



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

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1. Introductory comments

Barnardo's works directly with more than 100,000 children, young people and their families in over 400 services across the UK. Our services have developed based on the needs of local communities; these services are supported by a regional and UK-wide structure allowing us to benefit from the expertise and access to funding that a larger infrastructure brings, as well as our local knowledge.

In the past year 63% (£147.1m) of our revenue has come from statutory sources (contracts and grants). We currently have around 1000 agreements with central and local Government to deliver services, and our response draws upon this considerable expertise of commissioning and procurement in the public sector.

Our direct service provision includes running over 100 Sure Start Children's centres; disability services including short-breaks; recruiting and supporting foster carers and adopters; alternative and vocational education provision and access to employment; services for children in and leaving care; and many other areas of support for children, young people and their families.

Our practice is evidence based. Barnardo's is developing an outcomes monitoring framework and service specific evaluation tools. Robust evaluation of our services means that we are able to identify what works and demonstrate that our programmes make a positive impact. Professional researchers work closely with children's services to help projects set and evaluate outcomes, and use research evidence to develop their practice.

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

Most children's services provision is run directly by local authorities so there is scope to develop opportunities for civil society organisations. This could be a competitive market

as there are a number of small, medium and large charities and other potential providers with expertise either across the range of children's services or in niche areas. We believe that if outsourced, there would be mixed market provision, as the potential to deliver children's services would outstrip the ability of any one organisation to deliver.

We have welcomed the Government's focus on early intervention, and believe that this area of provision could be expanded to achieve improved outcomes and cost-savings. One example is Family Intervention Projects (FIPs) which reduce anti social behaviour by providing challenge and support for parents and their children to face up to their behaviour and accept responsibility for their actions. Following detailed assessment of the whole family a support plan is combined with sanctions where appropriate to motivate changes in behaviour. FIPs co-ordinate support from a number of statutory and voluntary services, in particular, liaising with schools, mental health services and benefit agencies. FIPs cost between £8,000 and £20,000 per family per year, significantly cheaper than alternative approaches. By taking a coordinated whole family and multi-agency approach FIPs address the cumulative costs incurred by families who come into contact with a wide range of services; this could be as much as £250,000-£330,000 in a single year.¹

This type of early intervention could be funded through Social Impact Bonds. We believe that these should be underwritten by the Government as the savings will accrue to local and central Government.

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

The consultation document rightly identifies that 'in practice, many organisations find these markets [public service areas] virtually impenetrable. The issues that present such barriers are well known and broadly accepted. They include issues like the length of contracts, the transaction costs of procurement processes, the inflexibility of specifications and the lack of transparency in decision-making criteria'.

Barnardo's submitted evidence to the Public Administration Select Committee's Inquiry on *Commissioning Public Services from the Third Sector in 2007*; we called for:

- Minimum three year contracts, with five and ten year contracts becoming the norm, for improved stability
- Increased training for commissioners
- Two-stage tendering process – a pre-tender questionnaire that, if approved, would result in invitations to tender and full tenders being submitted from a select few bidders who have a real possibility of winning the contract
- The introduction of standard contract terms and removal of unnecessary burdens from contracts
- Measures to allow direct cost comparisons between the statutory and third sectors on a level playing field and a focus on measuring outcomes

¹ Ward et al., (2004) *Costs and Consequences of Different Types of Child Care Provision*, Loughborough University

Unfortunately many of these areas still need addressing; in our experience there is a mixed picture of procurement, with some local authorities still poor in both managing the bidding process and defining contractual obligations.

Contract terms are almost always those of the public body, and civil society organisations very rarely have the opportunity to present their own terms, or negotiate terms. There are no standard contract terms across the public sector, so each of the local authorities that we deal with produce their own contract terms, which may vary widely from area to area. For civil society organisations this raises a number of concerns:

- Repetitive review and negotiation of contract terms
- Drain on management time and diversion from core activity of providing services
- Deciding whether a full legal review of each contract is required, possible within the time constraints or affordable. Many of the staff who have the direct service expertise necessary to respond to tenders do not have legal training to deal with complex issues
- Negotiation is often not an option because the public body personnel are not authorised to agree changes or do not have the expertise to do so

In our experience contracts can follow a 'one size fits all' approach – for example having a 100 page contract for any scale of proposed service with a total lack of proportionality. They are also often unreasonably one-sided in favour of the public body. Our key concerns are around levels of risk, transfer of pension liabilities, and termination clauses / contract length.

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

The consultation document rightly recognises that disproportionate levels of risk can be a deterrent and can disadvantage civil society organisations that cannot afford to bear the risk. Currently the transfer of public service pension liabilities is a major risk to civil society organisations. The key elements are:

- Potential pension fund liabilities, even where the pension fund is 'fully funded' at point of transfer (liabilities relating to pre-service transfer can still arise and hit the supplier at termination or before);
- Transferred redundancy entitlement, where a transferred employee may have an entitlement to redundancy payments higher than statutory minimum and over a long period of time (e.g. 1.5 week's gross salary per year of service), which then becomes payable by the supplier in the event of redundancy, possibly triggered by a reduction in the price paid for the service compared to the cost when in house.
- Suppliers being required to provide performance or pension fund assurity bonds during the period of the contract and sometimes for several years beyond the end of contract, when the risks involved are minimal or, as in Barnardo's case, a legally binding parent company guarantee would suffice but cost the charity nothing to put in place (unlike bonds which are often circa 5% per annum of the sum assured).

We believe that there are potentially two ways to address this; either on transfer of staff the commissioner should make provision for accumulated pension liability, or accept that the level of risk is priced into the bid. Including this in the negotiation of a contract price will take a change in culture and skills for the commissioner and civil society organisations. We are pleased that the consultation document states that ‘the Government is committed to moving to a system which focuses on the price and value of a provider rather than the costs.’

Some contracts include a unilateral right for the public body to alter terms and/or terminate the contract. For example:

- Durham County Council’s Standard Terms and Conditions states: ‘The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances’.
- Provisions for the public body (or both parties) to terminate with six months notice, effectively creating a six month rolling contract even though the contract is for three years

Short contracts, either in themselves or because of short notice periods, are a deterrent to potential suppliers because of the investment that needs to be made in staffing, premises etc. In the current economic climate, where contracts are terminated because of lack of affordability rather than for poor performance, civil sector organisations need to be given as much notice as possible and public bodies need to be willing to negotiate to minimise the damage to service users and civil society organisations. We have recent examples where we have been told that we should work on the assumption that contracts will not be renewed/renegotiated in March, but we have not yet been given a final decision.

We would be happy to share further examples of the types of unreasonable or poor contract terms that we have experienced.

What issues affecting civil society organisations should be considered in relation to the extension of the Merlin standard across central Government?

In our work with the Department for Work and Pensions we have experience of the Merlin Standard pilot. Barnardo’s strongly supports the need to embed the principles and approach of fair and equitable treatment in the supply chain across central Government.

What barriers prevent civil society organisations from forming and operating in consortia? How could they be removed?

One of the key barriers for delivery through prime contractor models or other consortia is the extent to which the contract fits with the mission of the organisation. Charitable objectives are usually tightly defined, whereas private sector organisations have a wider remit.

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

Civil society organisations, like Barnardo's, would often like to be a strategic partner not just a service provider. This would help to improve the quality of public services.

Commissioning is still outdated in some areas, taking an adversarial approach between the purchaser and supplier. Barnardo's advocates the competitive dialogue approach where, following a pre-qualification questionnaire, a small number of potential providers start to design solutions with the commissioner until a delivery agreement is reached.

We also advocate a greater emphasis on proportionality where the size of the contract is reflected in the time limits and documentation required.

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

Barnardo's and many other civil society organisations already involve service users and potential service users in the design of services and continuous improvement.

Barnardo's has a well developed participation strategy, putting users at the heart of service design, delivery and performance management. All services have a core participation standard and implementation plan, which is included in all service plans. Barnardo's Asha project, in a highly segregated, deprived community in Oldham, engaged parents in redesigning the service to increase support, advice and educational opportunities. In 2009-2010 there were 170 new service user families accessing 655 advice sessions, and 48 parents engaging in learning opportunities.

Civil society organisations can also support individual and community involvement where statutory services can't, because we are seen as being trusted and independent.