



Response to Cabinet Office Green Paper  
**Modernising Commissioning**



Ormiston Children and Families Trust

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## About Ormiston Children and Families Trust

We are the biggest children's charity in the East of England, working directly with families facing challenging times in their lives. Last year we helped 64,000 children and their families. We are commissioned by seven local authorities and numerous national government bodies to provide direct services to children and families. We have a reputation for innovative approaches to work with some of the most vulnerable children and families within our society.

We are a key partner in the new Ministry of Justice's **Social Impact Bond**-financed work with prisoners at HMP Peterborough, working with prisoners and their families before and after release to reduce re-offending.

We work to help children and families visit 12 of the region's prisons, work established as the result of a unique seven year funding partnership between HM Prison Service and three charities, Lankelly Chase Foundation, The Henry Smith Charity and The Ormiston Trust. This pioneering programme is the largest of its kind in the UK.

We have 11 children's centres across the region and in December 2009 gave evidence as an innovator in Third Sector provision of children's centres to the Select Committee Inquiry into Sure Start.

We provide several highly successful Family Intervention Projects working with families at risk of causing youth crime and anti-social behaviour and this work has been lauded as exemplar by the Department for Education.

We have a national reputation for our ground-breaking work with children from Gypsy and Travelling communities in the East of England, working with health authorities and other professionals on the issues which prevent these communities from accessing mainstream health care, education and safer housing.

We also work with children and families facing a wide range of complex issues, including parental drug and alcohol abuse and domestic abuse.

Our sister charity, Ormiston Education, is the second largest provider of academies in the UK and we work together to improve life chances for children and young people.

## About our response to Modernising Commissioning

We welcome the opportunity to explain the issues we have faced in today's commissioning environment. Our aim is to support the most challenged children and young people in our society and enable them to have choices to realise a happy and fulfilling future. The current commissioning environment deflects significant resources, in terms of people, opportunities, time and money, from our real purpose. For this reason we welcome the opportunity to influence change for the better, for a fairer, transparent and practical approach to commissioning public services.

## 1. New opportunities

### Payment by results

We welcome the introduction of payment by results, and we are, in fact, a key partner in the Ministry of Justice's new **Social Impact Bond** project cited as an example in *Modernising Commissioning*. However, our experience shows us that there must be clarity over the measuring of results. For example, who sets the measures - the commissioner or the deliverer?

Secondly, our work with families with complex needs can take decades, and generations, to measure successful outcomes.

For example, an intention of our work with children affected by imprisonment is to reduce the staggering rates of intergenerational offending. Currently 65% with a father in prison will go on to commit crime later in life according to Home Office statistics. Measuring this outcome would take a lifetime. We do measure our work in many ways but some of our objectives are long term, as are the savings to the public purse that will transpire from our success.

Therefore we believe it is enormously important to involve the deliverer in setting outcomes for measurement and to allow for considerable external factors which might affect the short term 'on paper' results. This is especially important with working with long term social problems and with families with complex and multi-faceted needs.

*"Ormiston have received funding from us in the past and we know from their detailed monitoring and evaluation reports that their work can make a real difference to children who serve their own hidden sentence when family members are imprisoned. That's why we were delighted to make this award from our Child and Adolescent Mental Health programme, which will help such children cope with the anxiety and trauma which could make some of them vulnerable to entering the criminal justice system themselves as they get older. - The Harpur Trust (Bedford Charity)"*

We are currently engaged in a major research project with the University of Cambridge's Institute of Criminology which will reflect on the effects of supporting families through the imprisonment of a father. These results will show the effects over two years. However, the real test will be the consequent impact on long term rates of recidivism, family breakdown and intergenerational criminal activity.

We feel it is important that deliverers are held accountable for the results but that they are involved in agreeing on the measures of short term outcomes, whilst pursuing their long term objectives.

### Barriers to civil society organisations engaging in delivery

We welcome the intention to increase opportunities for the Third Sector to deliver public services. However, increasing opportunities will be futile unless the rules on fair and equitable commissioning are changed and more importantly, enforced.

Currently, services open for Third Sector delivery are still more likely to remain in local authority control, despite legislation to the contrary. For example, Sure Start children's centres are still mainly operated by the local authority in direct opposition to the instructions in the 2005 Children's Act, that the local authority should be the provider of last resort. Neither central nor local government has addressed this persistent contradiction.

Local authorities, and other public sector commissioners, have a vested interest in keeping services in house. Current legislation is not preventing this conflict of interest, which allows them to cross-subsidise and hide true costs so that on paper they seem to be the cheapest option. This situation is anti-competitive.

A new system for procurement is needed - to increase the competency, expertise and independence of procurement teams. Procurement staff should be trained to embrace the experiences of beneficiaries and the creativity of potential deliverers to design services to fit the needs of the recipients and the desired outcomes rather than the 'top down' directives to tick boxes of service provision.

#### Benefits of civil society engagement in delivery

We believe the Third Sector can bring innovation and creativity to public service delivery. We can do this because we have experience in working directly with hard-to-reach communities and individuals, and higher rates of engagement with the most vulnerable. These people will not necessarily engage with officialdom and this can prevent them from accessing help and finding solutions to their problems. We work with them to design work around their needs.

For example, our work in one of our children's centres - the only Third Sector-led children's centre in a county which is otherwise 100% local authority-run - has been enormously successful in reaching out in the community and engaging with families who are amongst the most vulnerable and at risk. Our performance in engagement and intervention outstrips the nearby local authority children's centres because we have the expertise and experience in working with the most vulnerable.

#### Asset based services

We believe that all assets involved in supporting the most vulnerable children and families will be at risk without a constant income stream. We are concerned that handing over assets at peppercorn rates to employee-led mutuals will be to the disadvantage of the Third Sector. We are concerned at the risk of asset stripping which will have a detrimental impact on the viability of services in the medium to long term. Consideration should be given to insisting on very long contracts or leases to prevent asset stripping and provide stability.

#### Teaming up with employee-led mutuals

We believe this proposition will be disadvantageous to the Third Sector. It will be anti-competitive. When we are successful at gaining commissions of released public sector work then we are happy to employ those former public sector employees under TUPE. Teaming up with potential competitors means sharing - and losing - our commercial

advantage, our intellectual property rights, our years of investment in experience and expertise. This would not be expected of the private sector and we believe it is unfair on the Third Sector. Already we are being asked to hand over our knowledge and intellectual property to our funders who will become our competitors as quasi-local authority providers themselves. By doing so we are committing commercial suicide but we have no choice. We must do as our funders demand.

#### Other methods to create more opportunities

We believe the Government should consider a true free market economy for services. There should be transparency. Local authorities and public bodies should publish full accounts whereas at present they do not reveal this to us (as competitors).

For example, we were recently invited to bid for a local authority tender which was so under-priced that not one external bidder accepted the invite. The tender covered only the salary costs for two staff and was therefore financially not viable for any outside provider. The local authority was able to hide all other costs of the provision and therefore keep the work in house. It is crucial that the real costs of work are revealed and that local authorities, as both commissioners and competitors, are transparent and fair.

## 2. More accessible

#### Issues of bureaucracy

We agree with the example cited from Cambridge House. The burden of bureaucracy is a significant factor, a repetitive and unnecessary cost of time and money on the Third Sector. We would welcome all measures to improve transparency, increase time scales and reduce bureaucracy.

However, these new measures must be consistently applied. For example, Contracts Finder must be legally enforceable. All public sector contracts must be published in this portal. There has to be an incentive, or a consequence of failure, to publish in good time and with true transparency of costs.

The bureaucracy of commissioning costs the Third Sector dearly. To acquire the most basic tender, honestly and competently, we are required to provide costly infrastructures to prove our ability to deliver. We have to prove we have policy officers, training officers, management structures, professional development structures, safeguarding policies, equal opportunities policies, environmental impact policies and countless other policies to be in with a chance to compete for even a small project. The truth is for a £1 tender we need an infrastructure worth close to half a million pounds.

#### Becoming fully inclusive

There is an inherent bias in the current system allowing the commissioners to compete and set the terms of the work. We also feel that this stifles creativity and hinders new approaches to long term issues. We believe it is important that commissioners need to work with the intended beneficiaries and potential deliverers on how best to achieve the intended outcomes. They should allow for innovation, creativity and consultation in delivery. Commissions should be based on outcomes set rather than tightly prescriptive

delivery methods. All that is needed is a definition of the problems and setting realistic desired outcomes.

There is also tremendous inconsistency in commissioning across government departments and local authorities, which results in a patchwork of service provision and a hotchpotch of service delivery. This erratic system of commissioning does not ease the process for participation in the competition. Knowing how and when commissions are available is a matter of local knowledge and in some situations, selective invitation. This is not inclusive practice.

#### Red Tape Taskforce - PQQ standardisation

We very much welcome the idea of a standardised PQQ and would suggest a **biannual PQQ certification** which would mean organisations would only need to complete the form every other year and would therefore be eligible to apply for a range of contracts up for tender. Micro-regulation means we are forced to spend disproportionate amounts of time on tenders of hugely variant value. For example, the same 10 people will work as hard on a bid for work worth £30,000 as for £2 million, because of the burden of bureaucracy involved in each application. An annual or better still, biannual PQQ certification would relieve this situation considerably.

We would also reiterate the point that Contracts Finder must be legally enforceable to have effect. There can be no exceptions and there must be consequences for failing to comply if the Government really wants to ensure public services will be divested fairly into a free market.

#### Fair balance of risk

We believe that in order to achieve a fair balance of risk there should be access to low or no interest loans for organisations taking on financial risks through new commissions.

We see that quasi-state competitors do not need to consider risk in the same way as Third Sector providers. We have seen examples where NHS, arms-length and other state organisations can compete against us with barely a second thought for financial risk. They have the confidence that they will be bailed out by the tax payer. This is unfair on the Third Sector.

#### Key issues dealing with TUPE regulations

We are experienced in TUPE regulations but we feel there is a huge need within the Third Sector for additional capacity, providing training and support for organisations and for greater transparency in costings.

#### Working in consortia

We believe working in consortia in public service delivery should only be used when there's an advantage in this to the agreed outcomes. Working in consortia can be a positive option when it can allow organisations to share expertise to create the best delivery and to share the risks that they could not take on alone. However, the current time scale for responding to tenders does not allow organisations to assess the risks, in

terms of finance and reputation, of joint liability. This is a significant barrier to the Third Sector to pursuing working in consortia.

Working in consortia, when it allows state organisations to work together to rig the market to prevent fair competition, is not the best option. We have seen examples where NHS providers can work with the local authority on local authority tenders. Both organisations have hidden subsidies which allow them to appear as the best cost provider when in fact the tax payer picks up this additional cost. This is unfair on Third Sector providers.

### 3. Value

Approaches to considering full social, environmental and economic value

We believe there must be consultation and meaningful participation from the outset with all stakeholders over what the outcomes should be and their values to us all.

For example, our Family Intervention Projects, working with families who are causing anti-social behaviour and youth crime, cost an average of £18,000 per family per year but they save between £70,000 and £150,000 per family per year in costs to the police, the justice system, local councils and children's services, according to the Department for Education. That means the state could save up to £1.5 billion by working directly with 10,000 families committing the worst anti-social behaviour. However, the price on the difference it makes to their long suffering neighbours and communities who are finally able to live life to the full again, is almost immeasurable.

Issues to consider in The Public Services (Social Enterprise and Social Value) Bill

To engage with some of these most hard-to-reach families, to agree achievable and realistic outcomes which match the expectations of their local communities and wider society, is a major task.

The Third Sector excels at engaging with these families because we understand the barriers - such as lack of education, lack of economic or social impulse - to participate in judging the value of work around their needs. The Third Sector excels at this because we have invested considerable time and money in training staff to become experts at working with these communities. We have spent years building trust and nurturing co-operation, opening up a dialogue where none existed.

For the beneficiaries to assess the value of intervention there must be flexibility and time built into the process to allow all commissioners and deliverers to assess the needs, to understand the issues, and to design the solutions. The Family Intervention Project example is a good case to illustrate this point as the beneficiaries include the perpetrators, their families, their neighbours, their communities, the local police and social services. Understanding these complex issues and needs takes time - and the investment in this time pays dividends in the efficacy of the work. We believe the government should enshrine the value of the Third Sector as an intermediary between statutory provision and beneficiaries within the Public Services legislation.



## 4. Citizen and Community Involvement

### Refreshing Joint Strategic Needs Assessment

We believe Third Sector participation in JSNA is crucial. However, our experience is that the participants are almost all state-employed professionals and their time, and the costs of their overheads, such as travel and information technology, are absorbed by the state. The Third Sector can and should represent those who are seldom heard. However, there is a cost to the Third Sector of providing this level of highly skilled representation. In fairness, this cost should be absorbed by the state just as it does of the state employees.

### Encouraging community and citizen involvement

We believe that effective citizen and community involvement in designing and commissioning services will take time and cost money. There can be no quick fixes, especially when the services in question are to support those who are disproportionately disengaged from the state - such as the groups we support like children of prisoners, Gypsy and Traveller families, children affected by parental drug or alcohol abuse.

It takes skills honed over many years to engage with these groups and to encourage them to contribute. They need to trust the process and its results. If this goes wrong for them our reputation - and opportunity to work with them - could be lost. There is a great opportunity here for the Government to utilise Third Sector experience and expertise but there must be an understanding of the costs and risks, in terms of time, money and reputation. Citizen and community involvement in commissioning must be seen as separate to the service delivery itself.

We would advocate a better use of service user panels where needs are properly met in terms of reflecting cultures, literacy and learning. There should be more of an outreach approach to engaging citizen and communities, taking into account the physical accessibility of participation - including different times of the day and easy to reach venues. Service user ambassadors could be a positive step only if these positions are used meaningfully within commissioning rather than as a gesture of inclusion.

### Contributing to Community Budgets and Local Integrated Services (LIS)

We believe the Third Sector should play a crucial role in speaking up for unpopular sectors of the community who will still need support through Community Budgets and LIS. Children of prisoners, children of Gypsy and Traveller families, children who have been causing anti-social behaviour, for example, will not necessarily receive the support of the more vociferous and active community leaders who may instead represent the majority wishes and more visible issues. Our chief executive was told by a local authority chief executive that this is precisely the intention - that the motivated majority will make decisions and hold power. But there will be no protection for vulnerable, unpopular and disadvantaged minorities.



We would like to see safety nets in place to speak up for persecuted and stigmatised minorities within our communities and to ensure their needs are included whenever decisions are made about funding or designing service delivery. **We believe the Third Sector has the experience and expertise to handle this responsibility** with the sensitivity and foresight necessary to enable LIS to successfully meet the needs of communities.

## In conclusion

Our recommendations to Government are;

- Agree fair payment by results. The concept of payment by results is right - but there should be acknowledgement that results are short term whereas outcomes can be long term. Results must be achievable and fairly measurable. They must also be agreed by all beneficiaries.
- Insist on transparent accounting from commissioners who are also our competitors.
- Ensure legal and financial repercussions on public bodies to enforce the free market of public service divestment.
- Become fully inclusive by abolishing erratic and selective invitation tendering.
- Give the Third Sector more freedom to innovate service delivery to achieve the agreed outcomes, free from the micro-regulation and prescriptive delivery styles set by state funders. Utilise our years of experience and expertise which mean we add value to service delivery.
- Ensure that the transfer assets or teaming up with employee-led mutuals is not anti-competitive practice, giving the former public sector an unfair advantage over the Third Sector.
- Prevent local authorities from the practice of hiding true costs of overheads when commissioning or competing for commissions. This is anti-competitive.
- Create a biannual PQQ certification to reduce costly bureaucracy and cut red tape.
- Ensure Contracts Finder is obligatory and that each tender is given an adequate time frame for application.
- Provide more support the Third Sector to account for the over complex TUPE regulations.
- Offer low or no interest loans to allow the Third Sector to mitigate financial risk and to even the playing field with quasi-state organisations and large private companies.
- Use the Third Sector to facilitate meaningful consultation with the beneficiaries about value, outcomes and delivery design.
- Enshrine the value of the Third Sector as an intermediary between statutory provision and beneficiaries within the Public Services legislation.
- Use the Third Sector to represent beneficiaries in JSNA.
- Use the Third Sector to represent the disadvantage or unpopular minorities in Community Budgets and LIS.

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For further information about Ormiston and our work in the East of England please contact