early identification and addressing of problems.
- Joint development of agreed mechanisms for measuring contract outcomes.
- Monitoring systems and data requirements proportionate to, eg the level of risk, size of the contract and past performance.
- Making the best use of providers' own quality assurance systems and monitoring what matters – how far outcomes are being achieved.
- Agreed protocols on intervention with underperforming providers such as a corrective action plan; working together to improve performance.
- Clarity in contracts about any situations in which the commissioner would have power to employ sanctions such as withholding payment.

GOOD PRACTICE: Liaison officers – Denbighshire introduced care brokers into domiciliary services. This has greatly improved communication between the department and independent sector providers who have one point of contact in order to discuss and iron out any service issues.

Overall behaviours and attitudes

Constructive relationships can be promoted by these processes and actions on the part of commissioners and providers. However, these activities will not of themselves solve the difficulties. There are some generic behaviours, attitudes and ways of working that need to underpin them. A genuine commitment, by all stakeholders, has to be made towards positive and mature behaviours[9], such as the following.

- Openness – dealing with differences and difficulties in a non-defensive or non-adversarial way.
- Ongoing self-reflection and assessment.
- Confidence in one's own skills and organisation to contribute to solutions.
- Knowledge of appropriate boundaries (ie confidentiality issues and discretion) yet also knowledge of where and how you can be flexible.
- Desire and commitment to seek realistic alternatives and sustainable solutions.
- Shared ownership of outcomes.
- Willingness to invest time and effort.
- Willingness to invest emotional and creative energy.
- Willingness to be proactive.
- Acceptance that individually we are all responsible for change management.

9 | A Catalyst for Change II: Tackling the long ascent of improving commissioning Care Services Improvement Partnership 2009