



Department
for Work &
Pensions

Adran Gwaith
a Phensiynau

DWP Commissioning Strategy 2013

Consultation

31st July 2013

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Introduction

This consultation seeks views from stakeholders and experts on the Department for Work and Pensions (DWP)'s 2013 Commissioning Strategy for welfare-to-work outcomes and services. This commissioning strategy will articulate a strategic framework for DWP welfare-to-work commissioning through a series of principles which will guide DWP's commissioning activity.

An overview of the 2013 Commissioning Strategy is provided on pages 7-8; with the following sections – on market structure and stewardship, driving performance and working in partnership – setting out a series of principles and questions for further work.

About this consultation

Who this consultation is aimed at

This consultation is aimed at stakeholders in DWP welfare-to-work commissioning and experts in both this and commissioning/market management more widely. The development of the 2013 Commissioning Strategy draws on evidence, expertise and best practice to set out a direction in line with DWP and wider government ambition. But a critical ingredient will be the perspectives of stakeholders and experts.

Purpose of the consultation

The questions indicate areas of DWP's commissioning approach where there is most scope for respondents to influence the approach. Written responses to this consultation do not need to cover each question – respondents can focus on areas of interest if they wish.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on 31 July 2013 and runs until 27 September 2013.

How to respond to this consultation

Please send your consultation responses, preferably by e-mail, to:
commissioning.strategy@dwp.gsi.gov.uk

Or, by post to:

Commissioning Strategy Team
Provision Performance and Controls Division
Contracted Customer Services Directorate
6th Floor (Tray 6), Caxton House
6-12 Tothill Street
London
SW1H 9NA

Please ensure your response reaches us by 27-September 2013.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

We have sent this consultation document to a large number of people and organisations. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to the e-mail address given above.

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Freedom of Information Team
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

The consultation is being conducted in line with the new Cabinet Office consultation principles¹. The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou
DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Phone 020 7449 7439

elias.koufou@dwp.gsi.gov.uk

¹ <https://www.gov.uk/government/publications/consultation-principles-guidance>

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the responses to the consultation in a report on the consultations section of our website www.dwp.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

Commissioning Strategy overview

The context – our purpose and priorities

DWP's purpose is to lift people out of poverty. To achieve this we need to transform lives – but we need to do so while controlling costs. In practice, this means improving services and outcomes by delivering value for money.

DWP and Government more widely have articulated the new policy and delivery landscape in which this goal and its supporting objectives can be achieved. The Social Justice Strategy places reducing poverty and increasing economic independence firmly at the centre of the Government's agenda². The introduction of Universal Credit³ will create infrastructure to support DWP to achieve this – and will also fundamentally change the way in which DWP and partner organisations can work with claimants. More widely, Government has set out an intention to create a more strategic and skilled Civil Service which delivers outcomes for citizens through collaborating and engaging with an increasingly diverse range of partners and providers⁴ – who collectively are enabled and empowered to work in new ways to deliver greater value for money.

Welfare-to-work commissioning

DWP's 2013 Commissioning Strategy will set out how – within this wider strategy, policy and delivery context – we will work with partners and providers to deliver the above goals and supporting welfare-to-work objectives: encouraging work and making it pay for those of working age; and enabling work, independence and wider participation in society for disabled people and those with ill health.

DWP has an established track record in using a network of private, voluntary and community and public sector providers to deliver a range of welfare-to-work outcomes and services including sustained employment for the long term employed and specialist disability support. The Department has overseen the development of a market which engages thousands of people in delivering this.

A key step in this development was the publication in 2008 of DWP's first Commissioning Strategy for welfare-to-work⁵. The strategy articulated a series of high-level principles for how the Department would work with the market to significantly increase the number of people entering sustained employment – without being specific to any particular programme.

² <https://www.gov.uk/government/policies/helping-to-reduce-poverty-and-improve-social-justice>

³ <https://www.gov.uk/universal-credit/overview>

⁴ <http://www.civilservice.gov.uk/wp-content/uploads/2012/06/Civil-Service-Reform-Plan-acc-final.pdf>;
<http://files.openpublicservices.cabinetoffice.gov.uk/OpenPublicServices-WhitePaper.pdf>

⁵ <http://www.dwp.gov.uk/docs/cs-rep-08.pdf>

Over the past five years, the market place has responded to a number of commercial opportunities structured in line with the 2008 Commissioning Strategy – including the Work Programme and Work Choice – and DWP, partners and providers have gained experience in operating through its principles. The new commissioning strategy will build on the achievements of, and lessons from, DWP’s commissioning to date and set a direction in line with wider strategy and policy development.

DWP does not default to particular means of delivering outcomes or services. We have a Contestability Strategy, which we can use to identify best value delivery approaches for different objectives – including whether to deliver through an outsourced or in-house solution, through joint ventures, mutuals or a combination of these. Where third party provision forms all or part of the best value solution, the new commissioning strategy will describe how we intend to work with providers and partners.

The opportunity – what’s next

DWP presently commissions third-party welfare-to-work activity with potential total contract values of over £1bn per year. The vast majority of contract value is centrally commissioned; where DWP continues to use large-scale, national programmes to deliver our objectives, we will continue to use this approach. But we also recognise the role of local commissioning; many smaller contracts and grants have resulted from this approach through the Jobcentre Plus network in recent years.

Most of DWP’s current large employment programme contracts, including the Department’s largest two – Work Programme and Work Choice – are due to stop receiving new referrals within the next 2-3 years, with new support to be commissioned. Formal procurement activity for a solution to follow these programmes would be likely to begin 6 to 12 months in advance of commencement. Ahead of these developments, the Employment Related Support Services (ERSS) Framework, used for Work Programme procurement, is due to expire in 2014.

Our 2008 Commissioning Strategy made longer term employment outcomes the norm in DWP employment programme contracts. In line with our Social Justice agenda and the implementation of Universal Credit over the next five years, we will build on this, continuing the emphasis on the achievement of sustained employment as an outcome, and delivering longer term economic independence outcomes for claimants. As part of this development, incremental progression is likely to become increasingly important.

The remainder of this document outlines our current thinking in the form of principles and questions around which we would be particularly interested in the perspectives and expertise of our providers, partners and wider stakeholders. Taking the approach set out in the 2008 Strategy as the basis, this document focuses on three key areas which will shape future DWP commissioning:

- our approach to market structure and stewardship;
- driving performance; and
- working in partnership.

Market structure and stewardship

Every commissioner of public services has a responsibility to use available resources to deliver the best value outcomes and services. But with the scale of our goals and the extent of our public service commissioning activity, our responsibility is greater than most. We recognise DWP has a market-making role – for welfare-to-work and associated services – and our commissioning approach can have a major impact on the market’s ability to deliver the outcomes which claimants, employers and taxpayers require.

The 2008 Commissioning Strategy arranged major contracted-out DWP programmes into larger contractual packages. The ERSS Framework has enabled us to access top tier providers, capable of operating at this scale, who lead and manage supply chains which are governed by DWP’s Code of Conduct (at Annex A). The Code of Conduct is given practical effect by the Merlin Standard⁶, introduced in collaboration with the welfare-to-work market. More generally, DWP has adopted more of a market stewardship role, developed a deeper understanding of its direct suppliers and a more strategic approach to management.

We intend our 2013 Commissioning Strategy to be more explicit about the range of commissioning approaches DWP will use – centrally and locally – to nurture the diverse array of providers and provider capabilities we will require to meet our objectives. In this respect, our commissioning principles around market structure and stewardship will provide a broader framework.

The welfare-to-work market is evolving. We have seen the market consolidating at prime level, with some new entrants to the market through recent major tendering exercises. To develop the capabilities and high performance we require we would expect to see further consolidation of our existing suppliers and more new entrants – at prime level and within the supply chain too.

DWP is seeking to build a vibrant, diverse and sustainable market for welfare-to-work services which creates the conditions for more effective competition.

Principles

- In commissioning welfare-to-work outcomes and services, performance across outcomes and claimant groups, value-for-money and the ability to operate a sound control environment have to be our primary objectives – more so than who and how our providers are owned. However, we are likely to commission a range of outcomes and we recognise our responsibility to consider wider economic, environmental and social benefits in designing these (Social Value is addressed in ‘Working in partnership’, below). Delivering DWP’s future objectives will require a range of capabilities and commissioning approaches.

⁶More details are at <http://www.merlinstandard.co.uk/>

- The Department’s future welfare-to-work portfolio is likely to include large scale, national services. We will therefore continue, through our commissioning, to build a flexible, capable top-tier of providers who can deliver larger contracts and multiple contracts, and with whom we can work strategically to steward the market and manage delivery.
- There will continue to be opportunities for smaller providers to operate as sub-contractors as part of these larger contractual arrangements. Where we commission through prime providers – for outcomes for larger groups of claimants – DWP will continue to expect diverse supply chains which are characterised by excellent sub-contractual relationships. We will have a particular focus on this where outcomes for harder-to-help claimants are required.
- We also anticipate some much smaller-scale procurement of specialist services which DWP will commission directly – primarily through DWP’s Jobcentre network, operating at sub-national level.
- We will review the ERSS Framework, to establish what arrangement will best support the delivery of our future objectives, in line with the development of this strategy. As part of this, we will look at how the Department can utilise specialist or localised capability through its commissioning.

Q1: How should DWP balance its responsibility to strategically manage and steward a large, developing market with our desire to maintain and develop the right specialist capability throughout the supply chain? Please consider contracting arrangements in your answer.

Q2: How can we make competition more effective? How can we break down the barriers to market entry through our contracting, for both our larger and smaller contracts? How could we increase competition through the procurement process? What role can Open Data⁷ play?

Q3: DWP wants to work with the market to improve the effectiveness of subcontractual relationships. What, if any, changes should be made to the Code of Conduct? What are your views on the way the Merlin Standard is used? How can we create supply chains with the inbuilt resilience and flexibility to cope with changing requirements and circumstances?

- DWP recognises that a level playing-field can drive performance. It allows us to identify the providers which can deliver best value⁸ for any given set of objectives – whichever sector they are from.

⁷ The Cabinet Office Open Data White Paper, which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78946/CM8353_acc.pdf, defines Open Data as: **accessible** (ideally via the internet) at no more than the cost of reproduction, without limitations based on user identity or intent; in a **digital, machine readable** format for interoperation with other data; and **free of restriction on use or redistribution** in its licensing conditions.

⁸ The Chartered Institute of Purchasing and Supply defines best value as “a trade-off between price and performance that provides the greatest overall benefit under the specified selection criteria”. This short definition is available at <http://www.cips.org/products-services/procurement-glossary/B/>

Q4: What steps does DWP need to take, across its commissioning (from large-scale national programmes to small-scale local commissioning), to maintain and promote a level playing-field for providers?

- We recognise there may, in general, be less experience across the voluntary and community sector in bidding for and delivering larger scale contracts, especially those where a large proportion of potential contract value is tied to outcomes which can only be achieved over the longer term. We want to see the capability of the voluntary and community sector built so organisations from the sector are better able to compete effectively. We will work with representative bodies to support this – as well as ensuring an understanding of the principles of the Compact between Government and Civil Society Organisations⁹ informs future competitions, service specifications as well as contractual terms and conditions.
- As articulated in the Social Justice Strategy, social investment has an important role to play in developing the capability and capacity of the voluntary and community sector, connecting organisations with sources of finance and financial expertise. ‘Social Justice: transforming lives, One year on’¹⁰ outlines the Government’s progress in developing the use of social investment.

Q5: How should DWP develop the role of social investment in our commissioning?

- In common with the wider public sector, we will consider how our commissioning can support the objective of economic growth – whether that is through using small and medium sized suppliers or developing the capability of larger suppliers so they are capable of competing in the increasingly global public services market place.

⁹ <https://www.gov.uk/government/publications/compact-the-agreement-between-government-and-the-voluntary-community-sector>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203041/CM_8606_Social_Justice_tagged-mw.pdf

Driving performance

To achieve our objectives, strong, sustainable performance on future DWP-commissioned welfare-to-work programmes is essential. That is why driving performance is the Department's main focus.

The contracts for our largest current employment programmes, Work Programme and Work Choice, are approaching or at the half way point – and we are seeing performance building. This is clearly positive but we need to see more in our current and our future programmes.

Fundamental to our approach is rewarding the providers who deliver and dealing fairly and robustly where performance drops below what is required. We see this as essential to the ongoing development of a competitive, functioning welfare-to-work market which is diverse, sustainable and delivers effective services and value for money.

Principles

- Well designed outcome-based payment models have the potential to drive performance by providing a direct link between outcome delivery and provider finances, rewarding effective support for claimants. Outcome-focused contracts will continue to be a prominent feature of DWP's future commissioning, especially for larger programmes. Linked to flexibility within contract specifications, this gives providers the opportunity – and responsibility – to develop effective delivery models and build their capability.
- Alongside a focus on outcomes, service standards and quality monitoring are important tools in delivering performance. We need to ensure each claimant expects and receives a quality, effective package of support which is able to meet their needs. We will examine the role of minimum service standards in our commissioning – whether specified by DWP or bid by providers – and how DWP can develop a more efficient and effective quality monitoring regime. As part of this we need to consider how any wider or secondary programme objectives are captured.

Q6: How should DWP design outcomes and service standards for the hardest-to-help within outcome-focused payment models?

Q7: How can DWP efficiently and effectively monitor and manage service quality within the wider framework described in this document?

- DWP will continue to develop performance management approaches to incentivise high performance and the provision of the most effective services to claimants. DWP presently uses a range of approaches to manage performance within contracted programmes. For example, in Work Choice, one provider is held to account for performance in each Contract Package Area (CPA), while in

Work Programme, two to three providers operate in each CPA with the Department able to move market share between them based on performance.

Q8: How should the Department, working with the market, develop its approach to performance management? For example, should we consider increased use of Market Share Shifting, focusing on directly performance managing individual providers or allowing claimant choice within CPAs? How can the market drive performance?

- We need to balance our providers' requirements for security to support the investment in, and the building of, services and capability with the right incentives for effective delivery. DWP intends our performance management approaches to be increasingly dynamic and responsive – with a greater emphasis on delivering across the whole of client groups commissioned for. Performance in programme live-running should be recognised and acted upon at the earliest point commensurate with the programme's objectives and outcomes.
- We want to see our providers succeed – in delivering outcomes for claimants and providing good value for taxpayers. Where a provider – whether nationally or locally commissioned – falls below the standards they have agreed to deliver, DWP is committed to working in partnership with organisations to improve. However, we are clear that allowing continued underperformance is not fair to claimants, taxpayers, or the better performing organisations in the market place. As such DWP is committed to commissioning arrangements which enable underperforming providers to be removed and replaced.
- Competition needs to operate effectively through the procurement process. DWP primarily uses competitive tendering to identify best value. We will examine whether we can increase the alignment between performance expectations and providers' bids. This would increase the fairness of the bidding process – which will in turn maximise the effectiveness of our competitive tendering exercises.
- DWP does not want to limit the ability of capable organisations, new to the welfare-to-work and related services market, to bid successfully for opportunities through DWP. However, DWP will continue to examine ways in which prospective providers' past performance can be taken into account through the procurement process, considering any provisions resulting from ongoing work to modernise EU procurement rules.¹¹

Q9: How, when assessing bids, should we balance price and quality?

- DWP will continue to look for credible, evidence-based delivery models in every bid. Within this, testing of new, innovative approaches – both in the types of interventions offered and the way these are delivered – will be welcomed and contracts will be sufficiently flexible to enable this.

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62100/PPN-0812-Update-on-Modernisation-of-the-EU-Procurement-Rules.pdf

Q10: How can DWP incentivise innovation in future welfare-to-work commissioning? How can we capture and share practice derived from successful innovations? What are the barriers?

- The provider capabilities contained in our 2008 Strategy (at Annex B), remain DWP's core set of expectations. However there will be increased emphasis placed on:
 - rigorous performance management;
 - programme and project management;
 - investment by providers in the development of their own staff and their supply chains.
 - supply chain management and development;
 - digital/IT, including using digital/IT to deliver services and enable outcomes, supporting digital inclusion and growing the IT capability of claimants;
 - effective partnership working; and
 - [Where appropriate] an understanding of the challenges faced by disadvantaged claimants and strategies to support this group into work.

Q11: We have re-affirmed our view of the overall set of provider capabilities, giving particular capabilities more emphasis. Are there key capabilities which we have not adequately captured?

- DWP will seek to continue to strengthen performance management accountabilities, both within the department and within our providers.

Working in partnership

Working in partnership is critical to the delivery of DWP and wider government objectives. Locally, through our Jobcentre Plus network, we are key players in a range of local partnerships. Nationally, we work closely with central government departments and agencies to align policy and provision in areas such as skills and housing. But demands for joined-up delivery – to provide a more seamless service and increase value for money – are increasing.

In addition, the wider commissioning and partnership landscape is changing at the national and local level. Recent developments have included the election of Police and Crime Commissioners in late 2012¹²; Clinical Commissioning Groups assuming commissioning responsibilities in 2013¹³; and the Ministry of Justice (MoJ) consulting on changes to the way probation services are commissioned and delivered¹⁴. DWP is part of this changing picture: we are developing local partnerships with Local Authorities through the Local Support Services Framework¹⁵ to support the delivery of Universal Credit and services such as Tell Us Once¹⁶ are demonstrating that the Department can meet citizens' needs in new ways.

This increasing plurality of partners engaging with DWP's clients is creating new and different opportunities. We recognise the implications of these developments for the way we deliver. We see partnership and co-commissioning approaches as integral to our future commissioning activity and key to fully exploiting these opportunities. In practice, that means developing the incentives for our commissioners, partners and providers to work together – and supporting them to be capable, confident and open to a range of effective and efficient partnership models.

Principles

- We expect future partnerships to be characterised by their increasing diversity – of commissioners, providers, employers and funding streams. Our arrangements need to be able to operate effectively across sectors: between the public, private and the voluntary and community sectors. They will also need to work between bodies operating at different spatial levels, nationally and sub-nationally.
- We believe the best response to a diverse and dynamic commissioning landscape is to be increasingly open to new ways of thinking about delivering outcomes with

¹² <https://www.gov.uk/government/policies/helping-the-police-fight-crime-more-effectively/supporting-pages/police-and-crime-commissioners>

¹³ <https://www.gov.uk/government/policies/making-the-nhs-more-efficient-and-less-bureaucratic/supporting-pages/nhs-management-and-commissioning>

¹⁴ <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181395/uc-local-service-support-framework.pdf

¹⁶ <https://www.gov.uk/tell-us-once>

and through partners, within the high-level strategic framework that the new commissioning strategy will provide. Therefore our ambition is to become increasingly flexible in our commissioning. To achieve this we envisage a number of practical steps, including ensuring any future framework arrangements are constituted to support multiple and shared outcomes and building a fully enabled local commissioning environment for DWP.

Q12: Working within the high-level framework articulated in this document, how could DWP become a more flexible partner, nationally and locally – what are the barriers to more effective partnerships?

- Co-commissioning is a form of partnership working which we think has the potential to deliver better value services. It can comprise joint resourcing of objectives between two (or more) commissioners as well as the alignment of resources through a formal arrangement to support shared objectives. We intend to build on the learning from our current pilots of multiple outcome co-commissioning¹⁷ – set-up through partnerships between DWP and MoJ to tackle unemployment and re-offending, and between DWP, Department for Health, the National Treatment Agency and Local Authorities to test different approaches to supporting people with drug and alcohol dependency. Here, separate but related outcomes are delivered through the same contract. Through learning and sharing the lessons, we can work towards a system where this sort of co-commissioning becomes part of the DWP commissioner's toolkit – whether they work at a national or local level.

Q13: What are the current barriers to co-commissioning?

- The Social Value Act¹⁸, which commenced in 2013, has created a requirement to consider the wider economic, environmental and social benefits of approaches to procurement before a process begins. The focus remains on value – but on capturing wider benefits as part of this. DWP sees the consideration of Social Value and our developments in co-commissioning and partnership working as complementary and reinforcing.

Q14: DWP recognises the importance of the Social Value Act, but also has a clear remit to deliver sustainable employment outcomes which offer good value-for-money to taxpayers. How can DWP best consider Social Value through its commissioning?

- We will continue to incentivise partnerships between our providers and with employers and other public service commissioners using clearly-defined outcomes and flexible delivery models which enable those engaged in service design and delivery to identify where and how to work in partnership. We will work to hone our incentive systems to encourage and enable partnerships in

¹⁷ <https://www.gov.uk/government/news/government-launches-employment-support-for-prisoners>
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98010/recovery-roadmap.pdf

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Service_Social_Value_Act_2012_PPN.pdf

DWP's delivery networks – regardless of the types of organisation these comprise.

- Particularly within programmes, DWP recognises the tension between collaboration and competition but the Work Programme Best Practice group, recently announced¹⁹, demonstrates a balance can be struck – enabling competing providers to work together to drive up performance.
- We see a real opportunity in building on our local commissioning activity. DWP has granted increased operational freedom to its frontline managers in Jobcentres. Through sharing the learning from the best locally-developed solutions across our networks, increasing access to expertise and building capability we can boost our local commissioning, opening up opportunities to providers able to offer flexible local services.
- DWP is committed to making full use of initiatives such as the Cabinet Office's Commissioning Academy²⁰ to build the confidence, connections and capability which our people need in order to commission in a complex and increasingly shared landscape. We expect DWP's national and local commissioners to be a prominent part of the public sector-wide network of expert commissioners that the Academy programme seeks to build.
- While we recognise there is considerably more work to do, we are developing, through the pilots referred to above, approaches to delivering multiple outcomes – as part of our work to build our evidence base. But we also need to build our evidence and organisational experience in the delivery of shared outcomes. The Department will examine options for trials of approaches to delivering shared outcomes with other public service commissioners.

¹⁹ <https://www.gov.uk/government/news/helping-more-of-the-hardest-to-help-into-work>

²⁰ <https://www.gov.uk/the-commissioning-academy-information>

Consultation questions

Q1: How should DWP balance its responsibility to strategically manage and steward a large, developing market with our desire to maintain and develop the right specialist capability throughout the supply chain? Please consider contracting arrangements in your answer.

Q2: How can we make competition more effective? How can we break down the barriers to market entry through our contracting, for both our larger and smaller contracts? How could we increase competition through the procurement process? What role can Open Data²¹ play?

Q3: DWP wants to work with the market to improve the effectiveness of subcontractual relationships. What, if any, changes should be made to the Code of Conduct? What are your views on the way the Merlin Standard is used? How can we create supply chains with the inbuilt resilience and flexibility to cope with changing requirements and circumstances?

Q4: What steps does DWP need to take, across its commissioning (from large-scale national programmes to small-scale local commissioning), to maintain and promote a level playing-field for providers?

Q5: How should DWP develop the role of social investment in our commissioning?

Q6: How should DWP design outcomes and service standards for the hardest-to-help within outcome-focused payment models?

Q7: How can DWP efficiently and effectively monitor and manage service quality within the wider framework described in this document?

Q8: How should the Department, working with the market, develop its approach to performance management? For example, should we consider increased use of Market Share Shifting, focusing on directly performance managing individual providers or allowing claimant choice within CPAs? How can the market drive performance?

Q9: How, when assessing bids, should we balance price and quality?

Q10: How can DWP incentivise innovation in future welfare-to-work commissioning? How can we capture and share practice derived from successful innovations? What are the barriers?

Q11: We have re-affirmed our view of the overall set of provider capabilities, giving particular capabilities more emphasis. Are there key capabilities which we have not adequately captured?

²¹ The Cabinet Office Open Data White Paper, which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78946/CM8353_acc.pdf, defines Open Data as **accessible** (ideally via the internet) at no more than the cost of reproduction, without limitations based on user identity or intent; in a **digital, machine readable** format for interoperation with other data; and **free of restriction on use or redistribution** in its licensing conditions.

Q12: Working within the high-level framework articulated in this document, how could DWP become a more flexible partner, nationally and locally – what are the barriers to more effective partnerships?

Q13: What are the current barriers to co-commissioning?

Q14: DWP recognises the importance of the Social Value Act, but also has a clear remit to deliver sustainable employment outcomes which offer good value-for-money to taxpayers. How can DWP best consider Social Value through its commissioning?

Annex A: 2008 Commissioning Strategy - DWP Code of Conduct

The 2008 Commissioning Strategy Code of Conduct spelt out the key values and principles of behaviour which DWP expects of providers and which are essential for creating healthy, high performing supply chains. Providers who contract with DWP are expected to operate in accordance with the Code of Conduct.

Values

The Code of Conduct is underpinned by a set of core values to be upheld by top-tier and delivery providers. They should:

- act with integrity;
- have respect for their partners (actual and potential), including the use of fair contracting and funding arrangements;
- ensure transparency, non-discrimination, equal treatment and accountability in relationships between both parties;
- ensure prompt and receptive responses to market place issues and challenges;
- encourage the sharing of good practice;
- promote equality and diversity in their own workforce and their supply chain; and
- be committed to achieving the best possible outcomes for our customers.

Pre-awarding of contract

- Sub-contracting opportunities should be advertised as openly and widely as possible.
- Application processes at the sub-contracting level should be open and fair, as simple as possible, consistent, and in proportion to the size of contract.
- Short listed top-tier providers cannot insist that potential delivery providers negotiate only with them and not their competitors.
- There will be no “poaching” potential delivery provider staff during sub-contracting negotiations.
- Top-tier providers should ensure transparency in providing timely feedback to unsuccessful delivery providers.
- Both parties should agree the terms of delivery at the outset and with additional agreement on how risk is to be allocated.

- Top-tier providers with longer contracts will offer contracts to delivery providers of sufficient length (subject to performance) to enable long-term planning and investment.
- Funding should be on a basis that is fair to the different organisations involved and reflects relative ability to bear particular risks. All providers will need, through the contract tendering process, to offer prices and have plausible expectations of what they can deliver, so that they are in a position to recover their costs.

Post-awarding of contract

- Top-tier providers will live up to any commitments they make to delivery providers at the time of contract award.
- Monitoring requirements and management information should not be overly bureaucratic and should be consistent, proportionate, clearly specified and agreed at the start of the contract.
- Neither top-tier nor delivery providers will engage in restrictive practices such as colluding on price.
- The development of smaller providers will be supported and encouraged.
- The top-tier provider should provide a reasonable level of extra support for new entrants into the market.
- There should be transparency between top-tier and delivery providers about decisions or referrals of customers including the level and type of support needed.
- Timing of payments should be consistent and agreed with both parties, to ensure the level of risk is minimal on the delivery provider.
- Top-tier providers should consider making payments in advance of expenditure (where appropriate and necessary) in order to achieve better value for money.
- There will be open lines of communication between providers to ensure any issues are resolved as soon as they arise as far as is practicable.
- Contracts between top-tier/delivery providers will allow a sufficient termination period, which will be agreed at the outset.
- Top-tier providers should not seek to obstruct or prevent delivery providers from presenting reasonable strategic or operational grievances to DWP.

Equality and diversity

- All providers will have effective equality and diversity policies and will abide by DWP policy on equality and diversity where relevant and proportionate to the contract.

- Top-tier and delivery providers should promote diversity and equality in their ways of working, in relation to their own staff, their supply chain and in the delivery of services.

DWP will undertake to:

- uphold these standards as a good commissioner;
- monitor and enforce the Code of Conduct consistently and fairly;
- allow a sufficient period of time for short-listed organisations to fully develop their tender proposals, including development of partnership and consortia arrangements. In the case of larger procurement exercises this will not generally be less than 12 weeks;
- act as stewards of the supply chain in its initial stages supporting providers and Contract Managers in the implementation activity from contract award through to live running;
- actively promote awareness of and adherence to the use of the Code of Conduct by top-tier providers and delivery providers;
- provide a grievance route for delivery providers who believe that the Code of Conduct is not being adhered to; and
- ensure that delivery providers can have a 'voice' direct to DWP, not just as a vehicle for talking about common problems, but as an opportunity to share insights that are best understood by those dealing with our customers.

TUPE

- DWP will request that all tenders that are submitted include a statement as to whether they believe TUPE applies or not. Whether or not TUPE applies in any specific set of circumstances is ultimately a matter for the courts. It would not therefore be either possible or proper for DWP to make a definitive statement on its applicability.
- DWP will facilitate where necessary the exchange of full and complete TUPE information during the tendering process and between out-going providers of the service and the incoming service provider. We shall expect the transferor and transferee to reach agreement on compliance with the information provisions of TUPE and will not be offering any warranties as to the completeness of any information where we facilitate exchange (since we have no way of assuring this).
- DWP will consider carefully the implications of contracting with a provider who is offering non-TUPE terms. Where an organisation had assumed it did not apply, we would want to explore the extent to which risks arising from that – including risk of their view being overturned in court – had been mitigated. We are prepared to disregard TUPE costs in deciding on contract award, but would not get involved in subsequent disputes between the new supplier and the old.

- Where contracts will potentially involve the transfer of staff from the public sector, the Cabinet Office Statement of Practice will apply.
- DWP or providers may from time to time propose amendments or developments to this Code, which will be the subject of consultation before any changes are introduced.

Annex B: 2008 Commissioning Strategy - Provider Capabilities

DWP's 2008 Commissioning Strategy outlined the following capabilities, which we would expect from our providers:

- financial strength/access to capital together with an investment strategy;
- ability to bring in expertise from other organisations/sectors;
- ability to lever in other resources to enable programme management with partners;
- effective partnership working;
- supply chain management and development;
- programme and project management;
- commercial acumen; and
- local credibility and outreach capability.
- ability to work effectively with other delivery partners, including those in the public sector, notably Jobcentre Plus, Learning and Skills Council and local authorities;
- rigorous performance management;
- case management to assist people, particularly disadvantaged people, into sustained employment;
- strategic employer engagement to provide suitable and sustained jobs and a sound employer-facing infrastructure;
- local labour market knowledge and identification of skills needs and job opportunities;
- specialist understanding of sources of disadvantage and strategies to overcome it for all customer groups based on evidence; and
- capacity and capability to respond to changing economic conditions.
- assessment of job seeker needs, and flexibility and personalisation in assisting them into employment;
- excellent customer experience; and
- investment by providers in the development of their own staff and their supply chains.