

Creating More Effective and Efficient Markets

Introduction

This briefing paper provides some background information on creating more effective and efficient markets in children's services, and is intended to support participants on the Commissioning Skills Training Programme.

Background – the drive for change

In recent years there has been an increasing emphasis on the need for commissioners of children and young people's services to influence the market. The White Paper 'Our Health, Our Care, Our Say'¹ suggests that local authorities and PCTs should support the development of the wider health and social care market, including services for those who have the ability to pay for social care services themselves. The Department of Health's Commissioning Framework for Health and Wellbeing² highlighted that there is a limited range of providers in some health and wellbeing markets and identified a vision for the future: a market in which there is a wider range of providers with provision that is more innovative, offering services better tailored to people's needs and building local social capital. The framework identified that it was the responsibility of commissioners to develop a more diverse market in order to ensure genuine choice for service users. The framework stated:

"Commissioners have a key role to play in shaping the market through dialogue and procurement to stimulate providers to produce innovative solutions and create an environment where these can be sustained....Commissioners should actively encourage a strong provider market, based on a diverse supply community from all sectors. Encourage entry by new participants and growth from under developed sources of supply, including social enterprises and the third sector."

The framework also emphasised the requirement for commissioners to engage the provider community constructively and transparently about priorities and issues for market shaping and development. It stated that:

"We believe it essential, and entirely consistent with good procurement practice, for commissioners to develop effective and strong partnerships with current and potential providers."

Managing and developing (often referred to also as influencing or shaping) the market can help to put people at the centre of commissioning by re-designing the pattern of local services, based on users' actual needs, wants and daily lives. The framework suggests that such an approach might, for example, involve co-locating relevant new services on sites that children and young people already use, such as children's centres and extended schools, to improve access and usage.

¹ DH (2006) Our Health, Our Care, Our Say.

² DH (2007) Commissioning Framework for Health and Well-Being.



Commissioning Support Programme
99 Waterloo Road
London SE1 8XP

OXFORD
BROOKES
UNIVERSITY

The Joint Planning and Commissioning Framework³ put better outcomes for children and young people at the centre of all joint planning and commissioning decisions and recognised that this will require new partnerships, a more commercially minded approach to procurement, and a stronger market management role⁴. The Framework states that children's trusts will need to help to shape both the workforce and the children's services market, so as to ensure the efficiency, effectiveness and long-term sustainability of services. Children's trusts should decide:

- if or when in-house services should be contracted out;
- how smaller providers will be supported;
- to what extent the markets need to be strengthened in terms of the number, size and range of providers; and
- how children, young people and families can have more choice about the services they access.

The circular Transforming Social Care⁵ also stresses the task of 'shaping and building' the market. The circular proposed that each local authority needs to have "a market development and stimulation strategy, either individually or on a wider regional basis with others, with actions identified to deliver the necessary changes."

These themes are also present in the health commissioning agenda where the Vision for World Class Commissioning sees 'stimulating the market' as one of eleven key 'headlines' for the health service. The overall vision document states:⁶

"Commissioners will need a choice of responsive providers in place to meet the health and care needs of the local population. Employing their knowledge of future priorities, needs and community aspirations, commissioners will use their investment choices to influence service design, increase choice, and drive continuous improvement and innovation."

World Class Commissioning, in its companion guidance on competencies, outlines in greater detail the nature of the market facilitation task. In Section 7 it defines the overall task as one of stimulating "...the market to meet demand and secure required clinical, and health and well-being outcomes". It suggests that the PCT:

- Maps and understands the strengths and weaknesses of current service configuration and provision.
- Has a deep understanding and knowledge of methods for finding out what matters to patients, the public and staff and is able to respond to this when defining service specifications.
- Models and simulates the impact of commissioning decisions and strategies on the current configuration of provision.
- Promotes services that encourage early intervention, to avoid unnecessary unplanned admissions.
- Has a clear understanding and knowledge of the abilities and role of the third sector, and of its ability to provide against service specifications.

³ DfES (2006) Joint Planning and Commissioning Framework.

⁴ DfES (2007) Delivering Better Children's Services through Better Market Development.

⁵ DH LAC Circular 1 (2008) Transforming Social Care (p.25).

⁶ DH (2007) World Class Commissioning: Vision.

- Translates strategy into short-, medium- and long-term investment requirements, allowing providers to align their own investment and planning processes with specified requirements.
- Is aware of market trends and behaviours, and shows knowledge of and acts on current gaps in the market to provide patients with a choice of local providers.
- Creates incentives where necessary for market entry, including understanding the requirements of full cost recovery.
- Stimulates provider development matched to the requirements and experiences accrued from user and community feedback (for example, timely and convenient access to services that are closer to home).
- Specifies the realistic time schedules that are needed to encourage and deliver innovation and change, providing direct support when required.
- Develops relationships with potential future providers whose services may be of interest and may be relevant to meeting need and demand.
- Communicates with the market as an investor, not a funder, using and specifying an approach based on quality and outcomes.

Differing markets

Children and young people's services are notable examples of a quasi-market i.e. a public sector institutional structure that is designed to reap the supposed efficiency gains of free markets without losing the equity benefits of traditional systems of public administration and financing. The characteristics of a quasi-market include:

- High degree of continuity in the personnel, and long term relationships.
- Market-like mechanisms, including contracting.
- A relational market.
- Professionals often purchase services on the part of both the organisation and the client.
- The market is often inward-facing, to minimise services failure.
- Heavily regulated by central government.

The number of players in a relational market can be small, and the result is a situation where a few (or one) powerful players are in more or less continuing negotiation with a few (or one) powerful providers. Judgments are often made on the basis of trust and reputation as well as hard data. Critics of quasi markets argue that their traditional weaknesses include:

- The potential for inappropriately strong influence of providers.
- Service users have very limited mechanisms available to them to influence the market.
- Service users have very limited choice of services available.

Effective management of relationships with providers is needed if commissioners are going to be able to influence the market so that appropriate provision is in place for patients/service users to be able to choose. Relationships between purchasers and providers have certain features which are needed if they are going to be successful in the longer term - accountability, openness, sustainability and trust - the characteristics of a constructive relationship. However, relationships between commissioners and providers (including internal providers) can, and do, range from adversarial to passive. In quasi markets commissioner and provider concerns range from 'cherry picking' of more profitable cases by

the independent sector, through high transaction costs, to a lack of accountability in arrangements with internal providers. Commissioners need to think carefully about how they manage their relationship with providers, and what is needed to achieve a constructive relationship.

A starting point for creating more effective and efficient markets is a good understanding of the relevant market. The development of a common and shared perspective of supply and demand (including any gaps in provision), should be published as a market position statement. Commissioners should have an understanding of:

- The structure of the relevant market: number and size of suppliers.
- Key players in the marketplace.
- The current market offerings of products and services.
- The drivers for the market: what business opportunities are regarded as most desirable.
- The scope for innovation and for expanding the market.
- Current capacity and capability in the marketplace, and the demands currently being placed on the relevant supply markets.
- The barriers to entry in the market.⁷

Children's services markets are complex. There is not a single market but rather a series of individual markets which are characterised by areas of overlap between services and providers, and varying degrees of integration. It is a fragmented picture that varies locally. In children's services, the market includes providers from the public (local authority and NHS provision), private (for profit businesses), and third (voluntary and community groups, not-for profit businesses and social enterprises) sectors; providing universal through to specialist services for children, young people and their families (the service classification adopted in *Every Child Matters*).

There are many ways in which the market for children's services can be categorised and segmented, including:

- Age at which a child/young person might come into contact with the service.
- Universal, targeted or specialist services.
- Public, private, and voluntary and community sector provision.
- Local, regional and national markets.
- Barriers to entry and exit.
- Number and market share of providers.

A DfES study was undertaken in 2004⁸ in order to improve understanding of existing and potential provision of children's services; including how services were being commissioned, who was providing them, and the different models of service delivery; in order that further work could be carried out to overcome obstacles and challenges to achieving improved outcomes for children.

The report identified nineteen service / function areas in the children's services market, which illustrated the diversity of this market. It included: special schools; Special Education Needs;

⁷ Office of Government Commerce. Introduction to Procurement, Chapter 6 Market creation.

⁸ DfES (2004) Study by Pricewaterhouse Coopers, Scoping the Market for Children's Services.

School Improvement and Support; Behaviour Support; Education Psychology; Education Welfare; Child Health Promotion; CAMHS; Speech and Language therapy; Family & Parenting Services; Child Care; Children's Centres; Social work for children; Fostering; Adoption; Children's Homes; Youth services; Connexions and Strategic and Operational Management.

Following discussions with stakeholders and providers in the children's services market, the study identified particular service delivery gaps, which could be addressed by greater contestability and market development, examples included:

- Limited services and solutions for children with multiple and complex needs such as appropriate accommodation solutions (including respite care) for some young people with multiple and complex needs.
- An overall gap in the design of services for meeting the specific needs of black and minority ethnic children and young people.
- A lack of advocacy services for children.
- A lack of services geared towards adolescent crisis intervention.
- A lack of provision (e.g. information and assistance) for parental and family support, and for young carers.
- Limited services that enable and support successful transition between children's services, family services and adult services.
- A lack of services for the 'middle years' of children aged 9-12 years (sometimes described to the researchers as the 'forgotten years').

The report concluded that markets for children's services are predominantly local and that there was evidence that a level playing field among providers is not always present in these markets. Issues included a lack of transparency on costs and potentially conflicting roles of local authorities as both commissioner and provider.

Voluntary and community sector (VCS) organisations are seen as key partners in the Every Child Matters agenda, sharing the vision to create an environment where they organisations can play a full part in improving the lives of children and young people. The sector is a major provider of services to children, young people and families, and brings a distinctive approach to service delivery, based on specialist knowledge, experience and skills, which frequently comes from the close relationship that the sector has with service users. There are numerous barriers, both perceived and real, faced by VCS organisations in their relationship with commissioners and in their search for an effective role in the planning, commissioning and delivery of public service contracts. These include:

- The absence of a commissioning strategy or any long term or consistent investment plan by commissioners, or a lack of early and effective consultation with the VCS in the development of commissioning strategies.
- Incompatible aims and values, or at very least different interpretations and use of terminology.
- A difficulty for providers (particularly smaller VCS organisations) in finding out about opportunities to tender for contracts and who to approach. VCS organisations often lack knowledge and experience of Government procedures and have great difficulty in breaking into the market.

- Over burdensome paperwork and complex and costly pre-qualification and tendering procedures with unrealistic time-scales, prescriptive specifications and excessive contract terms, meaning invitations to tender are not pursued.
- The use of large-scale contracts, such as national or regional frameworks and rationalisation of the supplier base, which rules out many VCS organisations.
- The unwillingness of some commissioners to accept full cost recovery, including management charges, included by VCS organisations in their tender prices.
- The information requirements of commissioners, including the information needed to meet the needs of national inspections.

To harness innovation and best practice from providers, commissioners will need to influence the market and increase contestability through procurement, market dialogue, and market shaping activities.

Using market dialogue to signal intentions

Commissioners should use the all levers available to them to influence the market. Commissioners will need to decide what are the best routes to signal intentions to the market, and should endeavour to establish earlier discussions with provider communities about need e.g. through JSNA or PCT prospectus.

There are a wide range of innovative approaches to market dialogue capable of assisting commissioners to develop the kind of market arrangements they want. Market dialogue activities can be used to manage relationships with providers, which depends on the quality and frequency of interactions between commissioners and providers, and to develop strategic partnerships. The following methods can be used:

- Procurement compacts, for example with small business or the voluntary sector, where a framework for the local role of the third sector is agreed, and procurement activities take place within the context of that agreement.
- Running procurement 'open days' or 'meet the buyer' events and appointing named officers to follow up from these events.
- Improving communications with and from providers – developing a communications plan, publishing procurement strategies and processes e.g. on a procurement website.
- Involving providers in the development of commissioning strategies, purchasing plans and specifications as well as reporting and monitoring arrangements.
- Producing guidance on 'How to do business with the Local Authority/PCT'.
- Common, and regular, approaches to liaison with providers e.g. provider forums, open book accounting, shared training and workforce development.
- Framework agreements where terms and conditions can be agreed and contracts called off when needed, for up to 4 years. Frameworks can cover more than one provider, and a further mini-competition between agreed providers can be used.
- Specifying a clear role for internal services, including pricing, SLAs and clearer separation of duties between commissioning and provision.

Situations where there is a limited range of provision

Market shaping is a key role for commissioners in children's services, who have to deal with many situations where there is the desire to increase the range of providers from the public

or independent sector, or where agencies need to encourage greater contestability in the market.

The Pricewaterhouse Coopers study for DfES referred to earlier identified four main types of barrier to entry into the children's market in general:

- **Legal barriers** – these are relatively few in children's services, but include issues such as the legal restrictions surrounding Child Protection investigations, the undertaking of which is prohibited to anyone other than local authorities and the NSPCC.
- **Political and cultural barriers** – often the most significant barrier to entry to and exit from the market, for example the final influence of local political decision makers in the local authority and NHS can impact on what actually happens in practice, for example in making decision about those service areas that have historically been provided in-house.
- **Contractual and commissioning barriers** – including: a lack of long-term strategic planning capability, which creates short term decision making and instability; a lack of capacity to help develop alternative suppliers and delivery models; variability in commissioning skills, including in some areas a lack of skills and experience to undertake strategic commissioning; tension between economic and efficiency concerns and delivering high quality services; a focus on traditional input based specifications that can stifle innovation; bureaucratic funding application and tendering processes that are time and labour intensive; the lack of stability in the funding relationship for voluntary and community sector organisations, including reliance on grant funded programmes delivered through one year renewable arrangements, risks associated with front-loading contracts, and delays in funding⁹.
- **Economic barriers** - the lack of reliable and transparent economic information and the perceived lack of a level playing field in relation to full cost recovery, particularly for the voluntary and community sector.

In these circumstances, with the resulting constrained markets, commissioners may need to engage in capacity building and market development, proactively supporting providers to develop their services in line with the local commissioning strategy. Some examples of these market shaping activities include:

- Approved lists and accreditation schemes of potential providers. An extension of this is common arrangements for accrediting providers across a region or sub-region. The benefits of approved lists are that they are a way of developing quality assurance and regulating providers. They can also create potential for greater engagement with providers and longer term relationships.
- Delivering capacity building activities, such as training to meet standards, or in writing tenders or finding sources of business development funding.
- Shared information or intelligence about current service provision and performance with providers.
- Market sounding exercises such as surveys, workshops, focus groups, interviews or consultations on strategies and procedures.

⁹ HM Treasury (2002) The Role of the Voluntary and Community Sector in Service Delivery – a cross cutting review. Office of Government Commerce (2004) Think Smart...Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector.

- Negotiating incentives to encourage providers to enter new markets or to improve standards.

Initiatives might require additional funding or resources to work with local providers to develop their capacity to deliver services. For example, appointing a market development specialist to get to know the market and the players within it; be a named contact for enquires from potential providers; offer training to potential providers, outside of any particular tender, to enable them to improve tenders.

In summary, if a commissioner does identify that market development and capacity building is needed to draw new provision into a market, the following questions should be considered:

- What conditions need to be put in place to support providers who wish to play a role in the market? Do they need business skills support? Do they need support gaining registration, or appropriate kite marks? Do they need access to training for their staff?
- Could they, with further support, provide an integrated service which delivers more than one service? Would the commissioner benefit from this type of integrated service? Would this generate cost efficiencies which the commissioner should encourage?
- What form should contracts offered to these new providers take, and what conditions would they be willing to take on? Do they need guaranteed contracts? Could the commissioner bundle together easier and harder to deliver services?
- Will varying the level of commissioning change the type of organisation willing to enter the market? Would a regional commissioning structure, for example be able to access a wider variety of possible new entrants?

Using procurement to influence the market

Effective procurement mechanisms are essential to manage the market, and commissioners must ensure that their purchasing processes are transparent and in-line with EU procurement regulations. However, often commissioning agencies' purchasing and contracting arrangements could be improved.

The Department of Health report on third sector commissioning¹⁰ proposed the following seven fundamental principles for procurement:

- **Efficiency:** enabling commissioners to achieve quality services at value for money.
- **Sustainability:** embodying a general approach to a proper working relationship which fosters sustainable, long-term provision (where appropriate) in the interests of service users.
- **Proportionality:** achieving what is necessary or highly desirable in the simplest possible way. Document length should be reduced as much as possible and the "kitchen sink" approach abandoned.
- **Suitability:** reflecting the service that is required and the actual agreement between parties.
- **Simplicity:** Plain English wherever possible, with clear explanations of jargon.
- **Fairness:** Reflecting a fair and proper balance between commissioner and provider, with risk properly allocated.

¹⁰ Department of Health (2006), Report of the third sector commissioning task force: part II, outputs and implementation

- **Equality:** Contracts should be the same for every sector.

One way to enable effective purchasing and contracting arrangements and to help stimulate the market is to minimise the administrative burden on providers and use standardised procurement processes/ templates based on best practice. Purchasing and contracting arrangements should be proportionate to the scale and complexity of the service you are buying, and not discriminate against VCS organisations. This applies to tendering processes, contract terms and conditions, and specifications. For example:

- Implement best practice tender processes that are transparent, proportionate and non discriminatory. Tender documentation should strike a balance between enabling tenders to be objectively evaluated and making too many demands on providers. Do not ask for information, particularly from a small provider that is more than you really need to ensure that risks are managed and value for money obtained.
- Ensure that tender processes give enough time for providers to think through the issues and respond to the requirements of the process, and that contracts have a long enough lead in time.
- Develop contract terms and conditions that are 'fair' e.g. ones with realistic contract length and are designed to cover contingencies and to protect the interests of both parties to the contract.
- Use a 'model' service specification template to develop specifications that focus on the outcomes desired.

The EU procurement regime which sets out the law on public procurement is sometimes viewed by commissioners as a barrier to effective procurement, particularly from smaller providers. The EU regulations are actually fairly brief and flexible, and can offer innovative and flexible opportunities for adopting different approaches to purchaser-provider relationships. More often, the problem is actually complying with local regulations drawn up by risk adverse organisations that have interpreted the EU regulations very tightly. There are a range of market shaping activities that can take place outside of the formal tender process whereby commissioners can encourage candidates to express an interest and disabuse potential providers of the perception that the market is 'closed' to all but the incumbent.

Conclusion

Clearly from the above; influencing, enabling and developing the market is not going to be an easy task! There will be greater diversity through more people purchasing care whether from their own funds or those supplied by the public sector, yet the public sector will still retain a role of purchasing on people's behalf. The market will operate in the context of increased pressure on public funds. What all these factors point towards is the importance of commissioners rapidly developing skills in facilitating the market. Some of the roles that this is likely to encompass include:

- Developing much improved information systems that focus on giving potential service purchasers the information they want to make good decisions. This could include developing eBay style websites to enable users to publicise their experiences of services and particular providers, and eventually to include online purchasing, e.g. shop4support.
- Moving the relationship with purchasers from 'arms length' to 'embracing' so that the best providers can have confidence in making long term business investment decisions and commissioners can understand and support the development of best practice. Relationships between purchasers and providers have certain features which are needed

if they are going to be successful in the longer term - accountability, openness, sustainability and trust - the characteristics of a constructive relationship.

- Having a much better idea of the health of local economies so that vulnerable but key service providers can be supported and those that seek to create local monopolies of traditional provision can be discouraged.
- Maintaining diversity in the market place through pump priming small businesses which can enable them to grow into quality providers. This could include negotiating incentives (proportional, transparent and time limited) to encourage providers to enter new markets or to improve quality standards e.g. advance payment, extending the contract term, providing pump priming loans (or staff resources) to start up a service, reducing the capital investment required from the provider, paying a supplement to the tariff or quality bonus schemes.

Commissioners may need to learn how to, or improve how they, influence the market in line with their organisation's interests. This will involve developing a detailed understanding of the market, and encouraging a range of potential providers to take an interest in them. Given the relatively limited market capacity in some areas of provision, this may be difficult and might include marketing the local authority or PCT itself as a commissioner. In constrained markets, commissioners may need to engage in capacity building and market development activities, proactively supporting providers to develop their services in line with the local commissioning strategy. The concept of commissioners 'selling' themselves as reliable, constructive, attractive trading partners in this way may be new, and will require skills in advertising, communications and public relations management.

Commissioning Support Programme and Oxford Brookes University
October 2009