



Really Intelligent Commissioning: A Thinkpiece

This thinkpiece on really intelligent commissioning was written by Hilary Barnard of HBMC for participants in the Leadership Enhancement Programme for Integrated Youth Support Services. This programme is based on a series of action learning sets throughout England with a participant from each local authority and a broadly representative third sector youth focused organisation.

The programme was commissioned by Children's Workforce Development Council and Children's Workforce Network, and is being delivered by a consortium led by FPM and including the National Youth Agency. The piece was written because commissioning issues have been a hot topic in every round of action learning sets.

Although the audience for the thinkpiece are youth services, the key points being made apply equally to other service areas where local authorities and other public bodies commission the third sector. This thinkpiece is produced by kind permission of FPM.

Introduction

The House of Commons Public Administration Committee defined intelligent commissioning as commissioning “based on a knowledge of potential providers and desired outcomes, based on user needs. Intelligent commissioners should be able to make judgements such as whether contracts or grants are the right way to fund a service, how important price should be in determining who wins a contract, and whether there is scope for innovative methods of delivery”¹

Local authorities moved into commissioning third sector organisations with contracts and service level agreements nearly 20 years ago. Frequent incremental changes in contractual arrangements and the critical reaction of third sector organisations indicate that commissioning has yet to prove itself a success. It is important to ask why this is.

Over the years, there have been various initiatives aimed at making commissioning work better. These have included strengthening the competences of commissioners (including better understanding of the third sector), an increasing emphasis on outcomes, and developing the skills of third sector organisations in the contracting relationship. These steps have not removed considerable tension and difficulties around local authorities commissioning third sector organisations. At the same time, voluntary and public services have become increasingly interdependent. For example, local authorities rely on third sector organisations for information and intelligence about what is needed and how those needs can best be met.

¹ Public Services and the Third Sector: Rhetoric and Reality 2008).



Talk in recent years about intelligent commissioning and world class commissioning has been a recognition that there are significant problems with current models of commissioning the third sector. The current recession and subsequent widely predicted cuts in public expenditure are likely to bring these problems into sharper focus.

This paper concentrates on the strategic questions of improving the practice of commissioning third sector organisations, both from the standpoint of the commissioner and from the perspective of the third sector organisation. This paper is set within the Every Child Matters Joint Planning and Commissioning Framework.

Status quo

“Most [local] authorities reported they were using an ‘intelligent commissioning model’ in aiming to understand service needs, understand the market and develop a choice of procurement methods involving:

- In-house provision
- Partnership working through pooled budgets, integrated services and co-location
- Grants
- Service level agreements
- Community development approaches
- Competitively tendered services from third sector and private organisations”

Commissioning Positive Activities for Young People, INLOGOV and Local Government Information Unit for National Youth Agency, 2008

As a prospective supplier you should be able to see most of these principles at work in commissioning processes as you engage with them.

The distinctive contribution of the third sector

Rhetoric about commissioning often suggests that it should be a matter of indifference whether it is the public, private or third sector that is commissioned by the local authority. While there should always be fair procurement processes, it is at least questionable whether commissioners or their third sector partners should be entirely comfortable with this “sector blind” approach:

- The third sector currently provides a large proportion of youth services and activities for and with young people. Its capacity to continue to do this, particularly on a more integrated basis, matters to the outcomes for young people
- Local third sector organisations hold considerable local knowledge about young people and their communities, which is a significant though often seriously under-rated asset
- Local third sector organisations harness volunteering resources, which need to be sustained at a grass roots level but which require increasing effort
- Local third sector organisations are important agents in facilitating bonding within communities and bridging between communities. They are a bedrock of community cohesion and local citizenship, key underpinning elements in integrated youth support services
- Investing in local third sector organisations increases local circulation of money, a positive factor for community resilience in the face of the recession.

National Indicator 7 for local authorities – an environment for a thriving third sector – is the beginning of a recognition that third sector organisations are far more than providers. Their creation and continued work is an expression of the social capital that lies in local communities, a huge asset that is not always recognised sufficiently in policy making.

Reflection

“BME third sector organisations thought that commissioners often showed a limited understanding of the diverse needs of their local communities – and by extension, the potential value of working with BME third sector organisations in helping to meet these needs.”

Evaluation of National Programme for Third Sector Commissioning: Consultation with BME Third Sector Organisations, National Programme for Third Sector Commissioning, 2008

What factors might have prompted BME third sector organisations to reach these conclusions?

How might commissioners make better use of the information and insights contained within these organisations so as to make really intelligent commissioning judgements and decisions?

Large is not always best

It has been widely observed that the list of those third sector organisations being commissioned in many areas is getting shorter and increasingly dominated by larger organisations, some of whom will have weak or no local roots. In defence of such developments, often supported by national and regional infrastructure, it is argued that larger organisations are more efficient. It is true that larger organisations may be better placed to secure economies of scale, though this is not guaranteed. However, larger organisations tend to have greater inefficiency than smaller organisations in internal coordination, just simply because of the number of people who have to be involved. Both factors need to be weighed and the comfortable assumption that larger is necessarily best put to one side by the intelligent commissioner. It is important to challenge the thinking that large organisations alone constitute a healthy selection of providers. The local authority can follow the private sector example and nurture a wider range of suppliers, including smaller third sector organisations.

Intelligent commissioning is challenged to tap the potential of all third sector organisations who would like to contribute to integrated youth support services. This extends well beyond those who label themselves as youth organisations. These wider groups have a particular significance within BME communities, but often find themselves effectively excluded by not fitting the functional boundaries of local authority services.

Reflection

“I am deeply saddened, as an ex-director of social services, by the attitudes that some people in the public sector have towards third sector organisations. At its worst, there is a lack of common decency, including a refusal to communicate and respond to phone calls and an expectation that it will be possible to deliver quality and continuity on the basis of a one year contract.”

Dame Jo Williams, former Chief Executive of MENCAP, in Loose Talk & A Hard Nut: Commissioning for Better Outcomes, SOLACE Foundation 2007

How widespread are those attitudes in local authorities and how can they best be countered?

Alongside but not the same

Rosabeth Moss Kanter, a leading writer on management, memorably compared large organisations to elephants and considered how difficult it was to get them to be responsive or in her analogy to learn to dance. Local authorities could be regarded as quintessential elephants. The aspirations of local authority third or voluntary sector strategies are often disconnected from the much more powerful market forces that the same local authorities are managing. Even the best run can be siloed by department or service and be rule-bound and inward looking. While the work that local authorities do is essential, the way they organise themselves is usually not an attractive model for third sector organisations to follow. The power of local authority 'patronage' for the third sector can often shroud the underlying views of third sector organisations. Commissioning processes can recognise the virtues of a lighter touch of tight-loose management, only tight around a very few critical aspects and with no aspiration otherwise to change different ways of organising.

Reflection

What specifically are the business-like characteristics that local authorities seek in third sector partners? Why do third sector organisations sometimes struggle to display them?

Third sector organisations are often criticised for being insufficiently strategic in their approach. This criticism has some force. They may be focused on the very short term, not planning ahead enough and not thinking more widely. However, there is more than one way of being strategic. Local authorities have a natural bias to deliberate strategic planning with highly defined objectives and targets. In part, this bias has been driven by the demands of central government.

The difficulty is that this model does not entirely fit a world of increasing turbulence and unpredictable change, which is impacting on every aspect of the lives of young people, and all the organisations around them, including local authorities. Third sector organisations tend to have more affinity with emergent strategies, based on positioning. The more entrepreneurial approach of third sector organisations can be an asset in planning ahead if the approach adopted seeks to balance deliberate and emergent approaches in an umbrella strategy, combining both approaches.

Reflection

Consider the difference between deliberate and emergent strategies? What might be more fitting to adopt when seeking to join up services for young people in a volatile policy context? Why?

Tail wagging the dog

Intelligent commissioning is much more than procurement. For example, if needs analysis is to be conducted, who does it and how? Whose needs are being analysed – young people's, their community's, or the local authority's? These needs are not always identical. How is the creation of a market for services intelligently undertaken? Above all, how are real shared ambitions jointly developed?

There is an increasing tendency for some commissioners and procurement officers to advance rules and requirements into commissioning that are anti competitive for the participation of smaller and medium sized third sector organisations. Examples include:

- Setting minimum percentage turnover requirements (e.g. contract should be no more than 35% of turnover) in order to compete for specific contracts
- Excessive risk being placed on the third sector organisations. For example, the requirement for performance bonds as part of agreement to the contract
- Parcelling up projects into large contracts for which small and medium sized third sector organisations will find it very difficult to bid
- Timescales that are too short for engaging with contractual opportunities whilst having to run a service at the same time
- The excessive costs in assembling unnecessarily complex bids disproportionate to the size of the contract
- Onerous monitoring and reporting requirements that are disproportionate to the size of the contract
- Claiming in aid EU regulations regarding requirements for an open tender when the requirement is actually one only within the local authority's policies and procedures.

And then there is the matter of price. Unrealistic prices usually mean that smaller third sector organisations with limited or no reserves cannot compete. In 2007 the Charity Commission reported that of 3,800 charities surveyed, only 12% said that their funding for public service delivery always covered their costs. Government (2002) defined full cost recovery as "the price for contracts reflects the full cost of the service, including the legitimate proportion of overhead costs." In 2007, the NCVO survey of members of its Public Service Delivery Network found that 63% (the highest rating of any factor) of respondents rated achieving full cost recovery as one of the top three obstacles to achieving effective and efficient working between third sector and public sector.

All of these elements make it problematic for local third sector organisations to be prime contractors in work where they have considerable knowledge and expertise. This sets up a vicious circle as many third sector organisations get fewer opportunities to build up their competences in managing larger contracts and are thus less well placed in future bidding rounds.

A strategic commitment to collaboration

In defence of commissioning practice that restricts third sector organisations who can compete for contracts, it is argued that third sector organisations can always form consortia. If third sector organisations have a serious contribution to make to integrated youth support services, saying this is not enough.

- Consortia arrangements usually require much more time to establish than the tendering period of a very few weeks allows. The commissioner should be sceptical about the strength of consortia put together in under two months.
- Consortia arrangements usually require facilitation and continuing support to establish. That facilitation and support needs to be resourced and cannot usually be provided by the internal resources of the potential consortia members.
- Local third sector organisations are jealous of their identities and do not exist solely or principally for the benefit of the local authority. They often have different ways of working, policies and structures. Securing consensus on the best approach requires reflection, energy and commitment.

It is worth reflecting on how long it takes to build collaborative services between neighbouring local authorities, particularly where they have different political control.

Contracts: opportunities and limitations

The jury is out on the effectiveness of commissioning in securing better services and outcomes for young people. Policy is firmly wedded to the process but those charged with providing services have yet to be convinced of the benefits. Their experience of the process to date may allow them to be forgiven for judging the process to be more constraining than liberating. Perhaps they have yet to recognise there is more room for manoeuvre than they had anticipated.

A. Social clauses

It is possible to include additional community benefit in contract award criteria and contracts. These 'social clauses' can include such elements as generation of social capital or engendering a spirit of voluntarism, which are valuable to the development of work with young people. They can be aligned with the public duty on local authorities to ensure community participation and involvement in decisions about services. Care needs to be taken to ensure that social clauses are not discriminatory and do not constitute a 'local preference scheme'.

The adoption of social clauses can be reinforced by setting out within contract documents wider approaches, such as social return on investment (SROI), to assess outcomes. SROI translates both short term and long term social and environmental outcomes into tangible monetary values, helping third sector organisations and local authorities see a fuller picture of the benefits that flow from their investment of time, money and other resources. As well as fitting with HM Treasury definitions of value for money, it is suitable as young people and their organisations have time, knowledge, skills and networks that can play a vital role in designing and delivering effective services.

For more information on SROI, see *A Better Return: Setting the Foundations for Intelligent Commissioning to Achieve Value for Money*, New Economics Foundation for National Programme for Third Sector Commissioning, 2009.

For more information on social clauses visit

www.cabinetoffice.gov.uk/third_sector/public_services/social_clauses.aspx

www.berr.gov.uk/files/file34323.pdf

Reflection and activity

What social clauses are included in the youth service contracts in your area?

Brainstorm appropriate potential social clause provisions with commissioners and third sector providers.

B. EU rules.....OK?

Under EU procurement rules (Introduction to the EU procurement rules, OGC 2008), there are four different procedures which local authorities can choose between in tendering contracts

- Open: all those interested respond to the advertisement in OJEU by tendering for the contract
- Restricted: a selection (of a minimum of five) is made of those who respond to the advertisement in OJEU and only those selected are invited to submit a tender
- Competitive dialogue: following advertisement in OJEU and a selection process, the local authority enters into dialogue with potential bidders (a minimum of three) to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender
- Negotiated: the local authority may select potential bidders (a minimum of three) with whom to negotiate the terms of the contract. In certain circumstances, the contract does not have to be advertised in the OJEU.

Competitive dialogue and negotiated procedures are of particular interest in developing youth services. They fit with a co-production model that recognises that young people have assets and that some of the greatest challenges facing publicly funded services for young people rely on young people working with professionals – individually and in groups – to help themselves and each other.

Competitive dialogue is regarded as an exception route to be used for particularly complex projects (a term that could easily be applied to much youth work) and where open or restricted procedures are inappropriate. Competitive dialogue may require justification from the Office of Government Commerce.

C. Lessons from the private sector

The private sector tends to have a more robust attitude than local authority officers towards testing what the law will allow. Their mindset is one of asking what are we not permitted to do, why is this so and how can we limit that restriction. Those giving legal advice to their private sector clients are encouraged to focus on finding solutions within the law that will work for their clients rather than presenting obstacles. It should be remembered that legal services whether within or outside local authorities are also effectively contractors to those running services.

Perhaps in this particular regard, the public sector could take a leaf out of the private sector's book. Too often we may take as given what procurement officers determine. The most usually adopted option – open tender – may be preferred because it is probably the least complicated. Decisions taken by public sector administrators tend in turn to be derived from the advice of legal experts. However the views of legal experts are influenced by the questions they are asked. If they are asked different kinds of question they will give different kinds of answer. These might suggest a broader approach than that more usually conceived. There are several ways of skinning the commissioning cat. Perhaps we should be more courageous in challenging what is often presented as divine gospel on these matters.

Summary

To make intelligent commissioning a reality, we must all challenge existing mindsets around commissioning and the relationships we are fostering between local authorities and third sector organisations. There has been a general expectation that the boundary between grants and contracts will shift progressively in favour of contracts. This can usefully be questioned. Local authority grant systems have become tighter as a result of lessons learnt from commissioning. It can be argued on the basis of a significant amount of evidence that contracts in some service areas are unnecessarily onerous for a range of projects undertaken by third sector organisations and funded by the local authority. These projects can be better funded through grants and should revert.

There is no magic bullet to deliver ideal commissioning but there are clearly better ways. This paper suggests that those better ways are based on:

- More value being put on the contribution of smaller third sector organisations to IYSS, particularly through social clauses
- Looking more to a combination of tight-loose controls in managing contracts with third sector organisations
- Removing restrictive procurement rules so that local third sector organisations are more able to be commissioned
- Asking where contracts are needed whether they could be subject to competitive dialogue or negotiated procedures
- Facilitating potential consortia and other collaborative working well ahead of any contract timetables and deadlines
- Working out how large prime contractors, whether from private sector or large national voluntaries, could be incentivised to work with smaller third sector sub contractors and to build those organisations' capacity to participate more fully in the commissioning process.

Support helpline

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