

Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

Consultation response submitted January 4th 2011

We welcome the opportunity to respond to the Green Paper Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery. As a Council and a Primary Care Trust we are very supportive of the thinking in the paper and the removal of obstacles to the development of a commissioning based approach which includes a plurality of service provision. I enclose a copy of a report to our last meeting of Council which sets out our approach - see

<http://democracy.bathnes.gov.uk/ieListDocuments.aspx?CId=272&MId=2668&Ver=4> item 46.

The Council and the PCT already work closely with the voluntary sector using many outcomes based contracts. The Council is also looking to support the voluntary sector appropriately through the cuts in public expenditure and to include the Citizens Advice Bureau and possibly others in its shared front office.

The most substantial project in our change programme that is relevant to this consultation is the joint plan between the Council and NHS Bath and North East Somerset (the PCT) to develop a new local social enterprise (SE) to run community based health and adult social care. This is a joint £50M business, which at present rests within one of the most advanced NHS/Council partnerships in the Country and has been referenced as good practice in national studies. The aim, and NHS requirement, is to set up the social enterprise organisation early in the 2011/12 financial year. A draft joint business plan has just been submitted to NHS South West.

There are some significant potential challenges to this project which your White Paper and subsequent legislation could address and which are partially reflected in the questions within the consultation document. We believe these challenges will apply to all similar projects and need to be overcome to enable good take up of the ideas in the Green Paper. Although our points are specific we know they have widespread relevance:

- The new social enterprise, being engaged in community health and social care,

will provide mainly VAT exempt supplies and will not be able to reclaim VAT, whereas the local authority and the NHS can. We have had specialist advice on this and we are unable to substantially mitigate this problem. The VAT bill not capable of recovery is expected to be in the region of £1M and this figure is critical in terms of the viability of the new organisation.

To encourage innovation and transformation, we need the SE to be enabled to reclaim VAT or grant aided to enable it to be VAT neutral - as would be the case if the services remained provided directly from the NHS/Council. In general, the Coalition Government needs to consider the VAT implications of such transfers of services that may require further savings in addition to the demanding savings required of public services.

- The new social enterprise will need to borrow **working capital and set up costs** and will need to do so at competitive rates. The use of big society bank funding might be a good way forward were the funding to be available quickly enough at appropriate rates. We are also concerned about the position of potential funders especially as the NHS rules require contract length to be no more than 3-5 years, and because the business plan is also affected by stringent savings requirements - albeit that excellent progress has been made in identifying potential savings.

We would like the social enterprise to be assisted in borrowing its working capital and set up costs at competitive rates using the Big Society Bank or other funding streams, and we need this funding, if at all possible, to be available early in 2011/12. In general, the Coalition Government needs to consider arrangements (Government and other sector) over a transitional period that will encourage the development of social enterprises given mainstream banks' current caution on borrowing. This should not, of course, ignore the robustness of any prospective business case.

- The **EU procurement** rules and state aid rules heavily constrain the position of the Council and the PCT and make it very difficult to enter into longer term arrangements and transfers of services, despite Coalition Government policy. The impact of these rules needs to be taken into account. They affect flexibility, timescales and viability and can put off potential bidders or transfer under the Right to Request or the possible Right to Provide. In particular our proposed social enterprise is having to identify potential savings up front in its business plan rather than leaving the negotiations for later including the sharing of the costs of making savings, including severance costs. There are also legal challenge risks we need to fully evaluate if the project is not to be delayed, and delay would be likely to make the project unfeasible.

We suggest that the impact of EU public procurement rules is fully taken into account, is reviewed to enable greater flexibility as set out here, and that guidance is developed to enable public bodies to commission and for staff/management to set up social enterprises in the most effective manner whilst minimising legal risks to commissioners and the prospective social enterprises.

Set up costs, which we believe to be in the region of £2M for our proposed SE and are necessary as a result of the DH requirement for PCTs to divest their provider businesses.

Financial assistance with these set up costs would help to make this project, and other similar projects, more viable. There needs to be a clear pathway to such funding or loans for robust proposals. This may be in the form of transitional funding to allow the initial development of early adopters.

- **Consistency and coherence of Coalition Government policy in the face of commercial reality.** This point is about the attractiveness of a social enterprise model to providers and to funders. Both providers and funders will look for certainty from commissioners. In general terms this may require another look at the contractual terms as compared and related to policies such as Any Willing Provider, the contract length as compared to the cost base inherited through TUPE, while requiring challenging transformation in services which may require the SE to make investment that will need to be recovered over a period of time. This also needs to be seen in the context of the uncertainty created by GP Commissioning for potential providers and funders/investors. This also extends to the policy direction of the Coalition Government to encourage the integration of health and social care which requires a coherence within the policy framework which is currently under-developed both in commissioning and provision and which could significantly contribute to the elimination of duplication, and the improvement of patient experience and efficiency.

It would be helpful in drafting the White Paper to be clear on the evidence base for the market place in public sector services – in particular the impact on those residual services that may not lend themselves to the market. For example, most hospitals make a loss on their A&E but continue to provide it as a protected service in order to ensure a safety net for those in urgent need of care. The smaller the residual base on which such losses are dissipated the less likely the resulting organisation is likely to be financially viable. Those services that lend themselves to small & medium sized civil society businesses are more likely to be in the market for the lower risk public services. As commissioners managing the new market places the need to maintain a comprehensive range of services, including those that are not market viable, is made more difficult if we are unable to protect the viability of providers of protected services by limiting the impact of AWP on their overall income streams.

The consequent need to centralise such services in order to retain efficiencies of scale brings us into conflict with the local democratic will and the ability to provide real choice for people. For services such as those for care and support of vulnerable children, adults or older people, there is also additional complexity to securing integrated joined up services for individuals and for populations – complexity that is often experienced by those vulnerable people trying to access services and by hard pressed professionals trying to refer clients and patients. While none of these issues are insoluble, they do add cost to the commissioning process at a time when the drive is to reduce infrastructure costs.

The Green Paper is predicated on increasing plurality in the existing public sector market and thereby increasing choice for consumers of state funded services. For choice to be fair to all there needs to be oversupply otherwise the choice only exists for those at the front of the queue. In current financially constrained circumstances the continual expansion of the choice agenda adds greater pressure on public sector agencies, but also potentially precludes small & medium businesses and civil society from participation since they need to be prepared to take high levels of risk on any willing provider basis, with no up front guarantees of business or continuity beyond 3 – 5 years, making set up costs hard to justify to potential financial partners.

It would be helpful if the White Paper sets out explicitly across government a consistency and coherence of policy which encourages first class commissioning, and a greater degree of commercial certainty for prospective providers including charities, social enterprises, mutuals and cooperatives.

The status quo for our health & social care services is not an option permitted by the Department of Health as it develops a commissioning based approach and is not the Council's or PCT's preferred long term vision. The social enterprise fits with the commissioning model that the Council and the PCT supports and with the thinking in the Coalition Government's Green Paper. The benefits of joint working between the Council and the NHS would be adversely affected without this social enterprise model and a coherent set of policies that encourage the full integration of health and social care within commissioning as well as provision. There is a risk of substantial cost escalation and less investment in preventative care. We believe our social enterprise project has the potential to become an exemplar but still has some significant obstacles to overcome.

We would welcome an involvement as well as your help to resolve these issues. There is a lot more detail we could share but these are the main headlines. We are close to having a viable business plan for the social enterprise provider but the VAT issue is a major financial obstacle. The other issues produce risks for the Council and NHS as commissioners. The relevant legal advice on how to mitigate these issues is not yet finalised nor is the funding arrangement.

We would be happy to discuss these matters further with you. We would also welcome urgent advice from you about whether we can expect progress with any of the above issues. It is notable that similar VAT problems affecting Academies have been resolved as a result of Government intervention. We can see no reason why a similar approach cannot be taken in respect of social enterprise organisations. If the above obstacles cannot be removed we believe that the social enterprise model is at risk of being deemed unworkable.

We would welcome it if the above comments are taken into account in drafting the White Paper. Please let us know urgently whether we can expect any progress in respect of the above including particularly the VAT issue or if we can contribute further to the development of Government policy based on our front line experience.

Yours:

Andrew Pate

Strategic Director of Resources and Support Services
Bath and North East Somerset Council

Janet Rowse

Chief Executive NHS B&NES & Strategic Director for Adult Health Social Care and Housing Bath and North East Somerset Council (Acting)

