

Practical Challenges in Commissioning: A Children's Provider Perspective

1 Introduction

The Government¹ is clear that effective commissioning arrangements are needed within Children's Trusts. For this to be achieved, markets and services need to be developed to meet the needs of children, and services procured in such a way as to be both efficient and effective in the long term.

However recent experience of the Institute of Public Care (IPC) suggests some emerging commissioning and procurement arrangements, particularly in the area of family support services, appear to be having unintended negative consequences for voluntary sector providers, and ultimately for the services commissioned.

In 2007 IPC, in a publication for the Care Services Improvement Partnership (CSIP)², identified characteristics of effective partnerships between commissioners and voluntary sector providers.

These characteristics were used as the basis of an exercise to explore whether these characteristics were displayed in practice when in 2009 IPC reviewed the experience of a medium-sized voluntary organisation in competing for and delivering four successful tenders to provide family support services for different local authorities. To do this the tender and contract documentation was reviewed and the staff involved with bidding for the project, setting it up and running it were interviewed. Although a relatively short exercise, we think the review and the observations of the interviewees gives some insights into the reality of commissioning and contracting in children's services at the current time, and suggests how further improvements can be made.

2 Bidding for the contract

2.1 To bid or not to bid

Once a tender has been identified by the provider³, it will be examined to judge whether it is appropriate, and what sort of service can be offered. There is of course more to consider than the provider assessing their capacity to write the bid, their experience in delivering in that field and likelihood of winning the bid.

¹ Every Child Matters – Change for Children programme (DfES 2004), Joint Planning and Commissioning Framework (DfES 2006), The Building Brighter Futures Programme (DCSF 2007), Child Health Strategy (DH 2009). Significant investment is being made by the DCSF in improving and developing commissioning in Children's Trusts through the Commissioning Support Programme.

² Institute of Public Care (2007), *Care Services Improvement Partnership: Managing relationships between commissioners and the voluntary and community sectors*

³ There can be issues about how, where and when the contract is advertised that will determine if providers get to hear in time that the service is being tendered.

The monetary value of the contract is clearly an important factor when deciding whether to progress a bid⁴, but so too are the length of the contract and the deliverability of the service. The provider in the examples considered by IPC suggested that the costs of bidding for contracts are often not felt to be proportional to the monetary value of the contract: *"the form for project A, which was £130k was more complicated than the form for project B for £1M... once you're above the threshold there's no proportionality...quite often we will take that into account when we're choosing whether to put the effort in"*.

Different local authorities use different Pre-Qualification Questionnaires, and have different ideas what they want from a service. Every tender can therefore require a service to be designed from scratch if it is to be fit for purpose: *"it doesn't help you to have bid for something similar elsewhere because the questions are asked differently, even the core documentation is required differently"*.

The CSIP publication identified the need for *"Proportionality: There should be a direct correlation between the size of the contract being tendered for and the amount of work/time required to submit a bid"*⁵. Experience from this review indicates that more can be done by commissioners to consider this factor further.

2.2 Length of contract

The length of the contract and the impact that has on its effectiveness is a common recurring theme from providers. Few contract lengths are beyond three years, with some initially being only for a year. Providers were baffled as to why a Council would want to formally tender a service for only a year: *"It costs something like £125k to set up a project in Council C for less than a year contract to deal with the most difficult young people, it's a family intervention project. And it's very unrealistic. There's no way we can do it to go to Council and start in [1-2 months time] with that amount of money new to it... they're not even sure if they'll run it after March.."*

Treasury guidance dating back to 2006 on funding relationships with the third sector highlights four key concerns including the need for *"Stability in the funding relationship: moving from one year funding to longer-term funding arrangements where appropriate"*⁶ and states that:

- *"The length of funding should be tied to the length of the objective. There should be no standard length of contract."*
- *"Value for money must be the overriding principle that dictates whether or not a longer term funding arrangement is appropriate."*
- *"Longer term planning and funding arrangements can often represent better value for money than one year funding agreements."*⁷

⁴ Both unsuccessful and successful public sector bids cost providers money, but these costs are borne only by providers. This is hardly unusual, but nonetheless forces providers to become much targeted in what they will and will not bid for.

⁵ Institute of Public Care (2007), *Care Services Improvement Partnership: Managing relationships between commissioners and the voluntary and community sectors*

⁶ HM Treasury (2006), *Improving financial relationships with the third sector: Guidance to funders and purchasers* available at <http://www.hm-treasury.gov.uk/d/guidncefund1505061v1.pdf>

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The CSIP publication also observed the importance of *"Realistic contract length: The contract must be of sufficient length to make it worth tendering for. VCS organisations have limited time, money and resources to commit to the application process, so unless a contract is of a significant length, it may not be worth them diverting valuable resources from their day-to-day activity of actual service delivery"*⁸.

2.3 Underestimating set up and close down

The length of time in which the local authority thinks the service can be started up can be unrealistic: *"the invitation to tender documents usually specify a start date which is very unrealistic. Often that start date is set at a point when it's not possible for you to have signed the contract"*. Start up can be expected within a month of the tender being awarded, whilst providers find that in practice it can take 4-6 months. This can result in a 3 year contract to deliver a service, potentially only delivering the service for 2 and half years from outset because of the time taken for start up.

This was recognised in the CSIP publication advocating *"Longer lead-in times: It takes time to formulate good contract bids and to prepare for delivery when a contract has been won"*⁹.

Capacity to deliver can be curtailed at the end of the contract as well. As the contract nears the end it can be late before the provider finds out if the contract has been extended. In the meantime staff will have been given notice of redundancy and will be actively seeking new positions. Recruitment to replace staff that leave becomes harder as new employment contracts reflect the diminishing time remaining on the contract: *"in the last nine months of the last year there's no way of recruiting for anyone if people leave"*. Therefore the capacity of the organisation to deliver to capacity near the end of the contract decreases. As one member of staff observed:

"They're very late in re-tendering. They leave it 'til the last minute. 3/4 months before the contract's up it's almost a blight. You don't know whether they're going to re-commission you or not. You have to do all sorts of things in order to give people notice of redundancy and so on, massive HR costs and the whole process you have to go through – and the number of times we've done that and then they come back to us at some late stage and say 'oh by the way we do want you to continue'. Staff find that very difficult to deal with. Very stressful in having all their interviews to be made redundant and at the last minute they're not."

In a three year contract, a worst case scenario could mean that only 18 months of that time is spent delivering the service at an optimal level. When so much of the contract time is taken up with start up and wind down, questions must be asked about the impact the service can make in such a short time period. This is a consideration for providers when deciding to bid for a contract, whether they can realistically make a difference in the time allowed. This arises not only from

⁸ Institute of Public Care (2007), *Care Services Improvement Partnership: Managing relationships between commissioners and the voluntary and community sectors*

⁹ Institute of Public Care (2007), *Care Services Improvement Partnership: Managing relationships between commissioners and the voluntary and community sectors*

a recognition that if a contract is felt to be undeliverable they may suffer negative reputational impact, but from a sense that if they are to take public money for delivering a service they want to be sure that they are actually able to deliver that service properly: *"there are a number of tenders where we decide that the job can not be done for the value to the quality that [we] would consider acceptable"*.

From a commissioning point of view, it is vital that in order to get maximum value from the contract that realistic timescales are set that suit both sides and that both sides are able to work to.

2.4 Accurate evidence base

The evidence base for the service produced through the commissioning process will be important not only in shaping the service to be tendered, but in monitoring how the service is progressing. An inaccurate evidence base can skew how the service is set up, not helping those that need help in the most efficient or effective manner, or even wasting public money by lowering the level of service entry to ensure service take-up.

For example, work for one council specified that 100¹⁰ families should be dealt with each year. At the bidding stage the provider had worked out that 100 families meeting the criteria did not actually exist in the borough, and that in fact the contract would have been undeliverable in terms of costs if they had existed. The local authority's poor needs analysis had perversely enabled the contract to be viable in the eyes of the provider. However, once the contract is up and running, there is pressure to ensure that a contract that specified 100 families a year, actually handles 100 families a year – even though in some ways the project is now doing a different type of work from that tendered for, with a different group of families.

If a provider thinks at the tender stage that the evidence base is not accurate they are faced with a dilemma. Should they avoid the contract entirely, bid for it pointing out that they think the commissioner has got it wrong, or bid for it hoping that they will be able to constructively work with the commissioner once appointed to establish a truer base possibly leading to different services?

"The big ones that we will be up against, they've got their own bid writing teams and they would all play a game and go in and say 'we can do that, it won't be a problem' Basically sell, sell, sell and then when you get there you work it out. In a way we're part of the problem because we're raising the expectations, we buy into it, rather than challenging it... but it's part of that strategy because if you keep not getting tenders because you're being honest, it takes a lot of effort and you're not going to win any. So it's Catch 22 basically."

"Once you are through the door you have more power to negotiate. What shouldn't happen is that you're setting yourself up to fail."

¹⁰ Numbers have been changed

2.5 Unrealistic costings

Some commissioners are perceived to lack understanding of the full cost of running a business. A commissioner may take into account salary costs, building and premises overheads for a service but perhaps will not have factored in the cost of electricity and insurance. For the provider we spoke to, their tender's responses typically hit the maximum guidelines for cost for the bid because the local authority has not included all costs. Whilst no provider wants to predict in their costings that their staff will get sick, it is highly probable that they will and that cover will need to be arranged at additional cost.

Full cost recovery, whilst remaining an aim, is rarely if ever achieved. When the maximum value placed on the contract by the local authority falls short of what the true cost would be, providers need to balance the need to achieve Full Cost Recovery, against the benefits of winning the contract.

Cash-strapped local authorities understandably can be reluctant to pay Full Cost Recovery – and just pay for the 'service' that they are commissioning. This was seen by interviewees as a false economy. Increasingly providers are finding it harder to pay for their management and core infrastructure costs through contracts as a result and are effectively subsidising the contract: *"you need to always be prepared to put some money on the table because that's the way it's going now. You need to subsidise it"*. Providers' core financial sustainability is suffering, leaving them in a precarious situation where they may have to cut personnel and be unable to bid for future projects.

3 Delivering the Contract

3.1 Contracting for outcomes

Commissioning is still a new skill for many local authorities. Outcomes-based contracting is one of the newest elements on the commissioning process, and experience in this review has shown that understanding can vary significantly between local authorities.

A PWC report for the DfES noted in 2006 that in parenting and family support services *"there are significant challenges associated with appropriately and adequately defining what high quality outcomes should 'look like'"*¹¹, a finding later echoed by Clem Henricson in her research¹².

A problem shared by local authorities and the voluntary sector is that of how to define and measure outcomes, particularly in a meaningful way, over the lifetime of a project. It is easy for outcomes to get pushed aside in favour of easier to measure outputs in the quest to monitor if the service is delivering: *"Most local authorities ... want to press their buttons in terms of outputs mainly. Outcomes is a secondary process. But mainly they are concentrating on the outputs. They are clearly trying to hit their targets, that's what their councillors are going to get hold of and hold [them] responsible for."*

¹¹ PricewaterhouseCoopers (2006), *DfES Children's Services: The Market for Parental & Family Support Services*. DfES.

¹² Henricson, Clem, (2007), *The Contractual Culture and Family Services*. Family & Parenting Institute.

Understanding of outcomes is varied, and it requires careful planning to shape a commissioned service around outcomes, rather than familiar outputs: *"I think Council D and Council E may be a bit special and sophisticated in their thinking. They see themselves as very outcome focussed and forward looking in their commissioning, and I think we probably shouldn't generalise about local authorities because their behaviour does seem quite different in different places"*.

Once outcomes for a contract have been agreed, there can be a tension between contract length and the time that it can take to achieve the outcome. Outcomes can be designed to 'deliver' in a time frame in keeping with the commissioners agenda, but expectations from commissioners needed to be realistic.

Some outcomes can be so broad that their achievement can only be partially contributed to by the provider – such as meeting one of the five Every Child Matters outcomes. Whilst this can enable the local authority and provider to see how they could contribute to the local authority's strategic outcomes, and establishing a joined-up approach, the danger of being judged on an outcome largely beyond their control can be felt to be unfair by the provider.

Neither does what is being measured always correlate with the good outcomes that are being delivered. Outcomes-based contracting can be very person-focussed and consequently an individual's outcomes, or in an innovative environment the schemes outcomes, can shift. There is not always sufficient flexibility to enable the monitoring of outcomes to be adapted to fit what staff are actually doing and other worthwhile outcomes that are being achieved. While it is important to reassure the funder that the service is delivering against the identified need it is also valuable, and potentially cost-effective, to ensure there is flexibility for other emerging outcomes to be recorded.

Recent DCSF guidance is very clear that commissioning is about the delivery of outcomes not outputs and advises that *"when procuring outcomes, the outcomes identified will need to be measurable and achievable, and attributable to the contract in hand"*¹³.

While the aspiration to measure outcomes is valuable, and shared by providers and commissioners, the question of actual measurement of achievement of outcomes is much more challenging. The cost of measuring some outcomes convincingly would be considerable and this needs to be taken into account.

4 Innovation

There is a common presumption that the third sector is better placed to innovate to find better methods and solutions¹⁴. However they are only better placed if they are enabled to be so. If the service specification contains no desire for innovation, if providers have not managed to work innovation in at the bid writing stage, if the funding is so tight it is a struggle to deliver the service to the

¹³ DCSF (2009) *Commercial Guidance for Commissioners*.

¹⁴ For example, 'OGC/Home Office (2004) Think Smart...Think Voluntary Sector!' asserts that it is generally accepted that *"The VCS is well placed to offer fresh and innovative solutions. They may be less risk averse and have a stronger motivation, through their charitable aims and objectives, to identify better ways of doing things"*.

specification, then the opportunity for it to happen during the project can be slim: *"there's no room for innovation, there's no funding for innovation, there's no requirement for it"*.

The established good practice now being requested by local authorities was new and innovative itself once. Innovation needs the opportunity to happen and there is a feeling in the sector that it is getting harder to innovate with local authority money: *"most of the innovative projects we acquire or deliver are mostly funded by ourselves, or trust funded or government funded"*. The appetite for risk within local authorities is variable and often low, and a reliance on tried and tested practices is felt to be necessary. Recent guidance from the DCSF recommends as a key principle of procurement that commissioners should *"Work with providers to innovate: Avoid stifling innovative ideas during the contracting process"*¹⁵. This would appear to be timely advice.

5 Monitoring

Local authorities need to be able to satisfy themselves and their stakeholders that public money is being spent in a transparent and efficient fashion on the services that are most needed. Providers need to be aware of these pressures on the local authority, but also need the space and confidence from the local authority to be able to deliver the service in a way that secures the best outcomes for the clients.

Monitoring is seen as being much more rigorous than in the past when one *"used to waft about doing good"*, and this is largely welcomed. There is recognition that it can bring value and can help change when applied well.

The level of monitoring that the local authority undertakes varies tremendously. The costs to providers of producing the information required by the local authority can be substantial and often not factored by the local authority into the costs of delivering the service. The information collected is not always useful in informing improvement of the service and is seen to draw resources away from service delivery: *"they wanted every travelcard, every petty cash payment to be copied to them"*.

If the level of monitoring appears at times to exceed that of what would be expected if the service was delivered internally by the local authority, questions should be asked about how cost-effective the commissioned service is going to be allowed to be: *"if you're just being an arm of the council and they monitor and control you to such an extent it is hard to see what we're bringing in"*.

There is a danger that services are designed to manage risk to the authority first and foremost. This can manifest itself most noticeably in the monitoring of services. Providers consider that where they are contracted to deliver a service to certain outcomes, they should be measured on the outcomes they achieve and not scrutinised on a daily basis about whether they have filled all their forms in.

Some local authorities have found it difficult to let go of control of the service and the monitoring has morphed into micro-management. Constructive interest

¹⁵ DCSF (2009) *Commercial Guidance for Commissioners*.

from the local authority can be valuable for both sides, and providers can welcome interest and engagement from the local authority.

The CSIP publication recommended that "*Monitoring should increasingly focus on outcomes, be proportionate and not burdensome. Both service users and the VCS will benefit from a focus on outcomes, rather than spending time on unnecessary reporting. Good management information will allow the VCS provider to respond to changes or problems and build a trusting relationship with the commissioner*"¹⁶.

6 Conclusions

This short review of the experience of only four family support contracts between local authorities and voluntary sector providers is not intended to offer a comprehensive overview of the relationship between commissioners and providers in children's services. What it does do, however, is draw on the views of a small number of people working in this field to suggest some areas where further work might be needed by both commissioners and providers to ensure that commissioning and procurement activities do help to secure the better outcomes that we all want to see for children and young people. When relationships work at their best, it is often because each partner has a respect and understanding for the other person. The same is true for commissioning and contracting. Both commissioners and providers want to deliver a service that benefits the children and their families in the most effective, cost-efficient way. With a greater appreciation of the barriers that can exist to prevent that happening, perhaps contracts and services can be designed to maximise the chances of success, and we hope that this short paper suggests some of the areas where it would be useful for both sides to pay particular attention.

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¹⁶ Institute of Public Care (2007), *Care Services Improvement Partnership: Managing relationships between commissioners and the voluntary and community sectors*