

GOVERNANCE IN THE NEW COMMISSIONING LANDSCAPE

NPC Briefing, November 2012

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On 5 November 2012, NPC and The Clothworkers' Company held a seminar for trustees to understand more about the new commissioning landscape. Attendees explored risks and opportunities, and their role as trustees in steering their charity through this complex and changing environment. This report highlights key themes discussed during the seminar, looking at recent changes in commissioning, the consequences for charities, and how they can best respond.

The seminar was chaired by Sue Wixley, Head of Communications at NPC. The panellists included:

- **Iona Joy** (Head of Charity Effectiveness, NPC) summarised the findings of *When the going gets tough*, a survey which showed that many charities are finding the current commissioning environment challenging.
- **Selman Ansari** (Partner – Public & Regulatory Law Group, Bates Wells Braithwaite) gave his top legal tips for charities bidding for public sector contracts.
- **Graham Mynott** (Head of Project, Key House) explained how his charity is responding to reduced funding and larger contracts by collaborating and diversifying income streams.
- **Carol Homden** (Chair, National Autistic Society) emphasised the need for charities to keep up with a rapidly evolving commissioning context, and in particular to 'justify' their price based on better outcomes for beneficiaries.

Introduction

Charities and social enterprises have been delivering public services for years. Around a quarter receive some funding from government, and many rely heavily on income from government contracts and grants.

However, reductions in spending and radical reforms to commissioning are transforming the way services are delivered in areas of health, social care, education, criminal justice, and welfare-to-work. This has wide-reaching consequences for charities and social enterprises.

Trustees of charities involved in delivering public services need to face up to the challenges if their charity is to thrive—or even survive—in this difficult environment. Understanding both the risks and opportunities will help them to support their executive teams.

We are witnessing the most fundamental renegotiation of the relationship between the state and citizens since the second world war. We have a duty to ensure it works for our beneficiaries.

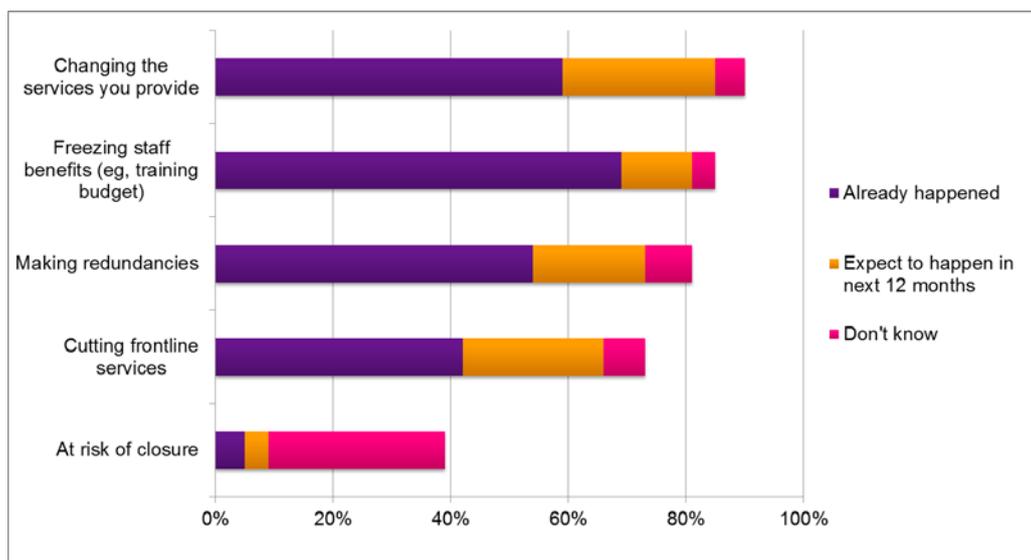
Carol Homden, Chair, NAS

The changing commissioning context

Five trends dominate seminars such as this and NPC's thinking:

- **Cuts to charity income:** More than a third of respondents to an NPC survey have experienced cuts to public sector income in 2011/2012. For 12%, these cuts affect more than a fifth of their income.¹ NPC estimates that the sector will lose between £3.2bn and £5.1bn of its annual funding by 2015 as a result.²
- **Opening up public services:** From social care to probation, schools to welfare-to-work, new parts of the public sector are being opened up to competition from businesses, charities and social enterprises. This is creating new opportunities for charities and social enterprises to deliver public services, but it is also increasing competition for contracts that some have held for years.
- **Fewer and larger contracts:** In the face of dwindling resources, many commissioners are radically reducing grant funding, and letting fewer and larger contracts. With shrinking numbers, many simply lack the staff to hold dozens of contracts with different providers. But many also feel that large contracts provide economies of scale and therefore offer better value for money. Charities (44% of those surveyed) are responding by collaborating with other providers.³
- **New funding mechanisms:** Historically, simple block contracts and grants were the norm. However, more complex funding mechanisms are gaining currency, aiming to give better value for money and improve results for services users. As NPC's survey shows, charities prefer block contracts and grants, and see many risks in the new funding mechanisms, including payment by results and personal budgets.⁴
- **Social value:** From January 2013, the Social Value Act will come into force for all public authorities—from government departments to local councils, health commissioners, and probation trusts. The Act requires them to 'have regard to economic, social and environmental well-being in connection with public services contracts.' Though it is not yet clear how authorities will implement the Act, it could develop into a powerful lever for lobbying commissioners to balance a focus on reducing cost with maximising social impact.

The changing commissioning landscape is hitting many charities hard. This graph from an NPC survey shows that 60% are already digging into reserves, and 9% are at risk of closure.



¹ Hedley, S. & Joy, I. (2012) *When the going gets tough*. New Philanthropy Capital.

² Joy, I. (2010) *Preparing for cuts: How funders should support charities in a world of government cuts and changing funding structures*. New Philanthropy Capital.

³ Hedley, S. & Joy, I. (2012) *When the going gets tough*. New Philanthropy Capital.

⁴ Hedley, S. & Joy, I. (2012) *When the going gets tough*. New Philanthropy Capital.

Key points from our speakers

The legal perspective

Selman Ansari explained basic procurement law. Contracting authorities may not need to apply the same level of procurement requirements for lower value 'soft' services, such as social services, care and advice, as they do for higher value 'hard services', such as road-mending and waste. However, the contracting authority must be 'fair and transparent' in its procurement processes. Selman stressed that charities need to:

- Know the law. If you don't, make sure you get advice.
- Get your bid right. Procurement commissioners use a scoring system and can only base their answers on what is submitted. Do not assume that personal knowledge will inform their decision; your experience must be written into the bid.
- Plan for the future. Make sure the service you provide is indispensable, so that you are well-placed to win the contract the next time it is tendered. Ensure your own strategy is cohesive, and that you have the right people in the correct roles.

The view from a charity providing housing and advice to the vulnerable

Graham Mynott at Key House explained that Bradford City Council has reduced the number of commissioned service providers of homelessness services from 11 to four. In his experience, when contracts become too lean, providers vote with their feet and decide not to bid. He has also perceived contradictory requirements from a council that asked bidders to demonstrate growing profits at the same time as squeezing the pricing. He emphasised that the sub-contracting market is not well developed, making it hard to decide whether to become a prime contractor and manage the risk of ensuring delivery, or a sub-contractor and accept a loss of control.

Graham urged boards to ensure they have the right skills to navigate such treacherous waters, and to develop measurement systems in the face of the increasing demand for evidence of outcomes.

Tell your chief executive to get out there and form relationships now. Don't wait for the next tender to come out. Networking needs to happen now.

Graham Mynott, Keyhouse

And from a trustee with varied experiences

Carol Homden also stressed the need for boards to keep pace with organisational needs and support staff in times of great anxiety. Carol wears many hats, and made valuable points about:

- Spreading risk and ensuring one contract does not dominate (easier for larger charities than small)
- Understanding risks such as TUPE and pension liabilities
- Forming groups of charities, so that overheads are reduced and also accountable, and duplication is avoided
- Paying attention to what is within your control and what is not
- Keeping your eye on the prize and not getting bogged down in compliance
- The need to evidence value and explain how you are different and better

Originally there was a lot of talk about opening up public services to charities, but something has gone wrong, small charities are losing out.

Karen Morton, Reading Voluntary Action

Challenges

Competition

Charities, particularly small ones, are struggling to compete for contracts against larger charities and companies for three key reasons. First, the size of some contracts mean many charities are simply not large enough to take it on. Secondly, the market for public services is 'very price driven,' meaning commissioners are sometimes asking providers to deliver at below cost price. Thirdly, larger charities and companies typically have teams of bid writers giving them the upper hand.

Clearly many commissioners could be doing more to enable smaller charities to access public contracts. However, charities also need to equip themselves better in order to compete.

Collaboration

Faced by larger contracts and more competition, many charities are opting to enter into partnership with other organisations—including charities, businesses and public sector organisations. Two main models have emerged:

- **Subcontracting:** In this model, one or more 'lead' or 'prime' providers head up the delivery of a particular service. These lead providers then subcontract work to smaller organisations. The most high-profile use of this model has been for the government's welfare-to-work scheme, the Work Programme, which also uses a payment by results mechanism.
- **Consortia:** In this model, networks of organisations come together and jointly bid to deliver a service. There may be one or more organisation leading the consortium, but the emphasis is on partnership.

Charities need to be constantly on the look out for new opportunities to collaborate, but they also need to be aware of the risks.

Sub-contracting is not a well developed market. There are lots of expectations, but it is not well understood, which is concerning given the push to increase sub-contracting.

Graham Mynott, Key House

Proving value

Changes in the commissioning landscape are creating unprecedented pressure for charities to demonstrate their social impact, for three main reasons:

- Commissioners' focus on value for money has increased the demand for measurable evidence of charities' impact, ideally for outcomes that generate savings for government.
- New funding mechanisms, in particular payment-by-results, require incredibly rigorous evidence of charities' impact on hard outcomes like employment, reoffending and reduced use of care.
- The Social Value Act should ensure contracts are more focussed than ever on measurable social impact.

In this competitive environment, charities need to prove their social value if they are to set themselves apart.

"We should get it because we're local" might have been a good reason in the past, but it doesn't cut it today—you have to prove your social value.

Selman Ansari, BWB

New risks

Risk was a strong theme of the discussions. One consequence of opening up public services has been a large scale transfer of risk from the public sector to charities and social enterprises. Charities need to be aware of the risks of entering into a contract and take steps to mitigate them, in particular:

- New funding mechanisms, such as payment-by-results and personal budgets, often mean that charities are paid in arrears for their services, transferring substantial financial risk
- Outsourcing on a large scale means many charities and social enterprises are required to “pick up the bill” for pensions and other liabilities (under TUPE arrangements)

Tips for trustees

Trustees have a critical role to play in ensuring their charity is in a strong position to compete for public funding. Our expert panel suggested that trustees check their charity is doing six things:

Tips for charities	Questions trustees could ask
Know the law: <i>‘Most contracts delivered by charities are “Part B”, meaning commissioners are relatively flexible in how they interpret the law.’ (Selman Ansari, BWB)</i>	Do our staff have a basic understanding of procurement law? Could they challenge bad procurement practice?
Get your bid right: <i>‘An Invitation To Tender is like a maths exam, you need to answer all the questions to get the points. Too often charities assume that their commissioner knows something. Don’t assume, assuming makes an ass out of you and me.’ (Selman Ansari, BWB)</i>	Are our staff doing the right things when it comes to tenders, eg, looking in the right places, putting together strong bids? If they aren’t, should we train them? If they can’t, do we need new staff?
Consider collaboration: <i>‘We are currently bidding as a prime, as a sub-contractor, as a joint venture. Whilst it can get very complicated, I have generally found collaborative bids really positive.’ (Graham Mynott, Key House)</i>	Is the chief executive taking time to get to know commissioners and potential partners? If not, why not? Could he/ she free up time by delegating more work to senior staff?
Plan ahead: <i>‘Don’t assume your contract will roll over. Half way through the contract, think about how you will win next time. Ask yourself: how can I make my organisation indispensable?’ (Selman Ansari, BWB)</i>	How well do your staff know their commissioners? Are they regularly asking for their commissioners’ feedback? Are they asking the commissioner about their future priorities?
Diversify your income: <i>‘I don’t think one contract should represent more than 15% of a charities’ income. Diversifying your income spreads the risk.’ (Carol Homden, NAS)</i>	Are we over-reliant on any one contract? If so, are we taking steps to diversify our income sources? Do we know the full range of financial scenarios we could face in the next 2-3 years?
Prove your social value: <i>‘You need to ensure you are demonstrating your social value as robustly as possible. The question should always be: how does my social value set me apart?’ (Iona Joy, NPC)</i>	How well can we evidence our social impact or social value? How well are we presenting that value in bids and monitoring reports to commissioners?

Final thought

Charities face a challenging few years. Many will see drops in their income from government, and increased competition for public sector contracts. Most will also have to manage the risks associated with new forms of funding like payment-by-results. To help them weather these tough times, Boards need to have the skills, knowledge and experience to guide their charity. Understanding the changing commissioning landscape will be key, as will commercial and financial skills. Finally, Boards will need to ensure their charity can demonstrate social value if they are to compete in an outcomes-driven market.

The Board needs to be match fit, and trustees should be asking: do we have the skills to support our management team through this new commissioning landscape?