

Home-Start UK submission to Modernising commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

1.1 Home-Start UK is pleased to be given the opportunity to respond to the Government's Green paper on Modernizing Commissioning. Before we provide our views on the questions asked, we felt it important to set out what we do and to provide some information about our recent experiences of commissioning and in particular tendering and procurement across England.

1.2 Home-Start's is a leading UK family support charity. We offer a free, confidential, informal and friendly family support service, working through a network of over 16,000 trained parent volunteers, supporting 35,000 families through 340 local Home Starts (schemes). These schemes are supported by Home Start UK working across the UK to provide training, information and guidance on family support, volunteering and charity governance, legal and human resources advice, help with fundraising and providing national quality standards.

1.3 In particular Home-Start UK provides tailored expert one to one support to each local Home-Start to secure funding from local commissioners. This support includes a comprehensive electronic resource of background materials and customised training. We therefore have experience of the broad range of local practices related to commissioning and in particular the more recent variable introduction of tendering and procurement across England. Specifically our experience of tendering and procurement over the last three years is as follows:

53 schemes in 36 local authorities have successfully engaged in a tendering process and secured in total over £6million

43 schemes in 26 local authorities have either been unsuccessful in a process that they entered or have been unable to engage in the process for the following reasons:

- Voluntary work was specifically excluded from the specification though the work seemed suitable for Home-Start
- The specification was for a wide age range e.g. 0 – 19 and schemes were unable to build partnerships in the very short timescale.
- Financial limits were placed upon bidders which excluded Home-Start schemes

94 schemes in 50 authorities expect to engage in a tendering process in the next 12 months. This figure is lower than previously predicted as some local authorities that indicated an intention to put certain services out to tender have now declared that they will not be doing this. They do not intend to continue funding Home-Start.

12 authorities so far have indicated that they do not intend to put some services out to competitive tender and some are continuing to fund Home-Start schemes on a grant basis. These authorities have differing views about their responsibility to put services out to competitive tender.

1.4 We are very keen to stress that service continuity for vulnerable families who have built key relationships with support services have often been a casualty of switching providers. We understand that localism and a power shift from central government through local government to citizens can result in different approaches to service provision in different areas. Therefore, as a way of managing the risks associated with contract changes we would recommend that account is taken of service continuity in tender applications and assessments. This explicit approach to risk management is complementary to the overall focus of the Green Paper on a user-led perspective – a focus which Home-Start would endorse. Associated with this issue of switching contracts is the consideration of the consequences and impact on voluntary sector providers themselves of changing what is being commissioned. We note that this point is well made in the document '[Better Together](#)' p11). Evidence about the overall impact for an organization if a contract is lost is an important part of commissioners' understanding of the local social care economy. The Green Paper does recognize that commissioning decisions should include consideration of full social, environmental and economic value. A note of caution is required around the utility of comparisons across tenders when different approaches to measuring social value have been employed.

2. In which public service areas could Government create new opportunities for civil society organisations to deliver?

Home-Start would like to see formal funded links between itself, health visitor services and Children's Centres as part of a package of support which are not negotiated at each Children's Centre but at local authority level. There are examples of this happening very successfully

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

The following are specific points about some of the current commissioning practices which make existing public service markets inaccessible particularly for small voluntary sector organizations:

- PQQ and tender application being combined into one process (this means that if the organization does not pass the PQQ, they have already spent non-recuperable resources on preparing tender documents)
- Unreasonably short time-scales to submit tenders are extremely likely to disadvantage small civil society organisations who do not have specialist bidding personnel and who will have to divert frontline service providing staff to this activity. In our experience this can take at least between 7 and 10 days. Whilst understanding that there must be local specificity,

some consistency of approach (eg of the PQQ) would make things much easier

- Local commissioners should not seek to over specify the service details – they should be looking to achieve certain outcomes, and allow potential providers to identify how they would go about delivering the service
- We recommend that:
 - commissioned contracts should be for a minimum of three years to allow for continuity of service
 - There are standardised contracts and reporting requirements
 - Tender time scales should be reasonable, take account of public holidays and agreed in principle with local voluntary organisations as part of the consultation process'

4. How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?

More recognition and credence should be given to softer outcomes and the very individual outcomes achieved for specific families over a period of time. The data required to carry out full social value assessment should be standardized and made easily available.

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

Civil society organizations are well placed to engage vulnerable citizens and disenfranchised communities because they often have well established relationships within local areas. However, these relationships have often been developed around specific service support. The step to engaging particularly vulnerable people in the planning of service specifications from the earliest stages is key to appropriate involvement in local commissioning. However, these sensitive processes have significant further resource implications which need to be recognized. The Report for the National Programme for Third sector commissioning - stimulating new markets – commissioning social enterprise <http://www.idea.gov.uk/idk/aio/24042772> makes the related point that commissioners have to adapt their processes to enable early effective engagement by local communities. This is particularly in terms of working more in partnership to commission local services.

6. What are the implications of payment by results for civil society organisations?

The underlying principle of payment by results which is to recognize as central the outcomes achieved by the service being commissioned is one which is supported by Home-Start. However we do have reservations around its application for small voluntary sector organizations and particularly those working in preventative aspects of care. These reservations include the following:

- Small organizations could experience cash flow problems

- Identification and measurement of appropriate generic outcome measures for an overall service particularly in the area of preventative work where client's individual journeys develop as part of service support is difficult

7. Which public services areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?

Some areas of work carried out by civil society organizations by their very nature require nurturing but not necessarily by funding them through competitive tender for specific service provision. For example innovative work needs a space to develop – freed up from rigid service specification.

A number of funders opt to adopt the full procurement process regardless of whether under the Public Contract Regulations 2006 they are required to do so. This is particularly the case with low value Part B services. Many local authorities have engaged in a full procurement process when they were not legally required to do so. It is recommended that funders are encouraged not to use the full procurement process when the sum involved is below the appropriate thresholds which will permit the full procurement process not to be used.

To enable small /medium sized organisations with limited resources to participate in the process, it would be very helpful if the tendering and procurement processes were standardised to minimise the burdens on organisations and ensure a focus on service delivery.

8. Should Government explore extending the right to challenge to other local state-run services?

In principle we can see that there will be opportunities for local people and organizations to rejuvenate some provision (eg community halls). The detail of the framework for challenge and the management of the challenge process will be crucial. A relentless challenge and recommission cycle will result in more bureaucracy and most importantly inconsistent service provision. The process itself would be costly and some local authorities may not have the resources to support it.

If so, which areas and what benefits could civil society organisations bring to these public service areas?

In particular Home-Start welcomes the opportunity to consider how it could contribute to the running of public services like Children's Centres. We could bring the experience of skilled home based outreach work using a nurturing, pedagogical isomorphic approach with vulnerable families focusing on learning and growing. Also the skills of volunteer management and leadership are appropriately transferable to the leadership of multidisciplinary teams within community based centres.

9. What are the main barriers that prevent civil society organisations taking over asset-based services?

Home-Start UK does not envisage barriers which would prevent civil organizations taking over asset based services. Technical considerations would have to be given to ensure that agreements had appropriate underwriting for example in the case of leased premises; landlords would need to ensure a strong covenant was in place to cover the alienation clause and maintenance costs and associated capital costs would need to be recognized in contracts.

10. What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?

See points made in point 3 above

11. What are the key issues civil society organizations face when dealing with TUPE regulations and what could government do, within existing legislation, to resolve these problems?

TUPE Regulations which are designed to protect employees in the sale of a business or the transfer of a service operate as a significant barrier to the transfer of services and the opening up of public services. Recent legislation has sought to clarify the application of TUPE where a contract for services is transferred to another provider. There is real difficulty as the TUPE Regulations undoubtedly apply to the sale of a business situation more readily than a transfer of service. This can be illustrated by reference to the disclosure obligations:-

TUPE was designed for a transfer of a business where the buyer and seller have a strict obligation of disclosure and duty of due diligence. A potential purchaser of a business is entitled to all information in respect of the employment of staff in the business in order to assess the value of the business. This does not apply in the scenario in which most voluntary organizations are bidding for funding.

Often potential bidders for services may not know whether there is a possibility of a TUPE arising and there is no mechanism within the Regulations for potential bidders to access this information as of right. Local authorities now seek to place a contractual obligation on all service providers to disclose this information to potential bidders but this contractual obligation of disclosure is not consistent with the outgoing provider's obligations in respect of disclosure under the Regulations which require disclosure only to the incoming provider **not to** potential bidders for the service. This is an anomaly which needs to be addressed as potential bidders for services will be deterred if there is the possibility of unknown TUPE liabilities emerging.

It may be appropriate to consider whether the funder should be required in a funding process to stipulate whether TUPE will apply and the extent of its application. This obligation could be underwritten by insurance as it is imperative when considering the commissioning of services that all

potential providers have equal access to critical information needed to assess the price of the service. Without this information, there is a high risk of non participation in the process.

The applicability of TUPE in the situation of transfer of services may result in unintended consequences in respect of the standard of service provision. If a funder terminates a contract with a service provider due to poor service and transfers the contract elsewhere, the employees engaged in the poor service of the outgoing provider are entitled to transfer to the new provider to continue to provide the service.

Inheriting Local Authority Staff

An incoming provider of a service previously carried out by a local authority will inherit the local authority employees engaged in the provision of the service under their existing terms and conditions. Public Sector Terms and Conditions regarding annual leave, sick pay and benefits (in particular pension benefits) are generally better than those of non profit sectors. The terms of such workers are protected on a transfer of service. This is a significant barrier to the transfer of services to private organisations as the staffing issues presented by the special protection afforded to local authority employees can be difficult to manage and may operate to preclude a potential provider from bidding for a transfer of service.

Whilst the withdrawal of the Code of Practice on Workforce Matters in Public Sector Service Contracts is to be welcomed the Code of Workforce Matters in Local Authority Service Contracts has not been withdrawn. This Code operates as a deterrent to potential bidders who are often unwilling and unable to assume the significant liabilities which would be placed upon an incoming provider under this code.

Where there is a transfer involving a public sector body then under the Cabinet Office Publication “Staff transfers in the Public Sector – Statement of Practice” states that private sector organisations should offer broadly comparable pensions. This is extremely onerous and it is recommended that this should be reviewed. Can the special protection given to local authority employees continue to be justified?

Process Timescales

The sustainability of the service depends on the smooth transfer of a contract from one provider to another. This requires careful planning and arguably a much longer time scale than is enshrined in the Compact (which provides for a notice period of termination of funding of at least 3 months). If a service provider has been in operation for a number of years it is possible that notice periods for staff may be 3 months. If a service provider is only given 3 months notice of termination of funding there is insufficient time to fulfil its obligations as a good employer and adhere to statutory minimum notice periods etc. The practical effect of

this is that a service provider is often faced with a dilemma when future funding is uncertain. In accordance with sound financial management, it is often necessary to serve redundancy notices on staff engaged in the provision of the service as the applicability or otherwise of TUPE applying if funding is withdrawn is not known. This can have a damaging effect on the continuation of service to service users and may result in the loss of valuable experienced staff that may have made a real contribution to the seamless transfer of service to the incoming provider.

It is recommended that consideration be given to raising the minimum 3 month period to a minimum of 6 months although ideally organisations should work on a 12 month notice period for the benefit of its service users.

12. How can commissioners achieve a fair balance of risk which would enable civil society organisations to compete for opportunities?

Pilots described in the Report for the National Programme for Third sector commissioning - stimulating new markets - commissioning social enterprise <http://www.idea.gov.uk/idk/aio/24042772> identified the advantages of commissioners taking on some of the risks associated with a commission in order to encourage smaller organizations engaging. These arrangements can be staggered over the life of the contract and can be negotiated within more of a partnership approach between commissioner and provider. Local Home-Starts would be interested in exploring this approach to working with commissioners locally.

For example commissioners should not automatically assume that there is inherent risk in awarding a contract of £100K to an organisation that currently only has a turnover of £80K. This perceived risk can be managed by a clear plan for managing the growth.

Commissioners should not design commissioning specifications with too much service provision together, but to parcel into lots, and allow bidders to bid for one or more lots.

13. What issues should Government consider in order to ensure that civil society organisations are assessed on their ability to achieve the best outcomes for the most competitive price?

Home-Start welcomes the assessment of price rather than cost as a mechanism for moving to more sustainable funding sources.

What issues should Government consider in the development of the Big Society Bank, in order to enable civil society organisations to take advantage of public service market opportunities?

We welcome the Big Society Bank as new and additional funding for the sector and remain optimistic that it will have the capacity to support a wide range of activities and invest at the level and in ways needed to mitigate the effects of the grant cuts currently being made. The key will be for it to find work closely aligned with the sector, be flexible and responsive to sector needs and have the capacity to invest in a range of organisations and approaches (large and small/tested and untested).

What forms of support will best enable statutory partners and civil society organisations to improve their working relationships?

Support to negotiate partnerships prior to tender applications would be welcome.

What issues should the government consider in the development of the future programme of training public service commissioners?

Home-Start UK would be very happy to share its wide ranging and varied experience of commissioning across England in the form of case studies and would also be interested in being involved in capturing the learning from new commissioning processes and sharing these in learning environments which facilitated a partnership approach to commissioning.

What contributions could civil society organisations make to the extension of personal budgets across a range of service areas?

Home-Start is very interested in exploring how we could contribute to facilitating the roll out of personal budgets within the context of home based volunteer family support particularly to families with more complex needs. We recognize that this would require us to develop our already established organizational ethos which focuses on the family and see our staff and volunteers as community resources.

What changes do both commissioners and civil society organisations need to make to adapt to an environment where citizens are commissioning their own services?

Civil society organizations would need to adapt their governance and administrative services to manage more fragmented services and ensure that there are resources in place to most effectively facilitate empowerment and user involvement.