Phoenix Futures response to the Cabinet Office Green Paper -

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

Summary

At Phoenix Futures we are delighted to see the new Government seeking to address issues relating to commissioning within public service delivery and in particular seeking ways to enable greater participation of civil society organisations like Phoenix Futures in the delivery of services within local communities.

As a provider of drug and alcohol treatment services we operate a number of national and local government contracts and also receive a limited amount of fundraising income. Over the last 40 years we have grown from a single service to an organisation delivering £25 million worth of services across England and Scotland. Whilst this is small compared to many civil society organisations, it does make us one of the larger drug treatment providers in the country. We help 14,000 people address their addiction each year in a variety of settings in the community and in prison. Throughout our 40 year history we have held true to our mission that everyone has the potential to end their dependency and transform their lives.

Significant growth over the last 3 years (by 52%) has been as a result of understanding the needs and wants of our service users and the communities in which they live. We have been able to communicate this effectively to commissioners working in partnership with them to deliver cost effective and targeted services to some of the people with the most entrenched drug and alcohol problems in our society.

We welcome the Cabinet Office's commitment to keep pace with the general speed of change and reform in other parts of Government. As an organisation impacted by changes in Health, Local Government and the Ministry of Justice we understand the need for changes in commissioning to be implemented coterminously with other government policy changes, if civil society organisations are to be in a position to contribute to the new social policy agenda.

The future of commissioning for those of us working in the substance misuse field is going to be much changed from previous experience. Most organisations are preparing themselves for that change. Of key concern to us is ensuring that commissioners understand the implications of TUPE legislation on tenders and providers and that commissioners show some flexibility in their approach to contracting with the smaller civil society organisations. Further, that in the process of shifting the power from central Government to local communities some consideration is made for those much needed services that are often unpopular with local communities. Although recovery outcomes

are often helped by engagement with local communities, it is often the case that those communities don't want to engage with recovering drug addicts and don't want such services in their neighbourhoods. It is our role as providers to highlight the social benefits of supporting recovery within local neighbourhoods; however at a time of increasing reduction in public spending it is likely that services for unpopular groups will be cut in order to protect services for groups perceived to be more "deserving". We welcome the moves to encourage a greater voice for users of services within communities but would urge the Government to give greater guidance to local commissioners on how to protect vital services to unpopular groups.

Whilst many of the points highlighted in the green paper are relevant to us we have focused on 2 main themes of the green paper in this response.

MORE ACCESSIBLE

How could Government make existing public service markets more accessible to civil society organisations?

The measures described in the Green Paper to encourage SMEs in existing public service markets would be welcomed by Phoenix Futures as they address many of the issues that increase risk for us as a civil society organisation in many tender processes.

Particularly of concern to us are:

1. **Onerous contract clauses** found in many local authority and health contracts that disproportionately place risk on the provider.

   In the main these are contract clauses that are acceptable to larger and statutory providers but present too much risk to smaller civil society providers such as us or in some circumstances make it impossible for us to comply with. We can provide detailed examples of contract clauses if required.

2. **TUPE** is a major risk factor in all tenders.

   Greater guidance for commissioners on the impact of retendering processes and models of provision would be greatly welcome. Training for commissioners on the impact of TUPE on price and how different commissioning could reduce the TUPE exposure is also needed.

The risks become more significant in large scale tenders that involve statutory sector employees. Increasingly in the substance misuse sector we experience very large tenders involving a variety of providers and types of services. The risks associated to transfer are significant but become impossible for us to accept when commissioners fail to identify the full TUPE costs at the point of submission. In many cases this poor commissioning practice has led us to withdraw from tender processes even though we have been confident we could deliver a good quality and cost effective tender.

In most cases it leads to civil society organisations becoming sub contractors of a major statutory provider due to the size of the contract and the TUPE risks. In a recent example it was clear that a significant number of redundancies would be required in order to meet the price of the tender. Should a civil society organisation have won that tender they would ;

- have had to meet the cost of making statutory sector employees redundant (more likely as there would be less availability of suitable alternative employment compared to within NHS organisations),
- incurred all TUPE costs and
- have faced the prospect of a retender in 3 years time.

Commissioners are unaware of and sometimes do not appear to be concerned about the potential impact of TUPE risks and costs on providers. Due to the frequency of tendering in the drug sector some staff are likely to be going through perhaps their 2nd or 3rd TUPE transfer and take to their new employer all the 2nd and 3rd generation TUPE issues that this brings. Pensions and liabilities for these are high risk and the impact of costs for those who TUPE with local government or NHS pension schemes could potentially bankrupt civil society organisations.

3. Closer examination of the **frequency of retendering** in some areas of public sector commissioning would also be welcome.

It is common practice in the drug sector for commissioners to retender services every 3 years. The cost of retendering is significant to providers and commissioners. More recently commissioners have gone out to tender in order to significantly reduce the cost of provision. Whilst we agree that the retendering of services is an important means to improve the quality innovation and responsive of services it is our view that in times of reduced public spending the amount of money spent on recommissioning is unjustifiable and greater guidance for commissioners on how to reduce the need

for retendering would be welcome. If commissioning is an active partnership as intended, then remedial action with an existing provider to address any concerns is often a more cost-effective way of dealing with performance or price than retendering. This would also reduce the TUPE costs highlighted in point 2 above.

The Government is committed to reducing transaction costs in the NHS and across the public sector; commissioning costs make up a significant part of those transaction costs. Reducing the frequency of retendering of drug and alcohol will contribute to that target.

4. There are in our view some examples of good practice across Government of commissioning civil society organisations.

The Ministry of Justice (no longer responsible for commissioning our services post March 2011) have excellent procurement practices in our view that are transparent and fair and fully inline with the spirit of the Compact. Lessons could be learnt across Government from examples of good approaches.

5. Payment by results is clearly one way to deliver a sharper focus on outcomes in all areas of public services delivery.

Some caution is required if the unintended consequences of such an approach do not threaten the aims of encouraging SME's and smaller civil society organisations. Withholding a large percentage of the total grant until final results are delivered will have an impact on financial viability and cash flow for smaller civil society organisations. Results that are measured need to be clear to all concerned and formal and proper processes put in place to evaluate those outcomes.

We are introducing a pilot PBR model in our Tier 4 rehabilitation services. Our model allows for clear milestones to be set and payments made throughout the treatment process as outcomes are achieved. It requires the active engagement of the care manager and the service user in setting and assessing goals and will in our view lead to both greater personalisation of care as well as a clear focus for the commissioner on the outcomes their funding has achieved. For us, these are the key principles of applying the Payment By Results system within substance misuse services.

CITIZEN AND COMMUNITY INVOLVEMENT

How could civil society organisations support greater citizen and community involvement in all stages of commissioning?

The central premise of a **Power Shift** from a central government to local communities is one we welcome. Our experience has taught us that local communities hold the key to unlocking the potential in the most deprived areas and providing hope and opportunity to those most socially excluded groups. Particularly for those recovering from problematic substance misuse, a key part of their recovery is acceptance by their community. Critical to this is enabling them to find a way to contribute to society in a meaningful way. Our conservation projects and employability work are key to this.

Localism does however present a dichotomy for us working in the substance misuse field. Whilst we agree that there are real and lasting benefits to recovery from effective local ownership and engagement with drug treatment services. The very nature of our client group makes our services more likely to be seen as undeserving of limited local funds. We already have examples of our services being cut to protect the more "deserving" poor by politicians keen to respond to their local electorate.

Some local communities don't want to accept that they have addiction issues that could be best addressed locally. Some want services for those addicted to drugs to sit outside of their communities. We would argue however that investment in effective recovery orientated drug treatment not only realises health benefits for the individual but also brings about improvement in family relationships and child development and reduces crime and anti social behaviour associated to substance misuse.

We particularly welcome the importance placed in the Green Paper on the role of civil society organisations as a source of expertise and as a voice of the less heard groups in local communities. We would welcome a greater emphasis in the White paper on the role of local commissioners to understand the wider social benefits brought about from funding services to more unpopular groups.

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