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Welsh Government

Promoting Good Provider Forums

Report

July 2011

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Report

1 Introduction

This paper has been produced for Steve Vaughan in the Welsh Government by the Institute of Public Care (IPC) at Oxford Brookes University to assist national conversations taking place around promoting good social care Provider Forums.

The paper draws upon a workshop held with the Fulfilled Lives, Supportive Communities Provider Forum and representatives of the Commissioning Executive on 6th July 2011, and on previous IPC work on promoting constructive commissioner-provider relationships in Wales¹.

2 Policy context

The value of constructive commissioner-provider relationships for effective commissioning has been extolled for a number of years. Promoting Partnership in Care² made explicit the need for commissioners to work with providers to achieve early, on-going involvement between the independent sector, health and social care providers in the planning, delivery, monitoring and review of local services.

Since then, Design for Life (2005) and A Strategy for Social Services in Wales (2007) have moved the agenda forward with explicit and implicit expectations that mature relationships with providers and purchasers are key to successful commissioning:

*"Most social care is provided by the private sector. Their contribution is central to driving up standards and they must be key partners in achieving our agenda for change."*³

In 2009 a Memorandum of Understanding was drawn up between WLGA, ADSS CYMRU, Care Forum Wales, The Registered Nursing Home Association and the UK Home Care Association, addressing certain challenges facing the health and social care sector over the next decade. It states that:

"The Parties to this Memorandum will encourage the establishment of local independent sector forums to facilitate the effective planning and delivery of services".

¹ Institute of Public Care (2008) Promoting Constructive Commissioner- Provider Relationships. Commissioned by Care Services Improvement Partnerships/ Welsh Assembly Government.

² Welsh Assembly Government (2003) Promoting Partnership in Care

³ Welsh Assembly Government (2007). *A Strategy for Social Services in Wales over the next Decade: Fulfilled Lives, Supportive Communities.*

Furthermore, it presents the range of areas where joint working can add value:

"The local meetings will focus on the parties contributing to shared understanding of needs and preferences of citizens who may require social care and how they are changing and will change."

"Care providers should be encouraged and enabled to make a significant contribution to the development of commissioning strategies...the "intelligence" which providers can bring about needs, preferences, methods, efficiencies, viability and sustainability is of great value".

The Fulfilled Lives, Supportive Communities Commissioning Framework and Guidance similarly has as a cornerstone the need to involve all stakeholders, including and explicitly, providers in the commissioning process. It recommends that local authorities should:

"Build a positive and trusting working relationship with and between providers across the social care system"⁴.

The importance of commissioners constructively working with providers is emphasised as prerequisite for ensuring the best outcomes for service users.

'Sustainable Social Services'⁵ places a strong expectation of partnership working at the door of commissioners and providers:

"Social Care must be delivered within a public service ethos and we will expect those who wish to be service providers to embrace this value base. All providers must have a place at the partnership table and we will ensure that the independent sector is able to play its full part. In return, we will assess the quality of all services against the principles of this paper."⁶

Commissioning and procurement activities are summarised in the Commissioning Framework by the diagram on the following page⁷. Commissioning is placed within a 4 stage cycle (analyse, plan, secure services and review) and underpinned by six key principles. Included within these is that:

"There is an on-going dialogue with service users/carers, case/care managers, providers and the third sector."⁸

The Framework notes that Provider Forums are key to achieving this "on-going dialogue" with Providers:

⁴ Welsh Assembly Government (2010) Fulfilled Lives, Supporting Communities: Commissioning Framework Guidance and Good Practice.

⁵ Welsh Assembly Government (2011) Sustainable Social Services for Wales: A Framework for Action

⁶ Welsh Assembly Government (2011) Sustainable Social Services for Wales: A Framework for Action.

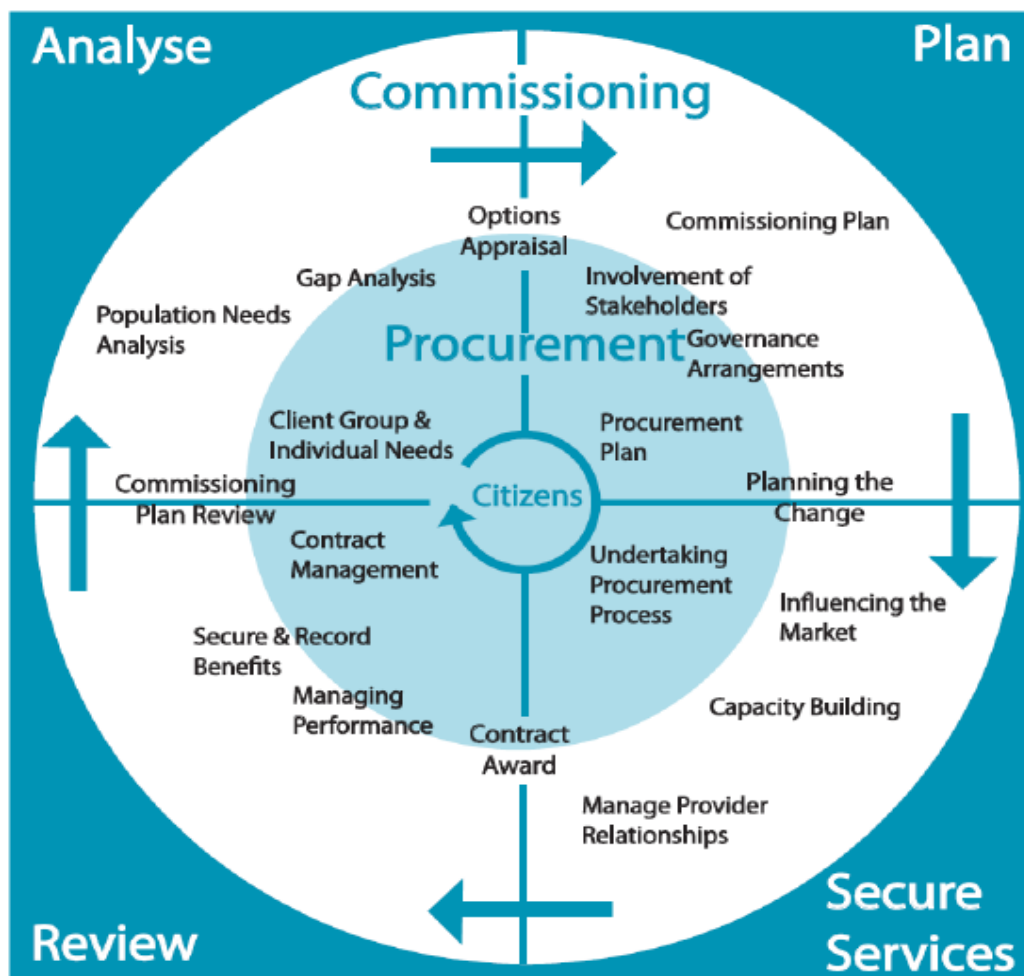
⁷ Taken from Welsh Assembly Government (2010) Fulfilled Lives, Supporting Communities: Commissioning Framework Guidance and Good Practice.

⁸ Welsh Assembly Government (2010) Fulfilled Lives, Supporting Communities: Commissioning Framework Guidance and Good Practice.

“Providers are encouraged to participate in planning through the appropriate independent sector forums established with the local authority and examine opportunities for developing and improving services together with working with commissioners to make better use of resources. They should provide services that deliver stated desired outcomes for service users.”

It also warns that:

“Lack of engagement of a significant number of service providers through representative bodies or other networks will hinder the implementation of change.”



The following sections of this paper look at the considerations that commissioners and providers face when setting up a Provider Forum and developing that Forum into one that can be considered to be 'good'. The terms of reference for a Provider Forum that need to be considered, the different levels of engagement within the Forum, the potential work programme, and common issues faced by Forums are all explored.

3 Terms of Reference for a Forum

The terms of reference for a Forum are important to allow clarity for providers, commissioners and other partners as to the remit and working arrangements of the Forum.

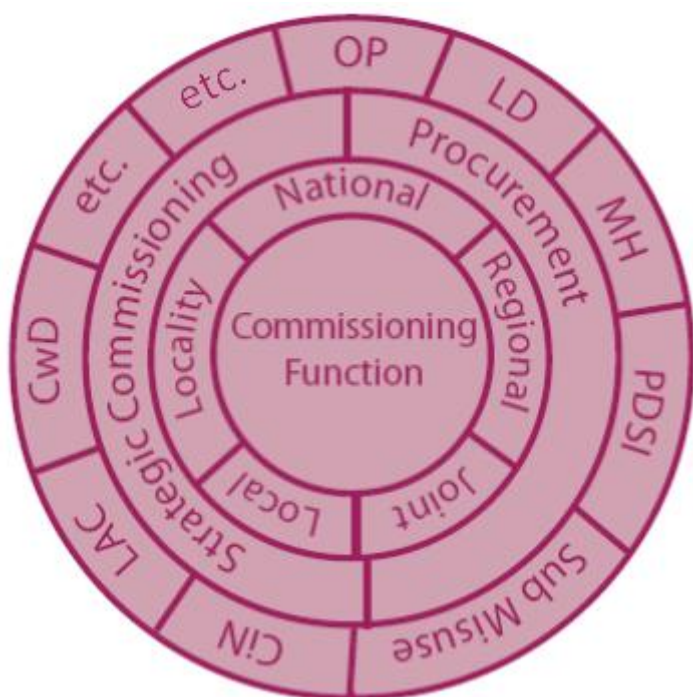
Section 4 outlines 4 levels of engagement, Communication, Consultation, Negotiation, Co-Production, and these can be applied to the construction of terms of reference for the Forum.

Ideally, the terms of reference should be developed by commissioners and providers together. Whilst Forums can be wholly independent of the council, and providers can set up the Forum themselves, a crucial aspect of the work of the Forum is likely to be around the interface between providers and commissioners. Experience suggests that Forums need to be designed to work effectively for all concerned so that both providers and commissioners are able to draw the maximum benefit from the Forum and its work.

Key considerations and options for the terms of reference include:

Scope. There needs to be clarity about exactly who the Forum is for. For example, should those providing advocacy services have a different Forum to

those supporting carers or people with mental health issues? In large geographical areas should they be broken down into smaller areas as long travel time's impact on smaller voluntary sector organisations? Should there be different Forums for the voluntary and community sector to independent organisations?



The model⁹ to the left summarises the different permutations for commissioning functions within Wales, split by population catered for, activity and scope of activity. A similar approach can be used for Forums.

The focus of the Forum may be steered in part by the size, remit and spread of providers serving the area. For example, if the majority of providers providing a certain service work across several local authority boundaries, then it could be worthwhile exploring having a Provider Forum that spans more than one local authority. Similarly if there are many small providers working at sub-local authority level then consideration may be given to Forum that operate at that level.

⁹ Institute of Public Care (2011) Developing Citizen Centred Commissioning Functions.

Membership. Who should attend the Forum? Should it be Chief Executive of the provider organisation, a member of the management team, or another member of the organisation. How important is it that the same person attends each time? Should all providers that fit into the scope and focus of the Forum be able to attend, or should some providers represent others? Whose responsibility is it to ensure that any representation is adequately taking place? Should membership be time limited or refreshed after an agreed period? Could ad hoc “task and finish” groups also be established?

Inclusiveness. A key issue for Forums is often achieving a reasonable consistent attendance which is representative of the provider sector covered. A good Forum will always be concerned to ensure BME and other marginalised hard to reach groups are involved. For a small provider, the investment in time and activity in attending Forum meetings is likely to be significant and the Forum needs to ensure that their core business is not disproportionately disadvantaged. Clear timings, travel costs and the provision of specialist support such as Braille documents are important. Consideration may also be given to an attendance allowance depending on the work programme of the Forum, and this would normally be funded by the local authority or LHB. In sparsely populated areas there may be a role for virtual Forums.

Organisation. Consideration needs to be given about who will chair the Forum. This could be a provider or the council, a permanent chair or a rotating chair. Who will take the any minutes, handle administration and provide the venue? This is often the council, as they have traditionally have had more capacity to take on this responsibility.

Work streams. Who will set the agenda for the meetings? Will it be a joint effort between providers and the local authority? While clearly one of the functions is to provide a vehicle for delivery of information from the council, it is much more useful for all concerned if the information and debate flows in both directions. If Forums are to avoid the accusation of being ‘talking shops with a few biscuits thrown in’, then they need to move away from having an ‘agenda’ towards a shared work programme with clear objectives with the local authority. This will be covered in more detail in the next section.

Role of infrastructure

organisations. Should infrastructure organisations, such as Voluntary Action Councils, be part of Provider Forums and/or is their activity influenced by the work programme of the Forum? For example, if providers identify a training or support need in that area, will infrastructure organisations be expected to source or organise training?

For example...

In Devon a County Strategic Provider Group meets quarterly in line with the Local Authority and NHS performance monitoring cycle and financial year. There are also 5 standing sub-groups, which are focused around the 5 key themes in the new Business Plan. Each group has a Lead Officer and Provider Co-Chair.

Each sub group, under the co-ordination of the lead officer, is responsible for producing a specific brief for the group, defining the scope and key activities. The group identifies it’s outcomes to evidence its effectiveness in achieving its brief. The sub groups report to the County Group and informs the locality meetings on the basis of these outcomes.

Whilst infrastructure organisations clearly need to be involved in Forums there is also a potential for conflict of interest if they hold full membership on the Forum as potential deliverers of support to the providers themselves. The nature of the relationship between the Forum and the infrastructure bodies needs to be clearly defined within the Terms of Reference.

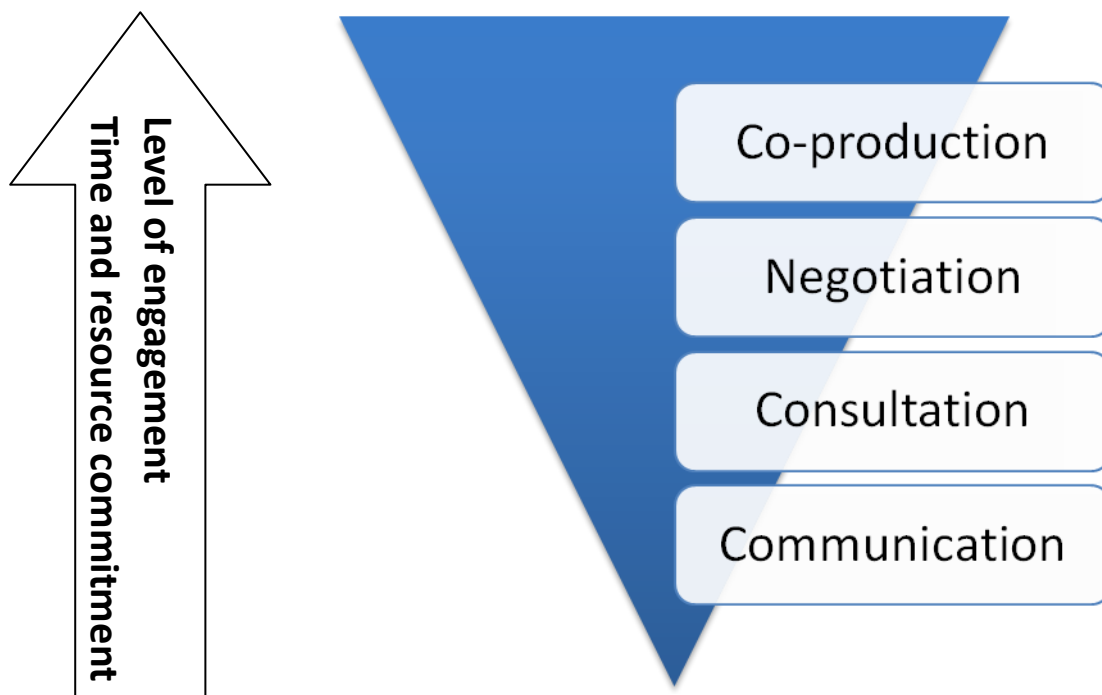
Impact and effectiveness. How will the Forum know if it is achieving the objectives and work programme that it set out to achieve? If the Forum expects its members to commit the time and energy to engage with the Forum then, in challenging financial times, members will need to demonstrate the value of their time invested and collective efforts to their organisations, service users and sector.

Culture. How the Forum is run can be more important than who leads it. A good Forum will employ a range of methods to engage with members, will be participatory, and feel equal and democratic. There will need to be space for differing levels of engagement, and clear expectations of behaviour agreed. A desirable culture may include holding values such as honesty, trust and confidentiality.

4 Levels of engagement

The extent to which the council and commissioners engage with the Provider Forum will be fundamental to the success of the Forum for not just those directly involved, but ultimately in improving outcomes for service users.

The model below shows four levels of engagement.



Co-production. Starting at the top of the triangle, is the level that requires the most effort and represents the highest level of engagement, co-production¹⁰. For some areas of work, commissioners or other council staff may best achieve outcomes by sharing the task with the Forum, and working together to produce a joint product.

Negotiation. The next level is negotiation where the council and Forum will secure agreement on an issue. Although they may not have co-produced the product or offer, there is effort and desire on both sides to reach a point where both can agree accepting that compromises may need to be jointly made to achieve this.

Consultation. Consultation is where the council gives information, but also seeks feedback on it. The feedback may, or may not influence what is decided by the council, but the provider has a dedicated opportunity to influence the outcome.

Communication. Requiring the least effort and representing the lowest level of engagement is communication. This is still a valid role for a Forum and for some work streams, it will be appropriate for the level of engagement to be at that of simply 'communication'. Provision of information is still one of the roles of a Forum.

Depending on the terms of reference of the Forum, different areas of the work programme will need different levels of engagement for the Forum to be successful. It is important to note that the higher level of engagement, the greater the trust necessary between partners. Trust and a good working relationship takes time to establish and mature and cannot be achieved overnight. Whilst a Provider Forum may explicitly aspire towards a high level of engagement, there needs to be recognition from all involved that it will take time and planning to achieve.

Kanter¹¹ talks about viewing 'growing' relationships between agencies using personal relationships as an analogy. The partnerships start off from an informal 'loose' approach which becomes more formalised and cohesive as it matures. The table below outlines the five key stages.

Stage 1: Early days	
Partners meet, are attracted and discover some compatibility	<i>"Should we meet again?"</i>
Stage 2: Going steady	
Partners begin to think about the future and start drawing up plans	<i>"Let's do this regularly – set up a Provider Forum?"</i>
Stage 3: Becoming real partners	
Like couples setting up a household, agencies discover they have different ideas about how	<i>"Hmmm....my agenda is a little different here."</i>

¹⁰ For more about co-production see Institute of Public Care (2011) Co-Production: A way forward for citizen-centred commissioning in Wales.

¹¹ Rosabeth Moss Kanter (1994) Collaborative Advantage in Harvard Business Review July-August 1994.

things should be done

Stage 4: Settling down

Partners develop mechanisms for bridging differences and develop techniques for getting along

"I hear what you're saying...could we try to do it this way?"

Stage 5: Growing old together

Each agency discovers it has changed internally as a result of accommodating the ongoing partnership

"I've started to finish your sentences! In a good way. (Most of the time)"

For example...

Providers in Torfaen and Newport worked with commissioners initially to resolve issues regarding fee levels. Providers were elected as representatives to work closely with commissioners from Torfaen and Newport councils and negotiate issues concerning costs. In the beginning the relationship between providers and commissioners was difficult however, by the end of the negotiation providers were pleased to be part of the process and enjoyed the honest and trustworthy discussions with commissioners. Following on from this a Provider Forum has continued working on a number of work streams which bring in other people as necessary. The work stream areas include: calculations for future uplifts; efficiency savings; nutrition in care homes; and nationally accredited training.

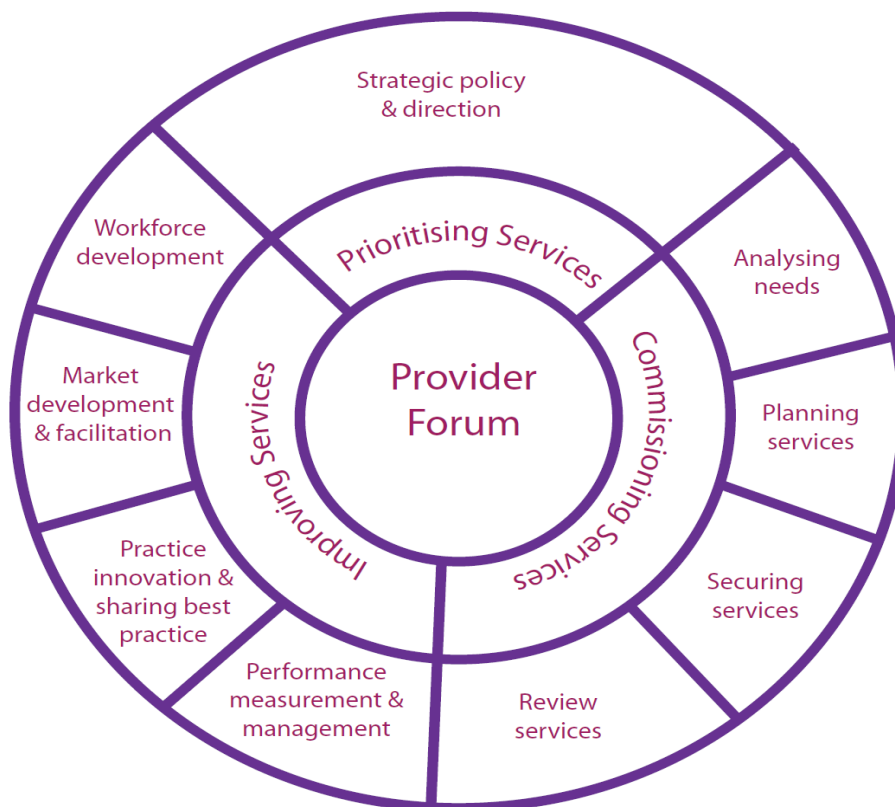
5 Work streams

There can be considered to be three main streams of work with which a Provider Forum may be engaged. It is important to note, that depending on the focus of the Forum, the Forum may choose not to, or may not need to engage with all these work streams.

Firstly providers need to understand, at the least, the council's priorities for services in the future. Secondly, they can be involved in the commissioning process (as appropriate) and add value to this. Thirdly, they can collectively look at improving social care services and how that can best be achieved.

The following model shows these three work streams and examples for each of the outer circle.

Possible Provider Forum Work Streams



The nine areas in the outer circle are explored in further detail below.

5.1 Strategic policy and direction

Provider Forums can be a vessel in which to develop, test and communicate strategic policy and direction, whether it be at a local authority, local health board or Welsh Government level. The ability to co-produce policy is limited because of the democratic structure of commissioning bodies, however the opportunity for those bodies to understand how proposed policy may impact on providers (and service users) is an important stage of testing and adapting policy.

Similarly Forums can act as a dissemination mechanism for new policy and direction,

For example...

The Supporting People Provider Forum works with local authorities within the Supporting People programme to ensure that both at a regional and national level that providers and service users are represented and have a voice.

New structures are being developed that include collaborative committees at a regional level that will oversee the commissioning function. These collaborative committees will have provider representation and will be supported by local authority staff.

A national board chaired by the Minister will link the programme into other policy areas such as health, social care etc at the national level and provide service users and providers with the confidence that they have somewhere for redress should the collaborative committees fail to deliver.

discussing implications, gaining collective understanding and perspective and sharing this with the wider group of colleagues and providers whom they represent.

5.2 Analysing needs

The range of ways that providers can engage with the commissioning process have been well documented but it is worth acknowledging the insight, perspective and rigour that provider engagement can bring.

Standard 2 of the Fulfilled Lives Supportive Communities (FLSC) Commissioning Framework states that *“Representatives of service providers need to be engaged at each stage of the analysis process as they can make valuable contributions towards identifying changes in need and with regard to the existing capacity to deliver services and options for future developments.”*

Specific contributions that Provider Forums can make include:

- Contribute to needs analysis with local and specific professional knowledge about service user needs.
- Carry out research.
- Provide opportunities for collective consultation with service users, families and carers.
- Provide case studies and (anonymised) personal histories.
- Provide information about the effectiveness, cost quality and use of existing services.
- Provide advice about models of best practice and potential innovation.

For example...

Southend’s Supporting People Provider Forum aims to: *“inform specific areas of the Supporting People strategy, relating to the needs of the different client groups in the Borough, including supply mapping information, gaps in provision and unmet need for Housing related support, to directly inform the Supporting People Strategy”.*

Analysing needs is one potential work programme area well suited to co-production, given the wealth of understanding and experience that is likely to exist in a Forum. Particularly suited to local authority based Forums and those for specific service groups, it is an opportunity for both commissioners and providers to gain a collective understanding of current and future need and demand.

5.3 Planning services

Provider Forums can contribute to the commissioning activity of planning services in the following ways:

- Provide feedback on the accuracy of the gap analysis and feasibility of service designs.
- Contribute to discussions about the implications of priorities and recommendations.
- Contribute to commissioning strategy’s supplementary plans – e.g. communication plan.

For example...

In Supporting People in Wales, local authorities and providers worked together to develop and pilot an outcomes framework which will now be mandatory from April 2012.

- Contribute knowledge of the market to commissioners' market position statement.
- Provide ideas and examples of potential service designs and developments – particularly innovative practice - to meet future needs.
- Contribute professional knowledge to discussions on service design and balance.
- Participate in shaping service specification – e.g. specifying soft outcomes, developing measures.
- Contribute to discussion of procurement options – e.g. procurement timescales, Pre Qualifying Questionnaires, invitations to tender, contract payment terms.

For example...

A provider forum in Merthyr Tydfil have worked collaboratively with commissioners in designing contracts for specific services.

Standard 4 of the FLSC Commissioning Framework notes that *"arrangements should ensure that that care providers can participate fully in planning, activities without conflicts of interest, and this may be best facilitated through representative bodies."*

Commissioners need to be mindful that some providers should not be given information that might give them an unfair competitive advantage later in the commissioning process. The need to be clear about actions and transparency at this stage should not be used as an excuse for not engaging with providers. Further information is given in the Appendix about engaging with Provider Forums when tendering.

5.4 Securing services

Standard 10 of the FLSC Commissioning Framework states that *"Local authorities need to have mechanisms in place to discuss costs and performance with providers"*.

Activities that Provider Forums could be engaged with include:

- Provide regular information to public authorities on meeting need, service activity and performance, contributing to contract management.
- Help plan, organise and deliver public/stakeholder information events jointly with commissioners.

For example...

The Vale of Glamorgan has representatives from membership bodies on the panel to select providers.

Whilst Provider Forums per se would be unlikely to be involved in scoring tenders, there can be a role for infrastructure organisations not participating in the tendering exercise to play a part in tender evaluation, e.g. scoring tenders.

5.5 Review services

Provider Forums can work with commissioners to develop an oversight of how services and contracts are working, how they could be improved to mutual advantage and provide a 'neutral' route for concerns to be shared without

providers feeling that may disadvantage themselves by being seen to criticise the commissioners.

Activities that Provider Forums could be engaged with include:

- Ensure balance in the provision of data to public authorities.
- Ensure that contract/SLA monitoring arrangements operate effectively for all services.
- Contribute to the review of new and existing services.
- Contribute to the evaluation of overall commissioning strategies.
- Collate feedback to commissioners.

For example...

The Swansea Learning Disability Provider Forum and Care Management both produce reports to the planning group which shape their shared implementation plan.

5.6 Performance measurement and management

Performance measurement and management can be challenging for both commissioners and providers, and managing the relationship when services don't go according to plan can be one of most difficult parts of being a commissioner.

To what extent should commissioners adopt a developmental approach to poor performance, supporting providers, developing a corrective action plan and making it explicit how performance issues should be resolved? Or should a more punitive approach be taken that performance should never fall below required standards and that financial or other punishments should be used to prevent recurrence of problems?

A Provider Forum can be a productive place to explore these options, to design with commissioners how poor performance, or indeed exceptional performance, should be managed and recognised.

Problems with performance monitoring are often one of the main reasons for service failure. Indicators that do not reflect priorities or outcomes, inappropriate use of indicators that distort priorities, and performance reporting that fails to highlight important issues are all common issues.

The type and level of monitoring and the use to which it is put varies between and within local authorities. It is important to both commissioner and provider that the information collected is useful in informing improvement of the service and sensibly informs risk management. For providers working across more than one authority, different performance management arrangements and measures can drive potentially unnecessary cost and confusion on the service. Provider Forums can play a valuable role in informing performance measures and negotiating refined arrangements that benefit commissioners, providers and service users.

5.7 Practice innovation and sharing best practice

A core task of many Provider Forums is sharing best practice and developing innovative ways of working.

Challenges such as developing citizen centred services, or engaging with hard to reach groups, can be discussed within Provider Forum with a focus on not only sharing knowledge but building solutions together.

At a time when effective use of resources is much discussed, Provider Forums can also play a valuable role in leading the creation of solutions for its members. Providers are increasingly looking at their skills, assets and shortfalls and helping each other: a provider with a meeting room freely lending it to another provider who can provide IT training for example.

For example...

Swansea Learning Disability Provider Forum worked in partnership with the City and County of Swansea and the web development company CDSM to develop a website that would enable them to communicate more effectively with each other and their service users. Now branded as 'People and Places' the website is for people who want to be supported: to stay at the centre of their circle of friends, families and supporters; to collect and share information about themselves and their lives through video, pictures and sound recordings as well as words and writing; and to plan their lives in a person centred way that makes the most of the way that they communicate.

The website provides service users with the opportunity to network and communicate with others, record information about themselves and their lives, as well as providing access to information they might need.

Access to service user perspectives, which can be written or video footage, about their lives is used not only for fun, but more formally in meetings with providers and local authority staff to show what users want or need, or in terms of reviewing services.

The Forum have worked with other local authorities, developers and users to further develop People and Places so that is it now in a number of authorities across Wales and England.

5.8 Market development and facilitation

An increasingly important role for the commissioner is to ensure that the providers exist (whether internally or externally) for the services that are needed.

Provider Forums represent a hub of intelligence for understanding the marketplace and can act as sounding board for commissioners in how best they can shape the market.

For example...

Devon Provider Engagement Network has five standing sub-groups, one of whom covers Market Intelligence, Market Positioning and Market Facilitation. Objectives of the group include:

- Undertake a market analysis, identifying demand, supply and the gaps in the market.
- Determine the role of the Council and how it will intervene in the market in order to ensure delivery of the kind of market believed to be required.
- Identify the benefits of undertaking Market Shaping.

The value of both commissioners and providers having a shared understanding of the state of the market, and changes needed in the future, is vital to the realisation of those services. Provider Forums therefore can have an important role in co-ordinating efforts and driving change from within.

5.9 Workforce development

The use of Provider Forums for developing the workforce is established regionally in Wales through the Social Care Workforce Development Partnerships.

The FLSC Commissioning Framework places emphasis on the need for workforce development in Standards 12 and 13.

Standard 12 is that:

"Social Services work with all their providers, including directly provided services, to identify the key actions necessary to support them in recruiting and retaining managers and staff with the appropriate knowledge, skills and values to provide services to the required standards".

Standard 13 suggests that:

"Commissioners should work in partnership with providers to help them develop their skills in handling a commissioning and contracting environment."

Provider Forums can play an instrumental role in identifying training needs and co-ordinating training. This may be funded by commissioners or providers, or jointly. Commissioners and their colleagues can facilitate training and development through offering venues and/or joint training/secondments/job exchanges with commissioners.

For example...

Devon Provider Engagement Network has five standing sub-groups, one of whom covers workforce planning, and skills and training. Objectives of the group include:

- Predict the future of the social care workforce requirements.
- Predict the "skill shift" that will be required by providers to respond to the changes coming through personalisation.
- Determine how we can maximise resources to support training and development.

6 Considerations

In setting up and running a good Provider Forum there will always be tensions and issues that need to be acknowledged, if not overcome.

These may include:

- **'Don't run before you can walk'**. Investing in relationships takes time. If commissioners and providers aim towards a co-productive approach there needs to be recognition that it needs to be built up over time to allow both sides to adapt and refine their joint working arrangements. There will be issues and problems as the relationship matures and how these are handled are crucial to the development of the relationship.

- **Recognise competitive tension.** There will be times when members of the Forum are actual or potential competitors and this can cause tension. Providers can have concerns about sharing information which may be useful to others competing against them, and smaller providers can be particularly wary of larger providers economies of scale they can arguably bring to the tendering process. This could mean having some Forum that are only open to providers below or above a certain turnover, recognising the differences between them and their potential input. How the inevitable tensions around competition are best managed will depend on the focus and membership of the Forum, and the culture that it seeks to build.
- **Acknowledge the democratic context.** Commissioners operate in democratic structures and therefore their autonomy can be limited in making decisions or changes to processes deemed to be desirable by the Forum. The commissioner needs to manage expectations, whilst working with providers and colleagues to reach a common understanding of what is wanted and what may be possible.
- **'No repercussions'.** Providers may be wary to raise issues for fear of damaging the relationship with commissioners, and their own organisations chance of success in tendering. This can severely limit how useful the Forum can be and, if this is an issue, mechanisms to temporarily overcome it need to be found such as the ability of the Forum to collate feedback to pass on to commissioners. However, if the relationship is to mature and the Forum become truly effective, this fear needs to be resolved and trust built between commissioners and providers.
- **Common terms of reference.** Participation between commissioners and providers can sometimes centre around clusters of relationships, rather than more mature structured relationships. Widespread joint ownership of terms of reference is important, as is the commitment to feed into other Provider Forum structures and agreements¹² thus building a culture of understanding across Wales.
- **'It's about the service users!'** Provider Forums that deal primarily with briefings from the council (or other body) and occasionally consult on training for providers fulfil a particular function. However, can they claim to be working together to improve all services for service users? Participants will want to feel that their attendance at the meeting makes a difference and that the same result couldn't have been achieved by reading a briefing paper or sending an email. If the meetings are not considered valuable and just 'talking shops' then smaller providers will often cease to attend as the time investment is not worthwhile. The work programme, and the outcomes that the Forum seeks to achieve should improve services and life for service users.
- **Coterminosity.** Coterminosity, where organisations or structures follow the same geographical boundaries, is neither possible nor practical. Providers are unlikely to align their business activities with local authority or local health board boundaries. History, practicality, and competition all predicate against this. However it presents an issue for local authorities wanting to setting up workable Provider Forums. Some providers will cover a larger area and may be understandably reluctant to invest time in every Provider Forum in their area, understanding different issues and contexts, building relationships with different people, potentially having similar

¹² Such as the Memorandum of Understanding, Securing Strong Partnerships in Care.

discussions. Smaller provider organisations may only cover part of the area covered by the Forum and may question the relevance of a Forum that deals with areas they have no knowledge of, or possibly interest in.

7 Characteristics of a Good Provider Forum

This paper has sought to outline the key elements that should be considered when seeking to establish and grow a 'good' Provider Forum.

There is no set recipe for creating a 'good' Forum but the common themes which have emerged are:

- **Clear terms of reference.** These should consider: the most appropriate focus for the Forum; membership; how the Forum can be inclusive; how it is organised; the work programme; the role of infrastructure organisations; measuring impact and effectiveness; and culture.
- **Use of different levels of engagement.** Good Provider Forums are likely to use all four levels of engagement (co-production, negotiation, consultation, communication) as appropriate. These should be determined by what is practical, productive and most likely to meet the desired outcomes of the Forum. Over time, higher levels of engagement should increasingly dominate.
- **Agreed work programme.** The work programme should focus on current and future services delivered to service users. It may focus on the prioritisation of services and agendas by different levels of government, understanding the drivers and concepts, and potentially feeding back the implications of such policies. It may focus on different elements of the commissioning process, from analysing needs, to planning services, securing services and reviewing. It may focus on improving services, how to make performance management arrangements work best, sharing practice and innovating together, developing the market and the workforce to respond to the challenges now and in the future.
- **Acknowledge the issues.** The road to 'good' Provider Forums is unlikely to be smooth. Issues such as confidentiality, working within a democratic context, and the challenges of non-continuity need to be acknowledged and, if not overcome, arrangements made to sensibly mitigate the risks they hold.

Constructive relationships can be promoted by the 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 working¹³ that need to underpin them. A genuine commitment, by all stakeholders, has to be made towards positive and mature behaviours¹⁴, such as:

¹³ From Institute of Public Care (2008) Promoting Constructive Commissioner- Provider Relationships. Commissioned by Care Services Improvement Partnerships/ Welsh Assembly Government

¹⁴ Crampton, J. and Ricketts, S. (2007). *A Catalyst for Change II: Tackling the long ascent of improving commissioning*. Care Services Improvement Partnership

- Openness – dealing with differences and difficulties in a non-defensive or non-adversarial way.
- On-going self reflection and assessment.
- Confidence in one’s own skills and organisations to contribute to solutions.
- Knowledge of appropriate boundaries (i.e. 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.

**Institute of Public Care
July 2011**

8 Appendix: Tendering considerations

The EU Treaty principles of equal treatment, transparency, proportionality and free movement of goods apply to all public sector contracts regardless of whether the EU regulations apply.

The European Commission is currently consulting on their Green paper on the modernisation of EU public procurement policy (COM (2011) 15 final). Proposals to simplify the public procurement directives are due to be published at the end of 2011 or early 2012.

For commissioners there are 4 stages in the procurement process during which provider engagement should be documented and adhere to the principles above.

Stages in the procurement process

EU regulations set out detailed criteria for the procurement process. The criteria cover:

1. **Specification stage.** How requirements must be specified, avoiding brand names and other references which would have the effect of favouring or eliminating particular providers or services - and the requirement to accept equivalence. Contracting authorities must publicise the selection criteria and be transparent in decisions to ensure that the process of evaluation doesn't discriminate in favour of or against any tenderer.
2. **Selection stage.** The rejection or selection of candidates based upon legal, financial or technical grounds:
 - evidence that they are unsuitable on grounds e.g. of bankruptcy, criminal conviction or failure to pay taxes;
 - their economic and financial standing e.g. that they are judged to be financially sound on the basis of their annual accounts; or
 - their technical capacity e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.
3. **The award stage.** The award of contracts is on the basis of "most economically advantageous" to the purchaser i.e. overall best value. Purchasers do not have to accept the lowest price if they have stated the award criteria in advance. Contracting authorities must state in advance the criteria that will be used to evaluate tenders, either in the advert or in the tender documentation, and state the relative weighting given to each criterion used to judge the most economically advantageous tender e.g. price 40%. When the decision is made, contracting authorities must send a contract award notice to the OJEU with 48 days of the award, but the award notice does not have to be published. Information and on-line forms are available at the OJEU web site <http://simap.eu.int>
4. **Post tender negotiations.** There are restrictions on the use of post-tender negotiation under the open and restricted procedures. Following selection, the purchasing agency is entitled to enter into discussions with tenderers for the purpose of clarifying or supplementing the tenders or the agency's specifications. However, the agency is prohibited at this stage from negotiating the principal terms and conditions of the contract, including

prices and specifications. The agency must be particularly wary of allowing individual tenderers to revise their tenders in the light of post-tender discussions, although the position is slightly different where the negotiated procedure has been used.

Provider Forum engagement during these stages

The potential for Provider Forum engagement with commissioners is generally limited during the procurement process, although there remains a role for infrastructure organisations who may be represented on the Forum.

- 1. Specification stage.** Providers Forums can help commissioners develop workable intelligent performance measures and achievable outcomes. It is important that their input is contributory rather than negotiated as commissioners must be responsible for privately collating input to inform the eventual service specification and award criteria.
- 2. Selection stage.** It could be possible to involve providers in this stage, assessing legal, financial, and/or technical information, providing that they had no connection to those that had applied or could gain any future competitive advantage. It could also be argued that by participating in the selection stage, providers might gain a clearer idea of the process. The risks involved would generally predicate against direct provider involvement. There can, however, be a role for infrastructure organisations in participating in tender evaluation including assessing legal, financial, and/or technical information.
- 3. The award stage.** Similar to the selection stage, risks to the commissioner of involving providers directly tend to predicate against involvement. There can, however, be a role for infrastructure organisations in participating in tender evaluation including scoring tenders.
- 4. Post tender negotiations.** There is no obvious role for a Provider Forum to play at this stage, however infrastructure organisation could play a role in supporting providers during any post-tender negotiations.