

# Report of the Third Sector Commissioning Task Force

*Part II Outputs and Implementation*







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Commissioning Task Force –  
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Implementation**

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# Preface

## Who is this aimed at?

This Part of the Task Force report contains the outputs produced by the Task Force working groups, which are intended as practical tools for all those involved in the commissioning, procurement, contracting and regulation of health and social care services across the statutory and third sectors:

- **Chapter 2 – *A Guide on how to commission from the third sector*** is targeted at **commissioners** of health and social care services; and will also be of particular interest to **third sector**, whether as **advocates or providers** – see page 11;
- **Chapter 3 – *Principles of good regulation and Accreditation, Passporting and Umbrella Bodies*** is of specific interest to **third sector providers** and **regulatory bodies of health and social care services**, including **inspectors** – see page 31;
- **Chapter 4 – *The proposed model contract and guidelines*** is targeted at both **commissioners** and **third sector providers** – see page 41.

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# Chapter 1: Introduction

1. Part I of this report “*No excuses. Embrace Partnership now, Step towards change!*”<sup>1</sup> summarises the vision and objectives of the Third Sector Commissioning Task Force, the obstacles it identified to the achievement of those objectives, how it set about achieving progress in addressing the obstacles; and sets out the Task Force’s conclusions, outputs and commitments, with proposals on how they should be implemented.
2. Most of the commitments relate to specific Task Force outputs, proposing action by the Department of Health PCTs and local authorities to ensure that the Task Force’s outputs inform policy development, commissioning, procurement and contracting, and used to inform the health system reform programme and its consultation on commissioning frameworks.
3. This companion document provides the detail of the Task Force outputs, with reference to the context and recommendations in Part I.

## Organisation

4. The Task Force was organised into three working groups to address the key priority areas where it had identified barriers to the third sector playing a fuller role in service delivery and productive partnership between the public and third sectors:
  - Planning and commissioning (Working Group A);
  - Regulation, accreditation and monitoring (Working Group B); and
  - Procurement and contracting (Working Group C).
5. Each working group produced a set of products, which for the most part provide practical advice for both commissioners and the third sector; and take the form of guidance, principles and a proposed model contract, with supporting material.
6. The objectives of each working group, and their outputs, are described below. The outputs themselves are referenced and contained in the following chapters of this document. They represent advice from the Task Force, as a contribution to the broader process of health and social care reform over the coming months, informing the development of commissioning. They will be of specific relevance to commissioners, providers, system management and regulation, as it begins to impact from April 2007.

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<sup>1</sup> No Excuses. Embrace Partnership now. Step towards change! Report of the Third Sector Commissioning Task Force. [www.dh.gov.uk/Stakeholders](http://www.dh.gov.uk/Stakeholders)

## Planning and Commissioning: Working Group A

7. The working group on planning and commissioning (Working Group A) was co-chaired by Jo Webber of the NHS Confederation and Elaine McHale from the ADSS. A complete list of all the members of each working group is at the Annex (page 92).
8. Working Group A comprised representatives from:
  - Third sector providers
  - Health and social care commissioners
  - Government officials with a remit on third sector and commissioning;
  - Agencies (PASA, SCIE); and
  - Individuals representing the user perspective.

The vision for this working group was a sound commercial relationship between the third and the public sector that ensures the design and delivery of user-centred services to meet locally identified service needs; resulting in a plurality of services which represent good value for money and deliver high quality, innovative care. Its specific objectives were:

- To develop greater expertise amongst commissioners across health and social care, increase their knowledge of the third sector and vice versa;
- To improve relationships between commissioners and third sector service providers such that they work effectively in partnership for the basic needs assessment and strategic planning of health and social care services for local communities, **focusing on outcomes for users**;
- To ensure that market development and assessment of service delivery considers the third sector;
- To enable the third sector to adapt its behaviour to prosper in the new market.

## Conclusions on planning and commissioning

9. Part I of this report sets out a number of commitments relating to planning and commissioning, referring to specific outputs produced by Working Group A.

## Working Group A products: see Chapter 2

10. The key product: *A guide on how to commission from 3rd sector organisations*, consists of short, practical advice on how to commission from third sector organisations, which is intended to assist in commissioning from these organisations. The core messages are:

- Commissioners must be able to identify a diversity of providers based on quality, user need and value for money. Care is needed to ensure that smaller, vulnerable, community based organisations are not exposed to undue risk.
  - Better commissioning of third sector organisations, results in better commissioning overall.
  - The above would help to achieve commissioning from a more diverse range of providers, thereby meeting policy aims to provide a wider choice of services better meeting the needs of the local community, and a thriving third sector, and better relationships with it.
11. The three other products: *‘Recommendations from a service user perspective on good practice in commissioning’*, *‘Enabling success for third sector providers in the new health and social care commissioning environment’*, and *‘Commissioner thoughts on the role of the third sector’*, which provide more detail on the various perspectives of users, third sector providers and commissioners, are attached as appendices to the main guidance product. They:
- set out guidance to ensure greater involvement of both users and the third sector in the early planning stages of the commissioning process to help identify users’ real needs , and design services that provide greater responsiveness of services to communities;
  - consider how the third sector needs to adapt its behaviour to prosper in the new markets – how it should play its part in commissioning, and how this can be facilitated; and
  - provide commissioners’ views and expectations of the third sector as providers of services, and what they envisage as the potential of the third sector to make a real difference to the spectrum and quality of care delivery.
12. Part 1 sets out the following commitments to use these outputs to inform the Department of Health’s major development programmes for Health System Reform:

**Commitment 3:**

The key principles and recommendations set out in the Task Force output *‘Recommendations from a service user perspective on good practice in commissioning’* will be used to inform the Health System Reform Commissioning Framework, due to be published in Summer 2006 and equivalent frameworks that inform local government commissioning

**Commitment 5:**

The Department of Health will disseminate to commissioners of health and social care the key messages within '*A guide on how to commission from 3rd sector organisations*'. This output will also be used to inform the Health System Reform Commissioning Framework, due to be published in Summer 2006 and guidance to support its implementation.

**Commitment 6:**

There should be strong third sector involvement in the development of PCTs and practice based commissioners. The Department of Health will consider and use the recommendations from a service user perspective and the guide on how to commission from 3rd sector organisations to inform its ongoing PCT development programme. The commissioning framework planned for December 2006 will address commissioner development and will include a strong focus on joint learning and partnership with stakeholders

**Commitment 7:**

Working with the sector, the Department of Health will, disseminate to third sector stakeholders and providers, Task Force output '*Enabling success for third sector providers in the new health and social care commissioning environment*'. The forthcoming consultation on the health Commissioning Framework provides an opportunity for stakeholders to feed directly into the development of the *Commissioning Health and Wellbeing* framework, planned for publication in December 2006.

**Commitment 9:**

The Department of Health will use Task Force output '*Commissioner thoughts on the role of the third sector*' along with the outputs from its initial third sector market mapping survey to begin to develop a coherent high-level view of how commissioners' current and potential expectations match with third sector providers' current and potential capacity to deliver services.

**Streamlining Regulation and Accreditation: Working Group B**

13. The Working Group on Streamlining Regulation and Accreditation (Working Group B was co-chaired by David Walden of CSCI and Anne Roberts of Crossroads. (See Annex on page 92 for a full list of members). It was a broadly based group of key stakeholders comprising representatives from third sector providers (large and small); regulators (CSCI, healthcare commission, Housing Corporation, Charity Commission), and health and social care commissioners.

14. The Government's vision is of light touch, system for system management and regulation that assures national core standards and focuses inspection and intervention where services are failing to meet patients needs, holds organisations to account for their performance and helps drive service improvement. A Government driven programme of reform is underway to achieve this vision by rationalising and simplifying the current complex arrangements, and specifically to reduce the number of public service inspectorates from eleven to four.
15. Within this context working group B's remit was to consider issues relevant to third sector providers within the Health and Social Care services sector, with a view to establishing models for a more risk based regulatory regime that is proportionate to the risks faced by people who use such services and more attuned to the needs of service providers, commissioners and regulators. The recommendations and actions from this group apply equally to public and private sector providers and do not favour third sector providers, conforming to the principle of a fair playing field. Their objectives were to:
  - provide input to and impact on the review of regulation across Health and Social Care
  - support Third Sector understanding of this work and propose any new models for regulation and monitoring
  - contribute towards a more streamlined system of regulation across Health and Social Care, and more widely that minimises the administrative burden on Third Sector organisations.

## **Conclusions on regulation, accreditation and monitoring**

16. Part I sets out commitments to inform the Department of Health programme of reform for the managing and regulating the health and social care system, with reference to products produced by Working Group B.

## **Working Group B products: see Chapter 3**

17. In considering positive outcomes and proposals for the ongoing development of health and social care regulation, and improving service standards which put users at the centre of provisions, Working Group B produced:
  - '*Suggested additional principles of good regulation*', drawn from existing regulatory regimes, extended by additional principles, and establishing a framework for good regulation for the benefits of regulator, provider, service user and wider community alike:
  - '*Cost reduction and streamlining of regulatory processes*', a summary of achievements by the Commission for Social Care Inspection and the Healthcare Commission in their

respective and ongoing efforts to streamline processes and reduce the costs of regulation, with some specific examples;

- *'Accreditation, Passporting and Umbrella Bodies'*, providing several examples of accreditation schemes operating in different sectors across the UK, including an example of passporting (ie where one regulatory body or commissioner accepts the assurance of quality provided by another).
18. The core messages of these products is that regulatory regimes must take account of the user perspective, should be more proportionate and tailored in terms of size and scale, and involve better integration of inspection and information sharing. The achievements by CSCI and the Healthcare Commission demonstrate considerable progress towards more streamlined, cost effective regulation already made; commitment to the ongoing modernisation of regulation and inspection for Health and Social Care, working in partnership with each other and other regulators such as the Audit Commission, with a view to investigating further ideas such as accreditation, passporting and kitemarking schemes.
  19. The emphasis is on designing regulatory regimes that promote service improvement, support service provider development, self-assessment and continuous improvement. The aim should always be to improve service outcomes for users through more partnership and collaborative working to strike the appropriate balance of meeting the combined needs of regulators (public safety, quality of service provided), commissioners, (value for money), and service providers,(fair remuneration for the services provided).
  20. Part I sets out the following commitments by the Department of Health to use the following products from Working Group B to inform the design of a more rationalised and streamlined system of regulating health and social care:

**Commitment 13:**

The Department of Health will use Task Force output '*Suggested additional principles of good regulation*' to inform its programme for designing a new system for managing and regulating health and social care.

**Commitment 15:**

The Department of Health will use the Task Force outputs to inform its programme for developing effective system management and regulation as part of its Health System Reform programme, and ensure the new regulation regime reflects the perspectives of users as well as third sector stakeholders and providers through their direct involvement.

## Contracting with the third sector: Working Group C

21. Working Group C was co-chaired by Lord Adebawale of Turning Point, and Ken Anderson of DH. Membership of all the working groups is set out in the Annex (page 92). The working group on contracting was composed of representatives from a similarly broad-based range of background and expertise:
- Third Sector providers
  - NHS commissioners
  - NHS PASA
  - LGA
  - OGC
  - Government departments (DH, Home Office, and HM Treasury)
  - ACEVO
  - Bates Wells & Braithwaite (legal)
22. Working group C's remit was to agree consistent process, procedures and contract frameworks that could be implemented across health and social care; and in doing so, strengthen the commercial relationship between the third and public sectors.
23. In developing the proposed model framework, group C identified the issues that needed to be addressed, such as:
- Lack of commitment to long-term relationships; risks associated with short-term contracts borne disproportionately by providers;
  - Lack of understanding around third sector cost structures;
  - Variable skills of both commissioners and providers, with serious process problems; and
  - Poor contract management.
24. In arriving at the proposed model framework and attendant guidelines, Working Group C endorsed the following principles:
- **The Contract**
    - Commissioners should be clear about the desired relationship
    - Contracts should promote stability through longer term contracts, in the right circumstances
    - Contracts should focus on outcomes
    - Contracts should allocate risk fairly

- Fair prices should be agreed and respected
- **Contract management**
  - Monitoring should be standardised and ownership clear
  - Monitoring should be focus on outcomes not processes

### **Working Group C products: see Chapter 4**

25. Working Group C produced two documents, the proposed model contract and guidelines, which were approved by the whole group and other stakeholders.
26. The Group envisaged that agreeing a standard framework across health and social care would:
  - Help in creating a fair playing field for all providers; one of the Task Force’s key objectives;
  - Deliver true value to all providers; public and private as well as third sector;
  - Allow providers to bring their services to the health and social care market with confidence: they would be able plan appropriately;
  - Reduce the administrative burden for commissioners, because they will be working within a common framework;
  - Most importantly, ensure better provision for clients: the market would have greater stability; providers would be able to invest in client care with more confidence; and contract management would ensure that services were fit for purpose.

### **Conclusions and commitments on contracting with the third sector**

27. Part 1 sets out the following commitment about procurement and contracting, referring specifically to working groups C’s model framework and guidance note:

#### **Commitment 12:**

To learn more about its benefits and challenges, and ensure fitness-for-purpose the Department will review the ‘Proposed Model contract’, working with national and local partners, to inform the development of the portfolio of national templates contracts, with a view to it being made available across health and social care by December 2006 and promoted as good practice.

# Chapter 2: Third Sector Commissioning Task Force: Planning and Commissioning: Guidance

## A guide on how to commission from third sector organisations

**Appendix A** – Recommendations from a service user perspective on good practice in commissioning

**Appendix B** – Enabling success for third sector providers in the new health and social care commissioning environment

**Appendix C** – Commissioner thoughts on the role of the third sector

## Introduction

The Task Force Working Group A on Commissioning produced this guide from evidence of existing good practice which is already yielding significant benefits. It represents a consensus of views across the providers, commissioners and policy-makers involved in the working group for definite and positive change.

It is a practical guidance document containing advice on how to commission from third sector organisations. It is not detailed, but indicates broad principles which commissioners, working with third sector partners, should seek to apply in a way which is appropriate for their local populations and partners.

Adoption of these principles would assist commissioners to better achieve:

- Commissioning of third sector organisations.
- Wider commissioning, thereby meeting Government policy aims and the future requirements of regulation
- Access to a wider choice of services for service users and local populations.
- A thriving third sector
- Better relationships between the public and third sectors.

Where third sector organisations are to be included in the commissioning process, the principles in this document should be observed for effective and fair commissioning.

## Context

The document has been written specifically for local authority and primary care trust commissioners of health and social care, as the agencies responsible for the majority of commissioning from the third sector. However, the recommendations are not exclusive to this audience, and are applicable to other commissioners of services, including GP practices.

The document is not a commissioning framework. However the DfES-DH Joint Commissioning Framework for Children, Young People and Maternity Services, (which can be found at: <http://www.everychildmatters.gov.uk/strategy/planningandcommissioning>) already provides detailed guidance on commissioning children and young people's services.

The document will not be appropriate for individual service-users and carers as commissioners of services through Direct Payments, Individual Budgets and self-funding, who will need specific and detailed support tailored to their needs.

The principles are designed for use in commissioning third sector agencies in the delivery of public services, and do not address the wider issue of how the third sector works outside the realm of contractual relationships with the public sector. The majority of the third sector's work is provided outside of statutory needs-assessment, and is not assessed against prescribed statutory targets. These activities include independent, user voice advocacy, representation, campaigning, and community and self-help activities. Despite the lack of formal commissioning of these activities, it is essential they continue to thrive, as there is a largely unquantified but equally undeniable relationship between the existence of wider informal services and demand on intensive and acute services.

## Other outputs from Working Group A

Working Group A also produced three further documents which provide the more specific perspectives of commissioners, users and the third sector, and are attached as appendices to this guidance:

- **Appendix A** "Recommendations from a service user perspective on good practice in commissioning" gives some ideas on the involvement of users and third sector representatives in the planning stages of the commissioning process.
- **Appendix B** "Enabling success of third sector providers in the new health and social care commissioning environment" provides recommendations on how the third sector needs to shape its behaviour to prosper in the new market and play its part in commissioning.
- **Appendix C** "Commissioner thoughts on the role of third sector providers" provides some views from commissioners on what they would like to achieve through commissioning services from the third sector, what they see as the advantages, and the

obstacles preventing them from expanding their provider markets to benefit fully from what they know the third sector can offer.

## **1 Including the third sector in commissioning**

### **1.1 Identifying the third Sector**

There are likely to be several thousand third sector organisations in each local authority or PCT commissioning area. Some of the typically larger organisations such as Age Concern, Citizens' Advice etc. will be clearly visible and already involved in the delivery of statutory services, however many will not. It is often the smaller organisations, who, with support, can achieve the most for their local communities. To create wider commissioning it is important to recognise where smaller organisations may be able to contribute, by knowing they are there and what they currently do. It is equally important to be aware of local social enterprises (also part of the third sector) and what they can offer; they can often be less visible or less easy to identify compared to conventional businesses or voluntary groups. In the White Paper *'Our Health Our Care Our Say'* there is a commitment to ensure each local authority and PCT will jointly maintain an accessible database of all services and support groups in their local area; a national pilot is currently being developed.

Such resources already exist in some form in most areas, maintained by third sector organisations such as Councils for Voluntary Service. Under the umbrella of the Social Enterprise Coalition, there are social enterprise networks which would be a source to help commissioners identify potential interested providers.

#### Database of services

- Commissioners should work jointly with local and regional strategic organisations in the third sector to compile a comprehensive database of services, organisations and groups in their area, building on what already exists. This should be structured in part around the needs of commissioning so prospective providers can be cross-referenced against commissioning needs. It may be that third sector organisations themselves would be best placed to identify and quantify the sector.

### **1.2 Developing mechanisms to communicate with the third sector**

Communicating with several thousand mostly small organisations about potential commissioning opportunities on an ad hoc basis is not possible, and messages are unlikely to 'get out' of their own accord.

- A local database of groups and services should be used to communicate regularly about forthcoming tenders and potential commissioning opportunities; and to invite proactive approaches through communicating current performance against targets. This is likely to be best done through partnership with the local strategic voluntary organisations.

- Events should be organised where third sector providers can meet and talk with commissioners, to develop a greater understanding, to help prospective providers better understand the commissioning process, and to help commissioners better understand how third sector organisations could potentially add value. This should encourage groups which may not have thought of themselves as public services providers to consider how they could use these opportunities to better serve their service-users, and help them present themselves in this context.

### **1.3 Encouraging creativity in the commissioning process**

One of the key strengths of the third sector, and why efforts are being made to increase the possibilities of commissioning from it, is its ability to innovate. Third sector organisations work best in the commissioning process if they have the scope to think outside the established norm, based on their contact with service-users.

- Tenders and other opportunities should be promoted by the outcomes and impact to be achieved, rather than the service to be provided. For example, commissioners should seek to commission a service which can demonstrate impact on falls prevention, rather than require specified types of falls prevention services.

### **1.4 Involving the third sector in the commissioning process**

Contracting is likely to be more attractive to prospective third sector providers if the third sector has been involved in the design of commissioning, so any barriers can be identified, and opportunities can appeal to the third sector's strengths. In some service areas, the third sector may have expertise that could help with commissioning models, outcomes and impact frameworks.

Methods should be developed to involve the third sector in the governance arrangements for commissioning. This could be through nominated representatives with a remit to contribute on behalf of parts of the sector, reference groups of different stakeholders which can be invited to contribute depending on the area of commissioning under review, or organisations with particular areas of expertise being involved in developing models of commissioning. Commissioning procedures must be open and transparent.

### **1.5 Developing a system for commissioning from small organisations**

As mentioned above, the third sector is mostly made up of very small organisations, serving small geographical areas or needs-groups. Seeking to commission services from such a wide range of providers, whilst ensuring consistency and cost-effectiveness, is one of the greatest challenges inherent in the widening of commissioning. It is not always cost-effective or feasible for very small organisations to put themselves forward for complex and rigorous commissioning procedures for small contracts. However, many of the larger voluntary

organisations already take a supporting role towards smaller groups, and perform umbrella functions.

- Commissioners should seek to work with larger organisations who can assist the development of delivery partnerships of smaller groups.
- Consideration should be given to the possibility of larger organisations contracting on behalf of partnerships of smaller organisations which can be sub-contracted
- Commissioning procedures should be proportionate to the size of the contract

## **2 Contracting issues**

### **2.1 Longer term contracts**

All organisations need a level of assurance to be able to develop and operate new services, to develop working relationships with partners and service-users, and to plan and invest for future improvement. This is in the interests of service-users, commissioners and providers alike. When competing for contracts, third sector providers are often the most vulnerable in a tight budgetary regime where savings have to be made. However, one-year funding agreements are untenable for any provider, and agreements of less than three years may be untenable for some larger services. A contract which is only guaranteed for a short period can prevent a new provider bidding for a contract, by creating too much risk of not being able to recoup start-up investment. This limits the choice of potential providers.

It is also recognised, however, that the commissioner has a responsibility to service users to routinely review whether providers are delivering as well as other potential providers, and to stimulate improvements through market-testing. Commissioners should seek to work with partners to develop a balance which protects and promotes quality of service, and also ensures service development. Whilst it is quite right to provide the incentive of a longer term contract to attract new providers to tender for services, in some instances there will be services that are not put out to tender where a one year contract would be acceptable.

- Where a contract is tendered, the resulting contract should run for three to five years, in the right circumstances, although this can be conditional on the provider meeting performance targets.
- Where rolling and renewable contracts are used, or when services are to be routinely re-tendered after an agreed period, timely and open arrangements should be made for exit/renewal.

## 2.2 Full cost recovery

Third sector organisations sometimes have the advantage of being able to add to contract income through fundraising and other means, and to use this additional income to provide services complementary to a statutory service, over and above the terms of the contract. However, this has often resulted in services being commissioned which are dependent on voluntary income to meet minimum contractual targets. The subsidising of public services through voluntary income results in risks to public trust in third sector organisations, affecting reputation and voluntary income itself, is costly and risky for the viability of third sector organisations, and carries an unacceptable opportunity cost in loss of independent services to the community.

- A minimum of Full Cost Recovery should be paid for the delivery of a statutory service by third sector providers. As third sector organisations have a responsibility to cost their services correctly, a commissioner should encourage providers to demonstrate a minimum of Full Cost Recovery in their pricing, or that they understand and accept the risks of not doing so<sup>2</sup>.
- Added value provided through externally-funded aspects of a service can be reflected in contract negotiations, but should be clearly separate from the central performance requirements of the contract and should not be used to subsidise statutory services. A provider should not be penalised during the agreed term of the contract for failure to meet additional indicative targets which are to be funded outside the contract fee.
- Full Cost Recovery is a minimum. Third sector organisations should be able to bid for services at a reasonable and justifiable level above this, to cover risk and speculative investment.

## 2.3 Creation of a fair-playing field

For mainly historical reasons, a number of conventions commonly exist between public sector commissioners and third sector providers, which do not exist in commissioning from other sectors, and must be eradicated so as not to disadvantage third sector providers.

These include ‘restricted funding’ arrangements often outside formal contracting scenarios, where the provider organisation is not free to spend money outside of strictly designated purposes which have to be agreed by the funder. This is a disincentive to make efficiency gains, and is an unacceptable encroachment on the autonomy of independent organisations. Having to accept this level of influence on an organisation’s right to govern its own affairs is a disincentive to potential third sector providers seeking to provide public services.

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<sup>2</sup> Guidance on full cost recovery and inclusion of overhead costs can be found in the Treasury publication ‘Guidance to Funders’, <http://www.hm-treasury.gov.uk/media/298/BD/guidancefunders150506.pdf>

The administration and auditing of restricted funding is costly and complex for both the provider and the commissioner.

Linked to restricted funding arrangements are contract negotiations conducted on the basis of costs rather than price. Like any other provider, a third sector organisation should be able to bid for a contract on the basis of price (i.e. cost-effectiveness to the commissioner); the commissioner should be able to examine that price and make a judgement about whether it wants to accept it or not. To ensure a fair playing field, the level of required disclosure on pricing and its relation to costs must be consistent across all potential providers, from whatever sector.

‘Clawback’ which is a requirement for a provider to pay back cost savings even if performance targets are being met, is another disincentive to make efficiency gains, and complex to administer. Long-term contracts generally do have clawback arrangements. Third sector organisations are likely to be open to working in partnership with commissioners in how savings are reinvested, although this should not be a contractual requirement. As non-profit organisations have a duty to use their funds within their defined area of benefit, the ending of clawback has the potential to further add value to services.

Because of restricted funding and clawback, third sector organisations are often contractually required to report to the commissioner on the basis of the cost of the service delivered. This is an unnecessary requirement, where price negotiation is an integral part of the procurement process. Once a contract has been awarded, performance should be judged on outputs, outcomes and impact of the service delivered. Whether or not the provider can meet these targets within the price is its own affair. Price must be challenged through competition in the commissioning process, not through retrospective monitoring. Any penalties should be levied on the basis of missed performance targets, not cost savings.

- Restricted funding agreements should not be used in the contracting of public services. All contract fees should be unrestricted.
- There should be a common level of disclosure of costs (if any disclosure is required) across all providers from whatever sector.
- Contestability within commissioning should be on the basis of price (except where national tariffs apply) and service delivered (reflecting a relevant proportion of overheads), rather than being restricted to the provider’s costs in delivering the service alone.
- Reporting, and any penalties, should be on the basis of performance targets against outputs, outcomes and impact, and not related to the providers’ costs in delivering the service.

- Clawback should not generally be used where a service is meeting performance targets, a possible exception being in the case of long-term contracts.

### **3 Issues to explore with prospective 3rd sector providers**

The guidance in this section is to assist commissioners and third sector providers to have a dialogue, and explore maximising the quality of services. They are not appropriate for ‘testing’ a third sector provider’s contract bids.

#### **3.1 Added value**

One of the great strengths of commissioning from the third sector is its ability to add value through the access to services. These include engagement and empowerment of service users and groups, the provision of information and advice on needs not directly covered by the contract, and support to access other services. Third sector organisations often have great potential to further add value to services by working in partnership with other organisations.

- Commissioners should engage potential third sector providers in discussions about added value.
- Commissioners should develop a clear understanding of how users and stakeholders are engaged in other aspects of the organisations’ work, and explore how these mechanisms could add value to the contract, or other services.
- Commissioners should explore with third sector organisations whether further added value could be achieved by the inclusion of additional organisations in delivery partnerships.
- Appropriate remuneration should be paid for quantifiable added value benefits, under the principles of Full Cost Recovery.

#### **3.2 The viability of third sector organisations**

As typically smaller organisations, third sector providers can sometimes be heavily dependent on contract fees for their existence. A new contract can create such a dependency. This carries risks to services in the community if the contract is withdrawn.

Where a contract might be relatively large compared to the turnover of the organisation, this can also have impact on the nature of the organisation, for example transforming a small user-led group giving mutual support, into a Direct Payments promotion agency delivering against targets. This carries a danger of resulting in the loss of the original reason for the organisation’s existence, and the original benefits.

When contracting with smaller third sector organisations, commissioners should explore, with the potential providers, the following questions:

- What would happen if the contract ended, either through lack of performance, or a contract not being renewed for other reasons?
- Who will carry the risk of a contract ending, and how will this be managed?
- Will taking the contract create any knock-on effects in the role already taken by the organisation in the community, and if so can and should this role be protected?

### **3.3 Assessment of the governance, compliance and viability of third sector organisations**

Assessment of the delivery capacity, management capacity, and viability of a third sector organisation, should be exactly the same as for any other organisation. However there are a number of characteristics of third sector governance and regulation which are specific to the sector.

This is particularly the case if the organisation is a Registered Charity. As a condition of this status the organisation has to meet certain compliance requirements governed by the Charity Commission. These include a prescribed format for presentation of the Annual Report and Accounts (called Charity SORP – Statement of Recommended Practice). Regulation by the Charity Commission, of finance, boards of trustees and activities, is more rigorous than that of companies registered with Companies House. A registered charity number gives a certain level of assurance as to regulated governance. In addition, many registered charities are also registered with Companies House as companies limited by guarantee, and are required to conform to company legislation in addition to charity law.

Many third sector organisations however may not be registered charities, such as very small organisations, various forms of social and not for profit enterprise, and Community Interest Companies.

An aspect of third sector finance which often comes under close scrutiny, is the level of unrestricted reserves. This is an amount shown on the balance sheet, which protects against risks such as the loss of contracts. If the organisation is not a going concern, the unrestricted reserves are used to wind up the organisation. The level of unrestricted reserves can vary considerably between organisations, depending on the level of risk they incur. The rationale for the level of reserves will be explained in the notes to the accounts. The level of unrestricted reserves should be of no concern to a commissioner, other than to indicate whether the organisation has enough risk protection to be a going concern.

It is common for third sector organisations to include local councillors and other figures of responsibility on their boards of trustees/directors. Care should be taken to avoid conflicts of interest between commissioner and provider. In addition, charity law requires a charity trustee to act in the interests of that charity and its beneficiaries, and for no other interest; so someone nominated by a local authority who is also on a charity board may not continue to represent that authority if they then become a trustee.

- The viability, management capacity and governance of a third sector organisation should be assessed on the same basis as any other type of organisation, with regard to the requirements of charity registration and Charity Commission guidance if this is appropriate.
- Any potential conflict of interest between the third sector organisation's governance and the commissioning process should be identified and managed.

## **4 How to support third sector providers**

### **4.1 Additional support for the third sector**

To create contestability, and to ensure there is a fair playing field in contracting between third sector and other providers, there should be no additional support provided to third sector organisations as public services providers, through contracting, which would not be available to other providers.

However, there are some areas where additional support may be justified by the resulting added value or benefits to service users and local populations. These would be applicable to providers from all sectors, but may yield particular benefits when applied to third sector organisations. For example, support and incentives can be provided to larger organisations to support smaller ones. These incentives should be justified by resulting improvements against agreed indicators.

It may well be advisable for public sector agencies to support, manage and/or fund programmes to foster a healthy third sector in their area, in order to support public services, and to ensure a wide variety of opportunities are available to local populations. Such programmes might include engagement with the development of regional 'hubs' of expertise to support third sector development, and the development of regional and sub-regional Infrastructure Development Plans. However, such support to third sector organisations as end-users, should be outside any contractual agreement to deliver public services.

- Additional support to a third sector contractor should only be provided if it leads to added value or benefits to service-users and/or local communities, and is consistent with the terms of any contract.

- Consideration should be given to providing contracted and outcomes-driven strategic support/incentives for large organisations to support smaller ones.
- Support given to third sector organisations through infrastructure development initiatives should be separate from public services contracts, although linked to any identified need to develop a range of viable providers to compete for contracts.

#### **4.2 Protection of the independence of third sector organisations**

Many third sector organisations have roles which can bring them into conflict with public agencies which are also commissioners. These include representational, advocacy, campaigning and lobbying activities. It is not uncommon for a third sector organisation in receipt of significant contract fees to be openly critical of, and actively campaigning against, a policy or action of its commissioning partner. This can be uncomfortable, and feel at odds with the approach to commissioners which may be taken by other types of provider. However, it is to be welcomed and encouraged, remembering that service-users are the customers of public services, not providers or commissioners. Many third sector organisations are constituted to represent the views of particular groups, and campaign for their interests, and they would not be fulfilling their duties if they did not seek to do so.

In the past some public sector organisations have sought to influence the independent functions of third sector organisations they are funding. If widened commissioning led to this type of influence being exerted then service-users would lose representation and advocacy, and public sector organisations would lose invaluable critical input. If a third sector organisation suspected that a commissioner might attempt to use influence in this way, it would be likely to remove itself from a market of providers, thus reducing contestability and choice of provider.

The ‘Compact on relations between Government and the Voluntary and Community Sector in England’ has existed since 1998. It is a statement of principles and undertakings to enable better partnership working between the statutory, voluntary and community sectors, and provides a framework within which to build on and develop existing partnerships. Every area is now covered by a local compact, and all PCTs should have signed up to their local compact since April 2004. The Government is currently working on ideas for an extension of the Compact, called Compact Plus, which would further assist the protection of good relations between the public and third sectors.

- Commissioners should observe the local compact and consider Compact Plus as it is developed.
- Commissioners should allow and encourage criticism and scrutiny from third sector organisations

- Where conflicts do arise they should be dealt with entirely separately from any discussions or considerations relating to service contracts

## **5 Conclusion**

If implemented fully, this advice would fall into disuse quickly. It is a one-off resource containing only cost-neutral or efficiency-saving ideas, over and above what has already been required by Government guidance, such as Full Cost Recovery.

This is easy advice to implement and observe, and once applied should become integral to commissioning practice and mindset permanently, to the demonstrable and continuing development of good commissioning, and with resulting benefits to users of public services.

However, positive change is usually achieved through the will and creativity of pioneers, who share their experience with others. We hope that many of the commissioning bodies and individuals reading this guide will join the growing body of pioneers and engage in networks and initiatives to improve third sector commissioning.

Support and opportunities to share experience can also be accessed through public sector organisational membership bodies, such as Regional Centres of Excellence and NHS Confederation.

Finally, the achievement of better commissioning of the third sector will be considerably easier if there is wide engagement in the sharing of experience. We would urge readers of this guide to involve themselves in this.

# Appendix A: Third Sector Commissioning Task Force: Planning and Commissioning

## Recommendations from a service user perspective on good practice in commissioning

### Introduction

The Task Force Working Group on Commissioning drew up the following set of recommendations pertaining to the **service user perspective**, particularly in the context of the planning and design of services. Central to these recommendations is greater involvement of both users and the third sector in the early planning stages of the commissioning process, thus enabling clearer identification of the real needs and requirements of the market. Commissioners should then be able to determine which providers would be best placed to deliver a high quality service, resulting in better responsiveness of services to communities.

### Recommendation 1:

**Commissioners should aim to put the user at the centre of service delivery patterns, mapping user pathways to inform service design:**

Commissioners must ensure that their dialogue with user groups directly involves people with first hand experience. Dialogue must be with *groups of users* rather than *groups for users*.

### Recommendation 2:

**Programmes and invitations to tender should *focus on outcomes*, rather than the processes required to achieve them, promoting innovation to enhance existing provision. Providers should be encouraged to develop early intervention and preventative services, and explore how such services can improve outcomes and reduce future costs:**

Outcomes should relate to the wider environment which determines people's independence and well-being, i.e. *the social model*, as well as the specific services they may require, i.e. *the medical model*.

### Recommendation 3:

**Commissioners should consult provider organisations regularly on how to increase efficiency and effectiveness:**

Commissioners should assess the provider environment and the infrastructure required to sustain and maintain providers who *adopt an inclusive approach and who involve users* in the design & delivery of services.

**Recommendation 4:**

**Commissioners should work to ensure that markets remain diverse and competitive, by encouraging and supporting new entrants:**

- Commissioners should establish local *capacity building programmes*, which include service users in the planning, design and delivery of services
- Commissioners should ensure they publicise upcoming **opportunities** through websites, external networks, and “meet the buyer” days.
- Commissioners should communicate forthcoming opportunities *in accessible ways* that meet the needs of user and provider groups.

# Appendix B: Third Sector Commissioning Task Force: Planning and Commissioning

## Enabling success for third sector providers in the new health and social care commissioning environment

### Introduction

In the light of market changes, the call for new and different models of service delivery, the Task Force Working Group on Commissioning considered what needed to be done to help third sector organisations more clearly understand the health and social care commissioning environment, in order to adapt their behaviour and succeed in an increasingly diverse provider market, which seeks to encourage new market entrants with new and innovative ways of delivering care. The issue was addressed around three specific questions:

1. How does the third sector need to adapt its behaviour to prosper in the new market?
2. How should the third sector play its part in commissioning?
3. What can be done to address these questions?

### Adapting behaviour to prosper in the new market

The NHS has stated clearly its wish to welcome new providers. This ambition is echoed in Government policy across all sectors, and the White Paper “Our health, our care, our say” makes a commitment to support and promote better use of third sector providers. Contestability, social enterprise, break out groups from the NHS and private providers will present threats to traditional third sector (voluntary and community sector) providers unless they adapt.

‘Users’, be they patients, families or others want best, most suitable and appropriate service. In most cases the identity of the corporate entity delivering the service will be largely irrelevant, unless their brand implies quality in itself.

The third sector needs to be clear of the solutions sought by commissioners across the whole spectrum of health, social care and other related services such as housing. The White Paper spells out clear criteria for PCTs when commissioning services: equity; quality – person-centred, joined-up and preventative; and value for money. Both PCTs and LAs should be aiming to achieve better integration of health and social care services.

The market place in which commissioning is taking place is so complex and changing so rapidly even the largest third sector organisations are struggling to understand it. Obviously the third sector needs to understand which commissioners they need to be close to and engage with.

- Guidance and clear signposting should be given to third sector providers on the new market place and how it operates both nationally and locally. This guidance must be very simple and very specific. Additional guidance should be given for specific sectors of service delivery, e.g. paediatric services, carer services, etc.
- Guidance should be given on the same basis on the specific solution/values being sought by Commissioners, e.g. *preference will be given to service providers offering ....*
- Not every third sector provider will be happy or comfortable or be prepared to adapt to the new market. Those that do not wish to adapt can choose to operate independently of the NHS in a market place that is becoming less monopolistic.

### **Third sector role in commissioning**

Third sector providers must offer their expertise to commissioners in the business of needs and services mapping. This should not necessarily conflict with the same provider subsequently bidding on a contract, particularly if the commissioners are inclusive rather than exclusive on who they involve in this process.

There is a fear that public bodies will commission from the ‘safe’ option in many cases this will mean large private sector companies, break out groups from the NHS of former colleagues or national charities. The third sector must see a fair playing field. The onus is on commissioners to be fair, open and transparent in procurement and not show preferential treatment.

- Service mapping and design should be flagged for consultation prior to commencement of the commissioning process.
- Commissioners should involve third sector expertise in service modelling and needs analysis, prior to commissioning.
- The third sector should be encouraged to offer its services in the commissioning process. If this is to be successful, training and facilitation will be necessary. In addition, it means that public bodies will have to be overtly transparent as they begin service modelling and commissioning.
- Capacity and expertise in marketing should be developed for smaller organisations. Equally, public bodies should be obliged to consider the full range of services available to them including third sector services.
- The third sector will have to recognise that they cannot expect to be financially remunerated for participating in the design phase unless specifically commissioned. Third sector providers may choose to enter specifically as specialist advisors on commissioning only. They should be encouraged to do so.

- Public bodies should not be seen to favour the safer option at the expense of capacity, quality, best outcomes or cost. They should be prepared to take risks and the third sector should be prepared to share the risk.

### **How can this be made to happen?**

- Provide guides on the new market places, both nationally and locally, including by type of service need.
- Give a clear message to the third sector that this is a competitive market place without specific privileges for social or charitable enterprise. Equally, give a clear message that the third sector can offer provision of its services on a different economic basis to end users. It can opt out.
- Give a clear message to the third sector that it needs to market itself in the context of current policy principles as expressed in the White Paper and Health Reform developments of patient choice, maximising independence, person-centred care, preventative approaches and cost-effectiveness.
- Give a clear message to the Public Sector that third sector expertise needs to be accessed and used. The third sector brings new focus and is likely to facilitate services becoming more person centred. A quality measure of commissioning in the future could include the extent of third sector and user involvement in planning, design and provision.
- Provide clear guidance on the commissioning process, including designing commissioning pathways which are easy to follow for the smallest third sector organisation and which will ensure a fair playing field.
- Support development of capacity and expertise for third sector organisations in the marketing of their services and in enabling better commissioning.

# Appendix C: Third Sector Commissioning Task Force: Planning and Commissioning

## Commissioner thoughts on the role of the third sector

This paper sets out, as responses to a questionnaire, commissioners' views and expectations of the third sector as providers of services, what they envisage as the potential of the third sector to make a real difference to the spectrum and quality of care delivery; and along with the outputs from the third sector market mapping survey, will inform the extent to which these expectations match with third sector potential and capacity to deliver services and make a real difference.

### 1. What sorts of care services do you want to be able to commission in future from the 3rd Sector?

- Potentially we would like to be able to commission the full spectrum of the health, social care and housing support services that are required for people of all ages with mental health or substance misuse problems or for adults with learning disabilities and for the carers of such people.
- This includes those community based services which can support people living in their own homes and the services that prevent them requiring specialist/secondary care. It also includes inpatient, residential and specialist therapeutic inputs when required. Basically everything!
- This also includes those services required to assess and care coordinate the diverse range of different inputs that a service user or carer may require and comprehensive brokerage services.
- We want these services to be reliable and the provider organisations to be secure and stable.

## 2. What do you want to achieve through this commissioning?

- A vibrant and sustainable range of care providers that are working together in a coordinated way at both organisational and service user levels.
- An increasingly varied and flexible range of provision
- Services that promote independence and deliver defined outcomes
- Reliable services that users and carers can easily purchase and coordinate themselves.
- Development, support for and appropriate use of volunteers in community support
- Service providers who see themselves in a wider well-being and community support role beyond that of the immediate service contract.

## 3. What competitive advantage would you hope the third sector could provide?

- The third sector should be particularly able to be locally sensitive and to respond flexibly to the diverse needs of local communities and minority groups.
- They should be particularly innovative and imaginative and be motivated to continuously evolve to better suit the individual needs of service users and carers.
- They should be financially competitive in that their base costs should be reasonable and since profits made would be ploughed back into the services provided.
- They should be able to contribute additional value through access to wider community resources when providing additional preventative and ancillary services
- They should be well placed to help to independently represent the views of users and carers to the relevant organisations as appropriate.

#### **4. What specific things are stopping you from commissioning such services from the third sector and need changing or developing to enable you to do this?**

- Legislation prevents me commissioning mainstream social care assessment and care management services from the third Sector. Until this is changed I am severely restricted from developing third sector services in the ways that I need to
- Tendering requirements are restrictive and do not aid the creation of evolving third sector partnerships. We need to be able to take a more flexible approach here.
- Inappropriate regulation constitutes a serious threat to the small scale services that will be required to deliver “Our Health, Our Care, Our Say”.
- Current approaches to contracting are crude and service driven rather than outcome driven. An innovative and flexible approach to contracting is needed that encourages providers to promote independence and to work together.
- Current market structures are almost exclusively cost driven and often destructively rather than constructively competitive in terms of service quality. We require a more sophisticated market model in future.
- There are not sufficient third sector providers with enough of a track record for commissioners to feel safe to shift from many of their traditional ‘in-house’ providers. This ‘chicken and egg’ issue needs cracking possibly by support structures similar to those available to business start-ups.
- Statutory reporting requirements require a level of infrastructure that it is hard for new entrants to the market to sustain. A more flexible approach to statutory performance reporting needs establishing so as to enable the 3rd sector to flourish.
- It is not only commissioners but also providers who subcontract who need to foster the third Sector.

# Chapter 3: Third Sector Commissioning Task Force: Streamlining Regulation and Accreditation

## Principles of Good Regulation

Working Group B on streamlining regulation and accreditation, considered and endorsed the existing Better Regulation Executive Principles; and has proposed some additional principles that would further improve the framework for good regulation for the benefits of regulator, provider service user and wider community alike.

### Better Regulation Executive Principles:

**Proportionality:** policy solutions should be appropriate for the perceived problem or risk: you don't need a sledgehammer to crack a nut.

**Accountability:** Regulators/policy officials must be able to justify the decisions they make and should expect to be open to public scrutiny.

**Consistency:** Government rules and standards must be joined up and implemented fairly and consistently.

**Transparency:** Regulations should be open, simple and user-friendly. Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all stakeholders.

**Targeting:** Regulation should be focused on the problem. You should aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented.

### Proposed additional principles:

**User perspective:** regulation should take account of the views of individuals and communities using health and social care and support services.

**Appropriate regulation:** in addition to being proportionate to risk, regulation should be more tailored to the size and scale of the services being regulated, moving away from a single one size fits all approach.

**Integration and joint working:** regulators should co-operate and work jointly in the sector, sharing information about regulated services to minimise duplication of, and/or integrate inspection activity. Management of information is key to effective regulatory activity.

**Relationship between regulation and commissioning:** there should be a strong relationship between regulation and commissioning to ensure value for money services, improved service provision and outcomes for people using social care services.

**Communication and consultation:** the regulator should regularly communicate and consult with the sector and its representatives to ensure there is a clear understanding of roles, responsibilities and regulatory expectations; and respond promptly to concerns raised by the sector.

### **Cost reduction and streamlining of regulatory processes**

This paper sets out efficiency measures through which the Commission for Social Care Inspectorate (CSCI) and the Healthcare Commission have reduced the burden of inspection, resulting in considerable savings and less reporting and monitoring activity for both the Commissions and providers, and reduced the costs of regulation, with some specific examples.

#### **Inspecting for Better Lives – CSCI stripping out costs**

CSCI is working on an ongoing comprehensive programme to reduce costs to itself and to the sector it regulates. Work includes:

- Operating within a budget in 2005/06 which was 6% less than in 2004/05.
- Becoming more efficient: the Commission has streamlined the registration process, making forms shorter, easier to understand and available online for easier completion. In addition, only 1 inspector conducts the registration interview instead of 2.
- Becoming more proportionate: during 2005, the Department of Health consulted the sector about making CSCI's inspection activity more proportionate and therefore more effective. The proposals included removing the statutory obligation for CSCI to inspect every care home twice a year. Activity will focus on improving the poorest performing services and move away from the "one size fits all" approach of the past.

***Focusing on quality: to help inform inspection activity, CSCI will ask providers to complete a quality self-assessment. As many providers already have such systems in place, this will remove some duplication from the system and enable providers to concentrate on the delivery of their service***

The Healthcare Commission worked with the Department of Health and Monitor to cut 61 collections of data. This led to an estimated saving of £6.7 million.

In the independent sector new self-assessment forms were introduced from April 2005. For small businesses (eg clinics, GP practices and beauty salons) the form's content was reduced by up to 80%.

Feedback from independent providers shows that 73% experienced a reduction in the burden of inspection this year when compared to the previous year, and 85% considered their inspection was targeted to areas of potential risk.

The Commission is working with the Department of Health to enable the frequency of independent sector inspection to be based on risk rather than on an annual inspection programme. Subject to consultation and changes in regulations, this would lead to a reduction in visits for small businesses from April 2007 potentially in the order of 66% and, in the longer term, lead to a similar reduction for private hospitals.

The Commission is currently evaluating the cost consequences, benefits and impact of the new Annual Health Check, and will have definitive results at the end of 2006/early 2007

The assessment of Core Standards, part of the Annual Health Check, is designed to be targeted and proportionate. It uses a cross-checking process to compare a trust declaration to a wide range of information – taken from existing national sources and including information from other regulators. This cross-checking process does not require any additional data collection from trusts and aims to make the best use of available information.

## **Accreditation, Passporting and Umbrella Bodies**

This paper sets out several examples of accreditation schemes which operate in different sectors across the UK, including an example of passporting; and looks at the role of umbrella bodies in processing Criminal Records Bureau.

The impact of the processes of multiple regulators/inspectors and, in particular of local public service commissioners imposing quasi-inspection regimes on providers already inspected by national regulatory bodies such as CSCI or HCC, imposes undue burdens on providers. Commissioners justify inspection-type activity on the grounds that they have to be satisfied about the quality of services they are purchasing and/or that they are buying at above the minimum standards applied by regulators

The impact of this approach at a local level is significant and can often demand high levels of administrative time in order to meet regulators' and commissioners' multiple requirements. This in turn can impact on the capacity to organise and deliver services.

## Purpose of Accreditation

An organisation or person is “accredited” to deliver a particular service.

Accreditation indicates that they have achieved a specified, minimum standard, laid out by the accrediting body, as evidence of;

- being fit to deliver the specified service,
- financial soundness,
- effective management and administrative systems and structures, and
- compliance with relevant statutory requirements

Once an organisation, branch or person has received accreditation it can be awarded a “kite mark” or “quality mark” as evidence of compliance with certain nationally established standards as prescribed by the accrediting organisation, which in this case may be any one of the regulatory bodies operating within the Health and Social Care services sector, (CSCI or Healthcare Commission). Such accreditation could then be accepted by regulators (national or local) and commissioners as evidence that the relevant service has achieved a particular level of quality.

A variety of models are possible under this general approach. For example, a national organisation (with many local services/branches) such as Turning Point or Crossroads could be accredited by CSCI or HCC as complying with certain regulatory requirements and any branch of those organisations would then be obliged to comply with the accredited corporate policies in return for lighter-touch inspections locally. Secondly, the concept of a “lead regulator” could be promoted, from which other regulators accept key information and aspects of quality assurance.

**Passporting** is a form of accreditation whereby evidence is accepted, from a national body or inspectorate or some other authoritative organisation, (funders or commissioners), of standards having been achieved, with the aim of simplifying accreditation for small providers. In other words, if a third sector provider is accredited nationally to provide services funded by Supporting People grant, then local commissioners can accept this and fund the services they require without the need to replicate the accreditation or inspection process (see example on acquA below). The converse is that the requirement to be accredited is essential before a provider can be funded.

## **National Accreditation: United Kingdom Accreditation Service (UKAS)**

UKAS is the sole national accreditation body recognised by government to assess, against internationally agreed standards, organisations that provide certification, testing, inspection and calibration services. UKAS defines accreditation as:

- “Third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks”

For comparison, UKAS defines certification as:

- “Third-party attestation related to products, processes, systems or persons”

Accreditation by UKAS demonstrates the competence, impartiality and performance capability of these evaluators. UKAS is a non-profit-distributing company, limited by guarantee and operating under a Memorandum of Understanding with the Secretary of State for Trade and Industry. The Chair of UKAS, Lord James Lindsay, was appointed to the Better Regulation Executive for 3 years from April 2006.

## **Examples of accreditation schemes**

**Acqua (Acquiring Accreditation)** is a trademark owned by the Alliance Herefordshire, a support organisation for third sector health and social care providers.

It consists of a comprehensive accreditation framework that provides third sector organisations with a kite-mark of good practice to confirm their fitness for purpose for delivering services. It provides the assurance of high standards within a framework that combines learning and improvement with rigorous, objective assessment.

Organisations earning the kite-mark are included on a Register of Approved Providers, owned and administered by the sector; and recognised by public sector commissioners.

## **Department for Communities and Local Government accreditation**

DCLG require all supporting people providers to be “accredited” before they are awarded a contract to deliver Supporting People services. As such, it is a prerequisite in the tendering process. Accreditation establishes that the provider:

- is fit to deliver housing-related support services;
- is financially robust;
- has effective management and administration systems; and
- complies with legislative requirements related to their business activities.

DCLG adopts a system of Accreditation Lite which aims to reduce administrative burdens on potential service providers whilst remaining robust.

Passporting aims to simplify accreditation for: small providers; telephone-only based support; sole traders. This process uses evidence from eg. CSCI of standards required for accreditation.

Passporting can also apply to the measurement of quality in Supporting People contracted services by accepting passported evidence for the Quality Assessment Framework.

### **National Autistic Society Accreditation**

The NAS provides an autism-specific quality assurance programme for over 260 organisations throughout the UK and across the globe, including local authorities, NHS trusts and private companies. The aim is to improve the quality of provision for people with an autistic spectrum disorder. The Society also seeks to help similar organisations nationally and internationally to develop national standards on a franchising basis. NAS is a member of the UK Accreditation Forum.

Before an organisation can be accredited, it must conform to a number of criteria including:

- the service has specialist knowledge and understanding of autistic spectrum disorders
- the knowledge and understanding of autistic spectrum disorders consistently informs the organisation, resources and management of the service plus the individual assessment and planning for all service users

The process is a programme of continuing review and development, with a formal review undertaken by experienced practitioners within 3 years of the service signing up for accreditation. Once accredited, shorter annual reviews take place.

The accreditation programme is intended to focus on autism related issues and, as such, is complementary to other regulatory processes.

### **Accreditation and the care sector**

This section describes what various care provider associations offer their members and gives some examples of the types of products that could be considered for accreditation.

#### **Registered Nursing Home Association**

RNHA issues a quality assurance manual with a CD-Rom which contains sample policies that can be photocopied and completed, plus details of legislation, which is regularly updated. Feedback from RNHA is that CSCI inspectors already see this as a sign of quality assurance, giving them more time to focus on the user experience in care settings.

## **National Care Association**

NCA issues a number of publications to promote best practice amongst providers and is preparing a quality self-audit tool that aims to meet the new requirements of CSCI's inspections.

## **National Care Forum**

The National Care Forum (NCF) was established with the primary purpose of promoting quality outcomes for people receiving care and support services through the not-for-profit sector. In pursuing this aim NCF has produced a Quality Statement. Through the Chief Executives, member organisations are expected to make a formal commitment to adhere to the NCF's underpinning values and promote quality outcome for all service users. NCF provides weekly information to all members and operates a website which is updated daily. There are eight National Standing Committees which take forward the work programme including undertaking a series of benchmarking exercises. Advice, support and guidance is provided in promoting best practice. NCF has recently completed an audit of QA systems currently in use and is considering the introduction of a accreditation scheme.

## **English Community Care Association**

Rather than providing off-the-shelf policies, ECCA provides more practical support through helplines, such as an employment helpline and legal helpline. Members could contact the DTi business link for help, but this may be rather narrow or limited. Local or national associations could provide support as could the Internet or other providers.

## **Umbrella bodies**

### **Criminal Records Bureau**

Umbrella Bodies register with the Criminal Records Bureau and provide access to CRB checks for other organisations. They must take reasonable steps to ensure that any organisation on whose behalf they are countersigning also complies with the relevant responsibilities and obligations.

Umbrella Bodies play an important role in the success of the CRB as they provide the mechanism by which many smaller organisations will access CRB checks. For example, the Registered Nursing Home Association acts as an umbrella body for smaller providers.

Some umbrella bodies charge a fee for processing CRB checks. CRB aims to publish umbrella body fees to ensure transparency in the market and to allow hard-pushed providers to exercise choice in how they get CRB checks done.

## **A Summary on the Process and Effectiveness of Supporting People “Accreditation Lite” and “Passporting”**

### **Introduction**

“Supporting People” is a national programme commissioned by the Department for Communities and Local Government and delivered through local authorities to provide housing related support. This should be low level support that enables people to maintain a tenancy and avoid or reduce the need for high cost services such as social care or homelessness.

Each local authority that is a Supporting People “Administering Authority” is responsible for commissioning such support services from the independent sector. Usually SP providers are third sector organisations, either registered social landlords or voluntary organisations.

### **Accreditation**

The DCLG require all SP providers to be “accredited” before they are awarded a contract to deliver SP services. Therefore successful accreditation is no guarantee of success in a tendering process, but it is a prerequisite to ensure that only appropriate people and organisations are invited to tender:

“Accreditation is concerned with the *organisation or person* that provides or wishes to provide services and is not directly concerned with the quality of service delivery. To deliver Supporting People services provider organisations or individual providers are required to be accredited. The purpose of accreditation is to establish that the provider organisation or individual provider is fit to deliver housing related support services, is financially robust, has effective management and administrative systems and structures and complies with statutory requirements related to their business activities.”

### **Accreditation Lite**

There are five key principles for accreditation:

- the process will be thorough but not onerous;
- it will be administratively simple;
- it will be a transparent process open to scrutiny;
- it will be a flexible process, able to reflect the diversity in size and type of potential service providers whilst still confirming their ability to meet the required standards and deliver the identified service contract; and
- The process will enable new and different styles of provision to emerge.

“Accreditation Lite” aims to provide a means of ensuring that potential service providers are effective and robust whilst not imposing overly bureaucratic and burdensome procedures. It provides a flow chart for establishing whether 5 key criteria for accreditation have been met. These are that providers:

- are financially viable;
- have competent administrative procedures that are able to properly handle and account for Supporting People grant;
- have effective employment policies to cover staff development, staff supervision and the health and safety of both staff and service users;
- have sufficiently robust management procedures to provide Supporting People services;
- are able to demonstrate a track record or competence to deliver services

### **Passporting**

The aim of passporting is to make accreditation as simple as possible for:

- Small providers
- Telephone based only support (such as community alarm systems)
- Sole traders and providers of individual support

Passporting is a process where evidence is accepted from the Commission for Social Care Inspection, or other funders or commissioners (such as other SP Administering Authorities) of standards required for SP accreditation.

Passporting may also be applied to the measurement of quality in SP contracted services by accepting passported evidence for the Quality Assessment Framework (QAF).

### **Benefits**

Passporting has been used to good effect in some Administering Authorities. Medway local authority has made extensive use of passporting for accreditation. It has found that it has achieved its aims to reducing bureaucracy where it is unnecessary. Usually the “good” providers are those that are able to demonstrate that CSCI or other commissioners think likewise.

### **Lessons Learned**

There have been some difficulties with passporting, both locally and nationally. These have been recognised by the DCLG, who are undertaking further work into why passporting has not been taken up consistently across areas. Locally, Medway have chosen not to use

passporting for the QAF because confidence in consistency of rigour in measurement across all Administering Authorities cannot be assumed. One problem we have encountered locally is explaining to some providers why it is that others have been passported. It is not clear to some individual and small providers who are being asked to engage with the full process when they perceive that others are not.

Lessons learned by DCLG include:

- That it is critical to ensure that the areas subject to passporting are acceptable to the Administering Authorities. For example, Authorities tend to be reluctant to accept health and safety information from other areas; they want to see for themselves locally.
- It is critical that Administering Authorities are involved in defining the criteria under each area subject to passporting.
- Yorkshire and Humberside (through the Regional Centre for Excellence) are developing framework agreements to capture business arrangements with both Supporting People and Social Care providers

## **Conclusions**

DCLG are currently reviewing the passporting scheme to address the lessons learned and because it has not been taken up consistently. The Yorkshire and Humberside approach is being seen as the way forward as all providers (Supporting People and Social Care) will have gone through the same process, but only once regionally. This could have national potential for some providers.

# Chapter 4: Third Sector Commissioning Task Force: Standard contracts across health and social care

## Third Sector Commissioning Task Force – Working Group C Proposed Model Contract: Guidance Note May 2006

### Proposed Model Contract: Guidance Note

This guidance note was prepared by the Third Sector Commissioning Task Force Working Group C. Drawing on good practice guidance from across government, it aims to provide a fair and balanced framework for the provision of services. The principles outlined below should govern the application of the accompanying model contract by commissioner.

### Principles

#### 1. The Contract

- Commissioners should be clear about the desired relationship
- Contracts should promote stability through multi-year funding where appropriate
- Contracts should focus on outcomes
- Contracts should allocate risk fairly
- Fair prices should be agreed and respected

#### 2. Contract management

- Monitoring should be standardized
- Ownership of monitoring should be clear
- Monitoring should be focus on outcomes not processes

#### 1. The Contract

##### *Commissioners should be clear about the desired relationship*

- 1) Commissioners must be clear about the nature of the desired relationship with potential providers:
  - a) Commissioning services
  - b) Grant funding existing services
  - c) Developing a strategic alliance

- d) Investing to build capacity
- 2) If they are commissioning services, commissioners must be clear about what they are paying for (the specification), and therefore what will be subject to agreed KPIs.
  - a) Providers must understand that additional services over and above the requirements will not necessarily be paid for.
  - b) Commissioners should aim to incentivise innovation and over-performance.

***Contracts should promote stability through multi-year funding***

- 1) The duration of a contract should be based on a genuine assessment of need, and be reasonable for the service being purchased. It should consider the following factors:
  - a) The length of time the programme will need to achieve its aims,
  - b) The need for sufficient stability and security in the relationship to encourage service improvement and efficiency gains,
  - c) The need, in some cases, to enable access to capital.
- 2) Commissioners should use 5 or 7 year contracts as benchmarks for commissioning services from independent providers
  - a) 3 year contracts may be suitable for high risk pilot services/projects.
  - b) 10 or 15 year contracts should be used for projects that involve significant capital investment, e.g. residential care, treatment centres,
- 3) 12 months before the contract is due to end, a final review of the contract will be carried out against the agreed criteria.
  - a) The review process should include consultation with the provider, which will be given 6 weeks to respond
  - b) At least 6 months before the contract is due to end, the provider will be informed in writing of the commissioner's final decision on contract renewal.

*Five year contracts*

- 4) In the second quarter of year 3, a mid-way review of the contract will be conducted against the agreed outcomes.
  - a) The commissioner will decide whether to extend the contract for two-years following the review, based on the criteria.
  - b) At least 4 months before the end of year 3, the provider will be notified in writing of the commissioner's decision.

*Seven year contracts*

- 5) In the first quarter of year 4, a mid-way review of the contract will be conducted against the agreed outcomes.
  - a) The commissioner will decide whether to extend the contract for three years following the review, based on the criteria.
  - b) At least 6 months before the end of year 4, the provider will be notified in writing of the commissioner's decision.
- 6) There will be no unilateral rights to terminate (except in the instance of fraud, bankruptcy and serious breaches, etc. when termination can be immediate.
- 7) In longer-term contracts (over 7 years), the parties may agree a unilateral right to terminate on notice. This must be a reasonable period, and the contract should be clear about the provider's rights to compensation.

***Contracts should focus on outcomes***

- 8) As far as possible, contracts will incentivise outcomes rather than processes
  - a) Providers will be given as much freedom as possible to innovate in forms of service delivery.
  - b) The payment regime will balance the need for outcome-based funding with the need for start-up resources.

***Contracts should allocate demand risk fairly***

- 9) Where payment depends on referrals over which the provider has no control, (e.g. from a PCT), contracts for delivery should specify and guarantee a minimum number of referrals<sup>3</sup>
  - a) The commissioner can revise the number of referrals upwards by agreement and downwards using a mutually agreed change clause, based on three months consultation and three months' notice,
  - b) If the above clause is not invoked, the financial risks attached to shortfalls in referrals will be borne by the commissioner, not the provider.
- 10) Where appropriate, contracts for delivery will incentivise providers to attract clients into the programme, and encourage innovation.
  - a) Organisations will be allowed to market their services to clients in order to generate increased volumes.

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<sup>3</sup> E.g. equivalent to 80% of the contract value

- b) Organisations will be allowed to assess clients for eligibility against commissioner-set criteria, subject to auditing.
- c) There should be no “capping” of over-performance through successful outcomes.

***Fair prices should be agreed and respected***

- 11) Any tariffs set for payment should be fair and realistic, based on comprehensive research, so that they reflect the full costs of delivery and enable independent providers to cover their costs.
- 12) The **contract price must be agreed** up-front and respected by both parties.
  - a) Neither party will have a unilateral right to vary fees; changes must be agreed in writing by both parties.
  - b) Commissioners should not seek to examine detailed budgets with the aim of shaving off specific costs.
  - c) There must be no attempted claw-back of surpluses within a contract; this is only ever appropriate in the case of grants.
- 13) **VAT is payable by the commissioner** when incurred in the provision of services,
- 14) Commissioners should specify whether inflationary increases will be built into the contract.
  - a) For short-term contracts (3 years), commissioners may wish to specify a fixed annual price to be spread over the life of the contract.
  - b) For longer contracts, inflationary increases should be built into the cost, linked to appropriate indices, such as the wages index.

***Other issues***

*Variation*

- 15) There will be no unilateral rights to vary the contract terms.
  - a) The contract should establish a clear procedure for agreeing variations to the contract.

*Sub contracting*

- 16) Where sub-contracting, prime contractors should follow the principles of good practice set out in this contract.

*Intellectual property*

- 17) Rights to intellectual property should be fairly allocated and clearly specified in the contract.
- a) Where providers are specifically commissioned to develop a piece of intellectual property for the commissioner, the commissioner can claim associated rights.
  - b) Where providers use their own intellectual property to deliver a service, they should retain all associated rights.

*Capital*

- 18) Where providers invest in capital as part of the delivery of a project, they should retain all associated rights.

*Employment*

- 19) Employment and pensions consequences must be made clear in the procurement process.
- a) Both parties should be aware of the consequences of TUPE at both the start and the finish of the service contract.

*Specification and service standards*

- 20) The specification for services should be clear and proportionate.
- a) It should contain only the details of the required service, the required outcomes and key performance indicators (“KPIs”).
  - b) It should not contradict the main body of the contract (or vice versa).
- 21) Agreed services standards should specify reasonable care and skill.
- a) More stringent obligations are unnecessary. Appropriate KPIs should deal with performance standards.

*Indemnities and Liability*

- 22) Contracts should not include unreasonable indemnities. Thought should be given to their consequences.
- 23) Providers should be allowed to limit their liability to reasonable sums, particularly where the commissioner insists on indemnities.

## 2. Contract management

### ***Monitoring should be standardised***

- 1) A general monitoring framework should be agreed for all commissioners. Work should be done to standardise this for all types of service.
- 2) Monitoring should follow a properly established performance review procedure and timetable (see Annexe 2).
  - a) The timetable would be variable in the case of serious concerns by the commissioner.

### ***Ownership of monitoring should be clear***

- 3) Overall ownership of the provider relationship must be clearly located with a single lead agency, e.g. the lead local authority or PCT.
- 4) Inspections of service providers should be rationalised, and clearly owned by a single agency. They should be coordinated, with a frequency dependent on the assessed risk. They should focus on
  - a) The quality of provision
  - b) Where necessary, validating outcomes and client eligibility
  - c) Where organisations have no internal auditor, light touch financial auditing.

### ***Monitoring should focus on outcomes, not processes***

- 5) Where organisations have their own internal auditor, the audits should be recognised and used by the commissioner, subject to light touch validation.
- 6) Proportionate monitoring throughout the life of the contract should be used to guarantee performance against agreed outcomes.
  - a) Information should be sought only so far as is necessary for monitoring the services and the capacity of the provider, and meeting the commissioner's statutory obligations.
  - b) Monitoring should not relate to processes, e.g. timesheets for staff members.
  - c) Electronic records should be accepted.

## Annexe 1: Sample Contract Timetables

### 5-Year contract

		Review and renewal	Auditing
	Q0	Start-up meeting	
Year 1	Q1	Development meeting	
	Q2	Development meeting	Audit
	Q3	Development meeting	
	Q4		Audit
Year 2	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 3	Q1		
	Q2	Mid-way review conducted	Audit – High risk only
	Q3	Decision on 2-year extension made	
	Q4		Audit
Year 4	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 5	Q1	Final review conducted	
	Q2	Decision on renewal made	Audit – High risk only
	Q3		
	Q4		

### 7-Year Contract

		Review and renewal	Auditing
	Q0	Start-up meeting	
Year 1	Q1	Development meeting	
	Q2	Development meeting	Audit
	Q3	Development meeting	
	Q4		Audit
Year 2	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 3	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 4	Q1	Mid-way review conducted	
	Q2	Decision on 3-year extension made	Audit – High risk only
	Q3		
	Q4		Audit
Year 5	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 6	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4	Final review conducted	Audit
Year 7	Q1	Decision on renewal made	
	Q2		Audit – High risk only
	Q3		
	Q4		

DATED

20[ ]

[Provider]

and

[Commissioner]

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**Proposed Model Block Contract for the Provision  
of Social Care Services**

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Version Date: 27.04.06



Bates Wells & Braithwaite  
2-6 Cannon Street  
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Ref: PK/199999.0318

## Background Note

This model form of block contract was prepared by Bates Wells & Braithwaite with assistance from members of the Third Sector Commissioning Task Force Working Group C. The Working Group's aim with this model is to provide a fair and balanced contract for the provision of social care services. The Working Group recognises that work is already underway in the Department of Health to prepare model contracts for the provision of health care services.

In preparing the model, account has been taken of:

- the recent work of the Care Services Improvement Partnership (CSIP) as set out in its Guide to Fairer Contracting: Part 1 December 2005
- the Supporting People model form of contract prepared by the Office of the Deputy Prime Minister (now DCLG)
- the model terms and conditions of contracts for services produced by the Office of Government Commerce

The model has been prepared on the basis of seven fundamental principles for which contracts should aim as proposed by the Working Group:

- **Efficiency:** Contracts should enable the purchasers to achieve quality services at value for money
- **Sustainability:** Contracts need to embody a general approach to a proper working relationship which fosters sustainable, long-term provision (where appropriate) in the interests of service users
- **Proportionality:** Contracts should aim to achieve 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:** Contracts should reflect the service that is required and the actual agreement between the parties
- **Simplicity:** Departures from plain English need plain English explanations
- **Fairness:** Contracts should reflect a fair and proper balance between purchaser and provider. Risk should be properly allocated
- **Equality:** Contracts should be the same for every sector

The Working Group proposes that this model be thoroughly reviewed by bodies representing both commissioners and service providers with a view to establishing and promoting a national recommended model contract for social care services.

This model contract will be supplemented by a model spot contract.

## **Contract for Provision of Social Care Services**

### **Date:**

### **Parties:**

[ ] whose registered office is at [ ] (“the Provider”);

and

[ ] (“the Commissioner”)

### **Background: best value principles**

The Commissioner and Provider aim to work together in a spirit of co-operation with a view to ensuring best value is achieved. In particular, the Commissioner and Provider are committed to providing service users with high quality services at a fair price and they recognise the need for continuous improvement in economy, efficiency and effectiveness.

### **The Commissioner and the Provider agree as follows:**

#### **1. Definitions and Interpretation**

The provisions of schedule 1 shall apply.

#### **2. Services**

The Provider shall provide the Services during the Contract Period in accordance with the Specification and with such skill and care as may be expected of a competent provider of services similar to the Services.

#### **3. Compliance with Legislation, Guidance and Policies**

3.1 When providing the Services the Provider shall comply with its obligations under statute (including the legislation specified in part 1 of schedule 5) so far as applicable to provision of the Services.

3.2 When providing the Services the Provider shall comply with the guidance specified in part 2 of schedule 5 so far as applicable to the provision of the Services except:

- 3.2.1 to the extent such guidance conflicts with the Provider's obligations under this contract; or
- 3.2.2 if in the reasonable opinion of the Provider, compliance with such guidance would be detrimental to its proper performance of its other obligations under this contract or detrimental to the interests of any Service User.
- 3.3 The Provider shall have in place and comply with its policies specified in part 3 of schedule 5 and shall provide copies to the Commissioner at the start of this contract and on making any material change to them.

#### 4. **Personnel**

- 4.1 The Provider shall engage enough people with the ability, skill, knowledge, training or experience necessary to provide the Services in accordance with this contract and shall in any case meet such staffing requirements as are specified in schedule 2.
- 4.2 The Provider shall carry out appropriate Criminal Records Bureau checks on individuals whom it engages to provide the Services to the extent this is a statutory requirement relating to the Services.

#### 5. **Commissioner's Obligations and Facilities**

The Commissioner shall provide such facilities and perform such obligations as are set out in schedule 3, in accordance with the provisions of that schedule.

#### 6. **Authorised Officers and Liaison**

- 6.1 The parties shall appoint one or more Authorised Officers specifying the information set out in schedule 4 and may change such Authorised Officers at any time.
- 6.2 At least one Authorised Officer of each party shall have full authority to represent that party in all matters pertaining to this contract. Other Authorised Officers may have such limited authority as is described in the notice appointing them.
- 6.3 The party making an appointment or change of an Authorised Officer shall give at least two Working Days' notice in writing to the other specifying the information set out in schedule 4.

- 6.4 Upon any change in the details specified in the notice of appointment of an Authorised Officer, the relevant party shall send to the other a notice in writing setting out the changed details.
- 6.5 The parties shall ensure that their Authorised Officers meet on a regular basis for the purpose of ensuring the smooth running of the contract and to identify concerns early enough to prevent disputes arising.

**7. Inspection, Monitoring and Investigations**

- 7.1 The Provider shall allow the Commissioner's Authorised Officers (or anyone authorised by them) to inspect and observe the performance of the Services and to investigate complaints at all reasonable times on reasonable prior notice.
- 7.2 The Commissioner shall ensure that any person it authorises to carry out any inspection, monitoring or investigation shall not interfere with or disrupt the performance of the Services, shall have proper regard to the nature of the Services and the sensitivities and needs of the Service Users, and shall comply with the Commissioner's obligations of confidentiality.

**8. Performance Review**

The Commissioner may carry out Performance Reviews in accordance with the procedure set out in schedule 6 and the parties shall operate and engage with such procedure in good faith.

**9. Complaints**

- 9.1 The Provider shall operate and make known to the Services Users the complaints procedure set out in schedule 7.
- 9.2 The Provider shall deal with complaints promptly, courteously and efficiently and shall notify the Commissioner in writing of all complaints received and the steps taken by the Provider in response to them.
- 9.3 If the Provider is investigating or dealing with any complaint the Commissioner shall not intervene or carry out separate investigations unless it reasonably considers the Provider's action is inadequate. The Commissioner shall notify the Provider of its intention to intervene or start its own investigation.

10. **Price**

- 10.1 In return for the Provider providing the Services, the Commissioner shall pay the Price to the Provider in accordance with schedule 8.
- 10.2 If a Service User must make any payment to the Provider for provision of the Services, that payment shall not be increased except with the written consent of the Commissioner which shall not be unreasonably withheld or delayed.

11. **Price Variation**

- 11.1 The Price shall be increased annually in accordance with schedule 11.
- 11.2 Subject to clause 11.1 the Price is fixed for the Contract Period and may only be varied by agreement between the Provider and Commissioner in accordance with schedule 9.

12. **Value Added Tax**

The Price does not include value added tax which, if applicable, the Commissioner shall pay to the Provider at the prevailing applicable rate in addition to the Price.

13. **Late Payments**

- 13.1 A party who fails to pay to the other any sum for more than 14 days after it becomes due shall pay to the other interest on such sum at the rate of statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.2 Interest shall be payable from the due date for payment until payment is made unless before that date the party in default has (in good faith) informed the other that the relevant sum is disputed and has started the dispute resolution procedure in clause 21.

14. **Entire Agreement and Contract Variation**

- 14.1 This contract is the exclusive statement of the agreement between the parties in relation to the Services and it supersedes all previous communications, representations, arrangements and agreements between the parties in relation to the Services.

- 14.2 Neither party has relied on (and hereby waives all right to make a claim in respect of) any representation, arrangement, understanding or agreement not expressly set out in this contract.
- 14.3 No variation of this contract shall be effective unless agreed in writing signed by the Provider and the Commissioner.
- 14.4 If either party wishes to vary this contract it may start the contract variation procedure set out in schedule 9 and the parties shall operate and engage with such procedure in good faith.
- 14.5 This contract includes the schedules but if there is any discrepancy between the terms of the schedules and the terms of the main body of this contract, the terms of the main body of this contract shall prevail.

15. **Contract Renewal**

- 15.1 If either party wishes to renew this contract so that it continues after the end of the Contract Period, it may start the contract renewal procedure set out in schedule 10.
- 15.2 If by 31 December in the last Year of the Contract Period the parties have not agreed the terms on which they will renew this contract, and if by that date no party has served a Non-Renewal Notice, then this contract shall continue from and including 1st April in the following Year, varied as follows:
- 15.2.1 The new Contract Period shall be a period equal to the previous Contract Period;
- 15.2.2 The Price for the first Year of the new Contract Period shall be the Price for the last Year of the old Contract Period increased by reference to the retail prices index in accordance with schedule 11;
- 15.2.3 Either party may terminate the renewed contract by serving at least four months' notice in writing on the other before the start of the new Contract Period; and
- 15.2.4 In all other respects the terms of the renewed contract shall remain identical to this contract and in full force and effect.

16. **Insurance**

16.1 The Provider shall take out and maintain with reputable insurance companies policies of insurance of the types and in the amounts (at least) set out in schedule 12.

16.2 The Provider shall provide the Commissioner on request (not more than once a Year) with copies of the insurance policies and evidence that they are in force.

17. **Records**

17.1 The Provider shall maintain and provide to the Commissioner the Records in accordance with schedule 13.

17.2 The Provider shall retain such Records and make them available to the Commissioner at the Commissioner's reasonable request for a period of 6 Years from the end of the Year in which this contract expires or is terminated.

18. **Data Protection, Confidentiality, Public Announcements and Freedom of Information**

18.1 The parties shall comply with their obligations under the Data Protection Act 1998.

18.2 The parties shall use all reasonable endeavours to ensure that Confidential Information is only used for the purposes of this contract and shall not be disclosed to anyone else except as permitted by this contract.

18.3 Neither the Provider nor the Commissioner shall make any press announcements or publicise this contract or any part of it except with the written consent of the other.

18.4 The Provider recognises that the Commissioner's duties of confidentiality are subject to the Freedom of Information Act 2000. The Commissioner shall not provide Commercially Sensitive Information to a third party under the Freedom of Information Act 2000 unless, prior to any such disclosure, the Commissioner has informed the Provider of the request for such information and given the Provider the opportunity to make representations about what material should be disclosed.

18.5 The provisions of this clause shall survive termination of this contract.

19. **Intellectual Property Rights**

- 19.1 All Intellectual Property Rights generated from or arising as a result of the provision of the Services shall belong solely to the Provider.
- 19.2 So far as may be necessary for the Commissioner to be able to continue providing the Services after termination of this contract, the Provider shall grant to the Commissioner a non-exclusive, perpetual, royalty free licence to use any such Intellectual Property Rights.
- 19.3 The provisions of this clause shall survive termination of this contract.

20. **Breach**

- 20.1 If either party commits a Breach or Serious Breach the other may serve on it a Breach Notice.
- 20.2 On receipt of a Breach Notice the party in breach shall remedy the Breach or Serious Breach within the time specified in the Breach Notice, such specified time being not less than 21 days in the case of a Breach and not less than 7 days in the case of a Serious Breach.
- 20.3 If the recipient of a Breach Notice disputes that it is in breach, it may within 7 days of receipt of the Breach Notice start the dispute resolution procedure set out in clause 21. The Breach Notice shall then be suspended until the dispute has been determined.
- 20.4 If the dispute resolution procedure is not initiated then the party in breach shall remedy the Breach within the specified time.

21. **Dispute Resolution**

- 21.1 Any dispute arising in connection with this contract shall first be addressed by direct personal liaison between the Authorised Officers.
- 21.2 If any dispute has not been resolved by the Authorised Officers within 5 Working Days, the matter shall be referred to be resolved by direct liaison between more senior officers representing both parties.
- 21.3 If any dispute has not been resolved by such senior officers within a further 5 Working Days the matter may be referred at the option of either party, within a

further 5 Working Days, to mediation in accordance with the Model Mediation Procedure for the time being of the Centre for Effective Dispute Resolution.

21.4 If a dispute is referred to the Centre for Effective Dispute Resolution the parties shall engage with the Model Mediation Procedure in good faith and neither party may start legal proceedings until such procedure is complete.

21.5 This clause shall not apply after a notice of termination has been served in accordance with clause 24.

## 22. **Force Majeure**

22.1 Neither party shall be liable for any delay in performing any of its obligations under this contract if such delay is caused by a Force Majeure Event.

22.2 A party experiencing a Force Majeure Event shall give the other party full particulars of the circumstances and use all reasonable endeavours to resume performance as soon as possible.

## 23. **Liability and Limitations of Liability**

23.1 Subject to the following provisions of this clause, each party shall be responsible to the other for and shall promptly make good all losses, damages, costs, expenses, liabilities, claims or proceedings suffered by the other as a result of any Breach or Serious Breach that the party at fault commits.

23.2 A party that suffers as a result of the other party's Breach or Serious Breach must:

23.2.1 in consultation with the defaulting party, take such steps as are reasonable in order to mitigate its loss;

23.2.2 promptly notify the other of any claim or liability;

23.2.3 allow the other party (if it so requests) to conduct and control (at such other party's sole expense) the defence of any claim and any related settlement negotiations; and

23.2.4 afford the other party all reasonable assistance (at such other party's sole expense) and make no admission prejudicial to the defence of such claim.

- 23.3 Except in respect of fraud or of death or personal injury caused by the negligence of the party at fault (for which no limitation applies) neither party shall be liable to the other for any loss of profit, loss of business, loss of revenue, loss of anticipated savings or loss of use or value or any indirect, special or consequential loss however arising by reason of:
- 23.3.1 any representation (unless fraudulent); or
  - 23.3.2 any implied warranty, condition or other term; or
  - 23.3.3 any duty at common law; or
  - 23.3.4 any express term of this contract.
- 23.4 Except in respect of death or personal injury caused by the negligence of the party at fault (for which no limitation applies) the entire liability of each party under or in connection with this contract shall not exceed the Price in respect of the Year in which such liability arose.
- 23.5 If the Provider is not a single corporate body but instead comprises two or more contracting persons then the liability of those persons is joint and several.
24. **Termination**
- 24.1 Subject to this clause, this contract shall last for the Contract Period.
  - 24.2 Either party may terminate this contract in the circumstances and manner described in clause 15.2.3.
  - 24.3 The Provider may terminate this contract in the circumstances and manner described in paragraph 7 of schedule 9.
  - 24.4 The Commissioner may terminate this contract immediately by written notice if the Provider, its employees or agents commit an offence under the Prevention of Corruption Acts 1889 to 1916 in relation to the obtaining or the performance of this contract or any other contract with the Commissioner.
  - 24.5 In exercising its rights under clause 24.4 the Commissioner shall act reasonably and proportionately having regard to the gravity of the prohibited act and the identity and authority of the person committing it.

- 24.6 The Commissioner may terminate this contract by written notice with immediate effect if the Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the contract.
- 24.7 The Commissioner may only exercise its rights under clause 24.6 within three months after receiving written notice giving full details of the change of control.
- 24.8 Either party may terminate this contract immediately by written notice if the other party:
- 24.8.1 has committed a fundamental breach of this contract;
  - 24.8.2 has committed a Serious Breach and has not remedied the Serious Breach as required by clause 20;
  - 24.8.3 has committed a Persistent Breach and the last Breach comprising the Persistent Breach is not remedied as required by clause 20;
  - 24.8.4 commits or suffers any Insolvency Event;
25. **Consequences of Termination**
- 25.1 Termination of this contract shall not affect any right of either party that has arisen before termination.
- 25.2 Any provision of this contract that is expressly or by implication intended to have effect after termination shall continue in force for the intended period.
26. **TUPE**
- 26.1 At any time during the last nine months of the Contract Period the Provider shall provide to the Commissioner within 20 Working Days of a written request such information as the Commissioner may reasonably require to enable it to comply with its obligations under TUPE.
- 26.2 The Provider need not provide such information to the extent that doing so would breach:
- (a) any duty of confidentiality owed by it; or

- (b) any statutory obligation the Provider has, including its obligations under the Data Protection Act 1998;

26.3 The Commissioner must comply with its obligations under clause 18 in relation to any information supplied under clause 26.1.

26.4 If TUPE applies on termination of this contract then:

26.4.1 the Provider shall indemnify the Commissioner against any liability the Commissioner may have in respect of any claim or allegation made by any employee of the Provider after the termination date in respect of any act or omission of the Provider which gives rise to redundancy, wrongful dismissal or unfair dismissal before the termination date; and

26.4.2 the Commissioner shall indemnify the Provider against any liability the Provider may have in respect of:

- (a) any claim or allegation that there has been or will be a substantial detrimental change in the working conditions of an employee of the Provider in consequence of the transfer of the employee's employment of the Commissioner (or to any other person under contract to the Commissioner to provide services similar to the Services and to whom the employment of an employee of the Provider is transferred under TUPE); and
- (b) any claim for redundancy, protective awards, wrongful dismissal or unfair dismissal made in connection with the transfer of the employment of an employee of the Provider to the Commissioner or to such other person as is mentioned in clause 26.4.2(a); and

26.4.3 in clause 26.4.2 "employee of the Provider" means an individual in the employment of the Provider on or before the termination date.

26.5 Clause 26.4 shall continue in force for six months after termination.

## 27. **Assignment and sub-contracting**

27.1 The Provider may not assign the benefit or burden of this contract without the prior written consent of the Commissioner which the Commissioner shall not unreasonably withhold or delay.

27.2 The Provider may only sub-contract performance of its obligations under this contract:

- (a) by the appointment of agency staff under its direct control;
- (b) in the case of emergency when the Commissioner cannot reasonably be contacted for consent provided that the Provider notifies the Commissioner within 48 hours of subcontracting the obligation and terminates the subcontracting arrangement within 48 hours of a reasonable request by the Commissioner;
- (c) or otherwise as agreed in writing by the Commissioner (such agreement not to be unreasonably withheld or delayed).

27.3 The Commissioner may not assign or sub-contract the benefit or burden of this contract except:

27.3.1 in order to comply with any statutory reorganisation of the Commissioner or of the Commissioner's activities or functions; or

27.3.2 with the prior written consent of the Provider which the Provider shall not unreasonably withhold or delay.

27.4 If either party sub-contracts its obligations (whether in accordance with this clause or not) it shall nevertheless be liable for the performance of its sub-contractor.

## 28. **Notices**

28.1 Any notice to be given by either party to the other under this contract may be personally delivered or sent by recorded delivery to the address of the other party as set out in the heading to this contract or as otherwise notified in writing or by transmission with due transmission receipt to a fax number or e-mail address notified in writing for the purpose.

28.2 Any personally delivered, faxed or e-mailed notice shall be deemed received on the day it was delivered or sent, if it was delivered or sent on a Working Day before 5.00pm and otherwise on the next Working Day.

## 29. **Non-Waiver**

29.1 No forbearance, delay or indulgence by either party in enforcing the provisions of this contract shall prejudice or restrict the rights of that party, nor shall any waiver of rights

in respect of any Breach or Serious Breach or Persistent Breach operate as a waiver of any rights in respect of any other Breach, Serious Breach or Persistent Breach.

29.2 No right, power or remedy under this contract is exclusive of any other available right, power or remedy and each such right, power or remedy may be cumulative.

30. **Severability**

30.1 If one or more of the provisions of this contract are or become to any extent invalid or unenforceable under any applicable law then the remainder of this contract shall continue in full force and effect.

30.2 If this happens then both parties shall negotiate in good faith to amend the provision concerned in such a way that as amended, it is valid and enforceable and, to the maximum extent possible, meets the original intention of the parties.

31. **Agency, Partnership and Joint Venture**

31.1 The Provider is an independent contractor and this contract is not intended to nor shall it create any agency, partnership or joint venture.

31.2 Neither party shall hold itself out as being entitled to represent or bind the other in any way.

32. **Third Party Rights**

This contract does not and is not intended to provide any third party with any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

33. **Public Authority Functions**

Nothing in this contract shall prejudice or affect the rights, powers, duties and obligations of the Commissioner in relation to the exercise of the Commissioner's functions as a public authority provided that this clause shall not relieve the Commissioner from liability in respect of any Breach, Serious Breach or Persistent Breach.

34. **Governing Law and Jurisdiction**

This contract is governed by and shall be construed in accordance with the law of England and Wales and the Provider and Commissioner irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## Schedule 1

### Definitions and Interpretation

1. In this contract the following terms have the following meanings unless the context makes it clear this is not intended:

<b>“Authorised Officers”</b>	the individuals appointed by the Provider and the Commissioner to represent them under this contract
<b>“Breach Notice”</b>	a notice specifying: <ul style="list-style-type: none"><li>• another party’s Breach</li><li>• whether it is a Serious Breach</li><li>• the remedial action required and</li><li>• the time within such action must be taken</li></ul>
<b>“Breach”</b>	a failure by either party to fulfil its obligations under this contract
<b>“Change in Law”</b>	means the imposition of or a change in any law; regulation; order; directive having legal effect; requirements of any Regulatory Body; and guidance specified in part 2 of schedule 5 that comes into effect after the start of the Contract Period, relates specifically to services such as the Services and the effect of which was not known at the start of the Contract Period
<b>“Commercially Sensitive Information”</b>	the types of information described in schedule 14
<b>“Confidential Information”</b>	any information of a confidential nature obtained under this contract, or relating to this contract but not including information: <ul style="list-style-type: none"><li>• in the public domain (otherwise than by breach of this contract)</li></ul>

- in the lawful possession of the receiving party before the date of this contract (other than through liaison between the parties before and in anticipation of this contract)
- obtained from a third party free to divulge it
- required to be disclosed by a court or other competent authority
- properly disclosed on a confidential basis to staff, agents or professional advisers of the respective parties, for the purposes of this contract

**“Contract Period”**

from [*1st April*] [ ] to [*31st March*] [ ]  
(being a period of at least three Years)

**“Force Majeure Event”**

any event or circumstance beyond the control of a party including acts of war, acts of god, government action, riot and civil commotion but excluding labour dispute by a party’s own staff, failure by any sub-contractor which has not itself suffered such an event or circumstance, a failure by government to make payments to the Commissioner and any event or circumstance that would have been avoided by the affected party acting with reasonable prudence and diligence

**“Insolvency Event”**

the calling of any meeting of a party’s creditors; the appointment of any receiver, administrator, or administrative receiver over all or any part of its assets or undertaking (but not a receiver manager appointed under section 18 of the Charities Act 1993); the suspension or cessation of its business; any threat to suspend or cease its business; the making of a winding-up or bankruptcy order; the convening of a meeting to pass a winding-up resolution; or it entering into liquidation

<b>“Intellectual Property Rights”</b>	all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications of the same
<b>“Non-Renewal Notice”</b>	a notice served by either party indicating that it does not wish this contract to continue after the Contract Period
<b>“Performance Review”</b>	a review of the Provider’s performance carried out in accordance with clause 8 and schedule 6
<b>“Persistent Breach”</b>	the commission by a party of three or more Breaches in any period of six months whether or not such Breaches are of the same type and whether or not they have been remedied
<b>“Price”</b>	the sum specified in schedule 8
<b>“Records”</b>	the records which the Provider is required to maintain and provide to the Commissioner in accordance with schedule 13
<b>“Renewal Notice”</b>	a notice requesting renewal of this contract served in accordance with paragraph 2 of schedule 10
<b>“Renewal Reply Notice”</b>	a notice replying to a Renewal Notice served in accordance with paragraph 4 of schedule 10
<b>“Serious Breach”</b>	<p>a failure by either party to fulfil its obligations under this contract where such failure:</p> <ul style="list-style-type: none"><li>• has a serious adverse effect on the Provider’s overall provision of the Services</li><li>• seriously prejudices the health, safety or welfare of any Service User or</li><li>• is a failure by the Commissioner to pay to the Provider any sum which has become due and which is not reasonably disputed and which is not paid within 40 Working Days of the due date</li></ul>

<b>“Service User”</b>	an individual for whom Services are to be provided
<b>“Services”</b>	the services to be provided by the Provider as described in schedule 2
<b>“Specification”</b>	the specification set out in schedule 2
<b>“TUPE”</b>	the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended
<b>“Variation Notice”</b>	a notice proposing a variation to this contract served in accordance with paragraph 1 of schedule 9;
<b>“Working Days”</b>	Monday to Friday inclusive but excluding bank holidays and public holidays;
<b>“Year”</b>	a period of twelve months running from [1st April] to [31st March].

2. Unless the context makes it clear that this is not what is intended, in this contract:
  - 2.1 a reference to one gender includes all genders;
  - 2.2 the singular includes a reference to the plural and vice versa;
  - 2.3 reference to a clause or a schedule is a reference to a clause or schedule of this contract; and reference to a paragraph is a reference to a paragraph in a schedule; and
  - 2.4 headings are for reference only and not interpretation;
  - 2.5 references to statutory provisions include any provision that amends, replaces or supplements them.

## Schedule 2

### Services and Specification

*[To be written using the following headings and such other headings as may be required for the service. Where not applicable mark “Not Applicable”. The parties should consider how much detail is to be included here and how much the contract should emphasise outcomes rather than process. Care must be taken to ensure this schedule does not repeat or contradict parts of the main body of the contract.]*

1. Description of the Services
2. Outcomes expected (specify whether anticipated or guaranteed and dates by which anticipated or guaranteed)
3. Place(s) where Services are to be provided
4. Condition in which buildings to be kept/any specific maintenance and repair requirements
5. Days/times during which Services are to be available
6. Description of eligible Service Users
7. Explanation of how Service Users access the Services
8. Timing of referrals and of access
9. Explanation of how Provider will seek to meet Service Users’ needs
10. Number of Service Users who may be referred for access to the Services and during what periods
11. Special delivery requirements
12. Special equipment to be used
13. Special personnel requirements
14. Key performance indicators

### Schedule 3

#### Commissioner's Obligations and Facilities

*[Describe here any facilities (eg premises and equipment) that the Commissioner has agreed to provide and any other obligations it has agreed to perform.*

*State precisely:*

- *a full description of each facility or obligation*
- *any conditions to which its provision is subject*
- *the times when the facility will be provided or obligation performed*
- *the period during which it will be provided or performed*
- *any limitations on availability*
- *any special requirements for accessing the facility or requesting performance*
- *any standards the facilities and performances must meet. For example: facilities to be kept serviced/in good and substantial repair; obligations to be performed with reasonable care and skill]*

#### **Schedule 4**

##### **Authorised Officers' Details**

- Name
- Address
- Telephone number
- Mobile telephone number
- Fax number
- Email address
- Date from which his or her appointment or removal has effect
- Extent of authority

## **Schedule 5**

### **Part 1**

#### Legislation

Data Protection Act 1998

Health and Safety at Work Act 1974

Control of Substances Hazardous to Health Regulations 2002

Care Standards Act 2000 and regulations made under it

Sex Discrimination Act 1975

Race Relations Act 1976

Disability Discrimination Act 1995

Employment Equality (Sexual Orientation) Regulations 2003

Employment Equality (Religion or Belief) Regulations 2003

Prevention of Corruption Acts 1889 to 1916

Competition Act 1998

### **Part 2**

#### **Guidance**

### **Part 3**

#### **Policies of the Provider**

Confidentiality and Data Protection

Whistleblowing

Health and Safety

Protection of Vulnerable Adults

Protection of Children

Equal Opportunities

Recruitment and Selection

Discipline

Grievance

Supervision

Challenging Behaviour

Serious and Untoward Incidents

## **Schedule 6**

### **Performance Review Procedure**

1. The purpose of a Performance Review shall be to ascertain whether the Provider is complying with the terms of this contract (and in particular the Service Specification and key performance indicators) to identify any failings and agree how and when any such failings are to be rectified; and to identify any ways in which the Services can be improved for the benefit of Service Users.
2. At any time (but not more than twice in any Year) the Commissioner may serve on the Provider a notice specifying the date or dates of a Performance Review, which shall not be earlier than [20] Working Days after service of the notice.
3. The Performance Review shall take place on the date or dates specified in the notice or such other dates as the parties may agree. Unless the parties agree otherwise, a Performance Review shall last for not more than two Working Days and the parties shall strive to complete it in one Working Day. The parties will therefore have prepared for the Performance Review to the best of their abilities within the time available.
4. The Performance Review shall be carried out at any places specified in the notice at which the Services are provided or at such other places as the parties may agree.
5. During the Performance Review the Provider shall make available to the Commissioner the originals of the Records and shall use its best endeavours to make available for interview such of its personnel as the Commissioner (acting reasonably) may have specified in its notice. The Authorised Officers of both parties shall take part in the Performance Review.
6. On the date of the Performance Review the Commissioner may carry out inspection and monitoring in accordance with clause 7 of this contract.
7. During the Performance Review the Commissioner shall identify any failings that are immediately apparent and shall seek the comments of the Provider's Authorised Officer. The parties shall also discuss any aspects of the Services that they think can be improved, the means of doing so and any effect that adopting such means would have on the Price.
8. If as a result of the Performance Review the Commissioner identifies any Breaches, it may serve a Breach Notice on the Provider.

9. If as a result of the Performance Review the parties agree to vary any term of this contract, the parties shall implement the contract variation procedure in schedule 9.
10. Within [20] Working Days of the Performance Review the Commissioner shall prepare a written report setting out its findings and shall provide such report to the Provider for comment.

**Schedule 7**

**Complaints Procedure**

*[please insert agreed form of complaints procedure]*

## Schedule 8

### Payment Schedule

1. The Price for the first Year shall be £*[insert amount]*.
2. The Commissioner shall pay the Provider the Price in equal *[monthly/quarterly]* instalments on the following dates in each Year:  
*[1st April*  
*1st July*  
*1st October*  
*1st January]*
3. The first instalment shall be paid on *[insert date]* covering the period from *[1st April to 31st June]*.
4. The Provider shall deliver an invoice to the Commissioner in respect of each instalment and the Provider shall pay the instalment on the instalment date or, if later, within 30 days of receipt of the Provider's invoice.
5. If the Commissioner disputes any invoice or part of an invoice then it shall pay the undisputed part and start the dispute resolution procedure in clause 21 in relation to the disputed part.
6. Any overpayment by the Commissioner shall be reimbursed by the Provider within 30 days of receiving written notice of the overpayment.
7. The Commissioner may set off any overpayment that it has notified to the Provider against any future instalment of the Price.

*[Note: This schedule may need to be varied to take account of, for example, initial upfront payments where applicable.]*

## Schedule 9

### Contract Variation

1. This variation procedure may be started at any time by either party serving a Variation Notice specifying:
  - the proposed variation
  - the reasons for the proposed variation
  - how the proposer thinks the variation would affect performance of the Services
  - what effect the variation would have on the Price
  - when the variation would take effect.
2. Only the Provider may start the variation procedure in order to vary the Price. It may only do so if the cost of providing the Services would increase by 5% or more as a result of a Change in Law.
3. A party may, acting reasonably and having regard to the effect on Price of a proposed variation, require a variation in Price as a condition of agreeing to such other variation.
4. The recipient of a Variation Notice shall respond in writing within 20 Working Days setting out its comments on the proposed variation and any counter-proposals.
5. The parties' Authorised Officers shall then meet within 10 Working Days to discuss the proposed variation. If they do not reach agreement, the proposer of the variation may require a meeting within a further 10 Working Days between more senior officers of the parties. If such senior officers do not reach agreement, the contract shall not be varied.
6. If the parties agree to vary this contract they shall draw up a written memorandum setting out the agreed variation and the memorandum shall be signed and dated by Authorised Officers of both parties. The variation shall come into effect on the date specified in the memorandum or, if no date is specified, on the date of the memorandum.
7. If the Provider has started the variation procedure in accordance with paragraph 2 and the parties do not agree a variation, the Provider may terminate this contract by giving the Commissioner at least 3 months' written notice, such notice to be served no later than 20 Working Days after the meeting of the parties' senior officers or (if later) receipt of notification in writing of the decision of the Commissioner.

## Schedule 10

### Contract Renewal Procedure

1. The following procedure may be used in the last Year of the Contract Period.
2. Not earlier than [*31st October*] nor later than [*30th November*]<sup>4</sup> either party may serve on the other a Renewal Notice stating its wish to renew this contract for a further period with effect from [*1st April*] in the following Year. The Renewal Notice shall specify:
  - the proposed new Contract Period
  - the Price proposed for the new Contract Period
  - any other variations proposed to the terms set out in this contract.
3. The recipient of the Renewal Notice shall serve a Renewal Reply Notice within 10 Working Days of receipt of the Renewal Notice. The Renewal Reply Notice shall state:
  - whether the recipient of the Renewal Notice wishes to renew this contract and, if so,
  - whether it accepts the terms proposed in the Renewal Notice and, if not,
  - what alternative terms it proposes.
4. Within 10 Working Days of receipt of a Renewal Reply Notice, the recipient shall respond in writing specifying:
  - whether it accepts the terms proposed in the Renewal Reply Notice and, if not,
  - whether, despite that, it wishes to try to negotiate alternative terms.
5. The parties shall then meet as soon as practicable to try to agree the terms of a new contract.
6. Either party may at any time bring the renewal procedure to an end by serving a Non-Renewal Notice on or before [*31st December*]<sup>5</sup> in the last Year of the Contract Period. A written response served under paragraph 4 indicating that the serving party does not accept proposed terms and does not wish to try to negotiate alternative terms shall be a Non-Renewal Notice.

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<sup>4</sup> These dates should be five months and four months respectively from the end of the Contract Period.

<sup>5</sup> This date should be three months from the end of the Contract Period.

7. If the parties have not agreed the terms of a new contract by [31st December]? and neither party has by that date served a Non-Renewal Notice then this contract shall continue in accordance with clause 15.
8. Time shall be of the essence for service of a Non-Renewal Notice.

## Schedule 11

### Inflationary Price Increases

1. In this schedule:

“Current Contract Period” means the Year immediately preceding the Year for which the Increase is being calculated

“Current Price” means the Price in the Current Contract Period

“Increase” means the increase to the Current Price calculated in accordance with the following formula:

$$I = P \times \frac{(A-B)}{B}$$

where:

P = the Current Price

I = the increase to the Current Price

A = the Index for February in the Current Contract Period

B = the Index for February in the Year immediately preceding the Current Contract Period

AND if the figure for A is not available the latest available Index figure shall be substituted

“Index” means the general index of retail prices (all items) produced by the Office for National Statistics or other relevant department or office from time to time or if such index shall be replaced by some other index then such other index shall be used in substitution.<sup>6</sup>

2. The new Price shall be the Current Price plus the Increase.

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<sup>6</sup> Note: An alternative and more suitable index may be substituted.

**Schedule 12**

**Insurance**

<i><b>Policy type</b></i>	<i><b>Insured Sum</b></i>
Employer's liability	£
Public liability	£
Professional indemnity	£
Vehicle	£

Note: only policies in respect of which an insured sum is specified are compulsory.

### Schedule 13

#### Records

Type of Record	Frequency of delivery to the Commissioner
<ul style="list-style-type: none"> <li>Complaints made by Service Users and the steps taken to respond to those complaints</li> </ul>	Quarterly
<ul style="list-style-type: none"> <li>Training records/induction records and training strategy</li> </ul>	On request
<ul style="list-style-type: none"> <li>Supervision records</li> </ul>	On request
<ul style="list-style-type: none"> <li>Sources and numbers of referrals of Service Users</li> </ul>	Quarterly
<ul style="list-style-type: none"> <li>A record of work for each Service User detailing the Services provided</li> </ul>	On request
<ul style="list-style-type: none"> <li>Accident/serious incident records relating to any accident or serious incident happening to a Service User whilst actually in receipt of Services</li> </ul>	Quarterly
<ul style="list-style-type: none"> <li>Clear statement of the aims and Objectives of the Provider, which is available to the Service Users</li> </ul>	At the start of this contract and on any change
<ul style="list-style-type: none"> <li>Insurance certificates/schedules</li> </ul>	On request in accordance with this contract
<ul style="list-style-type: none"> <li>[Records relating to the Quality Assurance system]</li> </ul>	Within 10 months of the end of the Provider's financial year
<ul style="list-style-type: none"> <li>Annual audited accounts</li> </ul>	

Note: To the extent that a Record is to be available on request, the Provider shall not be required to provide the Record without making a reasonable charge if the number of requests made by the Commissioner for such record in any year is unreasonably high.

**Schedule 14**

**Commercially Sensitive Information**

**Signed** for and on behalf of the Provider  
by its authorised signatory:

Signature: .....

Name: ..... (*print*)

Position: .....

Date: .....

**Signed** for and on behalf of the Commissioner  
by its authorised signatory:

Signature: .....

Name: ..... (*print*)

Position: .....

Date: .....

## 2. The Contract

### ***Commissioners should be clear about the desired relationship***

- 3) Commissioners must be clear about the nature of the desired relationship with potential providers:
  - a) Commissioning services
  - b) Grant funding existing services
  - c) Developing a strategic alliance
  - d) Investing to build capacity
- 4) If they are commissioning services, commissioners must be clear about what they are paying for (the specification), and therefore what will be subject to agreed KPIs.
  - a) Providers must understand that additional services over and above the requirements will not necessarily be paid for.
  - b) Commissioners should aim to incentivise innovation and over-performance.

### ***Contracts should promote stability through multi-year funding***

- 24) The duration of a contract should be based on a genuine assessment of need, and be reasonable for the service being purchased. It should consider the following factors:
  - a) The length of time the programme will need to achieve its aims,
  - b) The need for sufficient stability and security in the relationship to encourage service improvement and efficiency gains,
  - c) The need, in some cases, to enable access to capital.
- 25) Commissioners should use 5 or 7 year contracts as benchmarks for commissioning services from independent providers
  - a) 3 year contracts may be suitable for high risk pilot services/projects.
  - b) 10 or 15 year contracts should be used for projects that involve significant capital investment, e.g. residential care, treatment centres,
- 26) 12 months before the contract is due to end, a final review of the contract will be carried out against the agreed criteria.
  - a) The review process should include consultation with the provider, which will be given 6 weeks to respond
  - b) At least 6 months before the contract is due to end, the provider will be informed in writing of the commissioner's final decision on contract renewal.

*Five year contracts*

- 27) In the second quarter of year 3, a mid-way review of the contract will be conducted against the agreed outcomes.
- a) The commissioner will decide whether to extend the contract for two-years following the review, based on the criteria.
  - b) At least 4 months before the end of year 3, the provider will be notified in writing of the commissioner's decision.

*Seven year contracts*

- 28) In the first quarter of year 4, a mid-way review of the contract will be conducted against the agreed outcomes.
- a) The commissioner will decide whether to extend the contract for three years following the review, based on the criteria.
  - b) At least 6 months before the end of year 4, the provider will be notified in writing of the commissioner's decision.
- 29) There will be no unilateral rights to terminate (except in the instance of fraud, bankruptcy and serious breaches, etc. when termination can be immediate.
- 30) In longer-term contracts (over 7 years), the parties may agree a unilateral right to terminate on notice. This must be a reasonable period, and the contract should be clear about the provider's rights to compensation.

***Contracts should focus on outcomes***

- 31) As far as possible, contracts will incentivise outcomes rather than processes
- a) Providers will be given as much freedom as possible to innovate in forms of service delivery.
  - b) The payment regime will balance the need for outcome-based funding with the need for start-up resources.

***Contracts should allocate demand risk fairly***

- 32) Where payment depends on referrals over which the provider has no control, (e.g. from a PCT), contracts for delivery should specify and guarantee a minimum number of referrals<sup>7</sup>

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<sup>7</sup> e.g. equivalent to 80% of the contract value

- a) The commissioner can revise the number of referrals upwards by agreement and downwards using a mutually agreed change clause, based on three months consultation and three months' notice,
  - b) If the above clause is not invoked, the financial risks attached to shortfalls in referrals will be borne by the commissioner, not the provider.
- 33) Where appropriate, contracts for delivery will incentivise providers to attract clients into the programme, and encourage innovation.
- a) Organisations will be allowed to market their services to clients in order to generate increased volumes.
  - b) Organisations will be allowed to assess clients for eligibility against commissioner-set criteria, subject to auditing.
  - c) There should be no “capping” of over-performance through successful outcomes.

***Fair prices should be agreed and respected***

- 34) Any tariffs set for payment should be **fair and realistic**, based on comprehensive research, so that they reflect the full costs of delivery and enable independent providers to cover their costs.
- 35) The **contract price must be agreed** up-front and respected by both parties.
- a) Neither party will have a unilateral right to vary fees; changes must be agreed in writing by both parties.
  - b) Commissioners should not seek to examine detailed budgets with the aim of shaving off specific costs.
  - c) There must be no attempted claw-back of surpluses within a contract; this is only ever appropriate in the case of grants.
- 36) **VAT is payable by the commissioner** when incurred in the provision of services,
- 37) Commissioners should specify whether inflationary increases will be built into the contract.
- a) For short-term contracts (3 years), commissioners may wish to specify a fixed annual price to be spread over the life of the contract.
  - b) For longer contracts, inflationary increases should be built into the cost, linked to appropriate indices, such as the wages index.

### ***Other issues***

#### *Variation*

- 38) There will be no unilateral rights to vary the contract terms.
- a) The contract should establish a clear procedure for agreeing variations to the contract.

#### *Sub contracting*

- 39) Where sub-contracting, prime contractors should follow the principles of good practice set out in this contract.

#### *Intellectual property*

- 40) Rights to intellectual property should be fairly allocated and clearly specified in the contract.
- a) Where providers are specifically commissioned to develop a piece of intellectual property for the commissioner, the commissioner can claim associated rights.
  - b) Where providers use their own intellectual property to deliver a service, they should retain all associated rights.

#### *Capital*

- 41) Where providers invest in capital as part of the delivery of a project, they should retain all associated rights.

#### *Employment*

- 42) Employment and pensions consequences must be made clear in the procurement process.
- a) Both parties should be aware of the consequences of TUPE at both the start and the finish of the service contract.

#### *Specification and service standards*

- 43) The specification for services should be clear and proportionate.
- a) It should contain only the details of the required service, the required outcomes and key performance indicators (“KPIs”).
  - b) It should not contradict the main body of the contract (or vice versa).

- 44) Agreed services standards should specify reasonable care and skill.
- a) More stringent obligations are unnecessary. Appropriate KPIs should deal with performance standards.

#### *Indemnities and Liability*

- 45) Contracts should not include unreasonable indemnities. Thought should be given to their consequences.
- 46) Providers should be allowed to limit their liability to reasonable sums, particularly where the commissioner insists on indemnities.

## **2. Contract management**

### ***Monitoring should be standardised***

- 7) A general monitoring framework should be agreed for all commissioners. Work should be done to standardise this for all types of service.
- 8) Monitoring should follow a properly established performance review procedure and timetable (see Annexe 2).
- a) The timetable would be variable in the case of serious concerns by the commissioner.

### ***Ownership of monitoring should be clear***

- 9) Overall ownership of the provider relationship must be clearly located with a single lead agency, e.g. the lead local authority or PCT.
- 10) Inspections of service providers should be rationalised, and clearly owned by a single agency. They should be coordinated, with a frequency dependent on the assessed risk. They should focus on
- a) The quality of provision
  - b) Where necessary, validating outcomes and client eligibility
  - c) Where organisations have no internal auditor, light touch financial auditing.

### ***Monitoring should focus on outcomes, not processes***

- 11) Where organisations have their own internal auditor, the audits should be recognised and used by the commissioner, subject to light touch validation.

- 12) Proportionate monitoring throughout the life of the contract should be used to guarantee performance against agreed outcomes.
- a) Information should be sought only so far as is necessary for monitoring the services and the capacity of the provider, and meeting the commissioner’s statutory obligations.
  - b) Monitoring should not relate to processes, e.g. timesheets for staff members.
  - c) Electronic records should be accepted.

## Annexe 1: Sample Contract Timetables

### 5-Year contract

		Review and renewal	Auditing
	Q0	Start-up meeting	
Year 1	Q1	Development meeting	
	Q2	Development meeting	Audit
	Q3	Development meeting	
	Q4		Audit
Year 2	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 3	Q1		
	Q2	Mid-way review conducted	Audit – High risk only
	Q3	Decision on 2-year extension made	
	Q4		Audit
Year 4	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 5	Q1	Final review conducted	
	Q2	Decision on renewal made	Audit – High risk only
	Q3		
	Q4		

**7-Year Contract**

		<b>Review and renewal</b>	<b>Auditing</b>
	Q0	Start-up meeting	
Year 1	Q1	Development meeting	
	Q2	Development meeting	Audit
	Q3	Development meeting	
	Q4		Audit
Year 2	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 3	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 4	Q1	Mid-way review conducted	
	Q2	Decision on 3-year extension made	Audit – High risk only
	Q3		
	Q4		Audit
Year 5	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4		Audit
Year 6	Q1		
	Q2		Audit – High risk only
	Q3		
	Q4	Final review conducted	Audit
Year 7	Q1	Decision on renewal made	
	Q2		Audit – High risk only
	Q3		
	Q4		

# Annex: Membership of Task Force Working Groups

## Working Group A – Planning and commissioning

**Co-Chairs** – Jo Webber, NHS Confederation and Elaine McHale, ADSS

### Members

- Tom Hughes-Hallett, Marie Curie Cancer Care
- Richard Gutch, Futurebuilders
- Virginia Beardshaw, ICAN
- John Knight, Leonard Cheshire (nominated by NCVO)
- Mary Jones, Director of Commissioning East Kent and Coastal PCT
- Mark Jordan, Head of Joint Commissioning, Hertfordshire Joint Commissioning Team
- Con Egan, Chief Executive, Bradford Care Trust
- Local Authority – Geoff Alltimes, Chief Executive Hammersmith and Fulham
- Paul Chandwani, Home Office
- Sue McLellan, Director, Specialised Commissioning Group, London
- Alyson Gerner, NHS PASA
- Jane Campbell, SCIE
- Carol Povey, Head of Adult Services, National Autistic Society
- Jonathon Bland, Social Enterprise Coalition
- Derek Campbell, Chief Executive, Central Liverpool PCT
- Steve Holland, Director Regional Centre of Excellence
- Melanie Kay, Commercial Directorate, DH
- Mark Upton, DCLG
- John Dixon, Director of Social Services, West Sussex County Council
- Janet Moore, Market Development, DfES
- Childrens Commissioner – to be nominated by EM
- Ryan Sampson, Age Concern.

## **Working Group B – Streamlining regulation and accreditation**

**Co-Chairs** – Anne Roberts, Crossroads and David Walden, CSCI

### **Members**

- Lorraine Denoris, Healthcare Commission
- Bob Ricketts, DH
- Peter Senker, Sussex Tikvah
- Jane Wood, LGA
- Candy Morris, Kent & Medway SHA
- Punita Goodfellow – Head of Public Services Regulation Team
- Mark Upton, DCLG
- Sally Collier/Christine Martin, OGC
- Moira Gibbs, Chief Executive, Camden Council
- Liz Sargeant, Director of Adult and Older People’s Services, Cambridge City PCT & Cambridgeshire County Council
- Amanda Rogers, Contracts and Commissioning Manager, Medway Council
- Clare Miller, Housing Corporation
- David Curtis, Audit Commission

## **Working Group C – Contracting with the third sector**

**Co-Chairs** – Lord Adebawale, Turning Point and Ken Anderson, Department of Health

### **Members**

- Carl Peters, Nottinghamshire SHA
- Jeni Bremner, LGA
- Barry Roberts, Director of New Business and Contracts, Turning Point
- Philip Kirkpatrick, Bates, Wells & Braithwaites Solicitors
- Gary Lashko
- Alan Kitt, Lead Commissioner, West Lincolnshire PCT
- Phillip Mind, HMT
- Richard Gutch, Futurebuilders
- Margaret Lally, Director of UK Service Development, Red Cross
- Sally Collier, OGC
- Debbie Edwards, Home Office
- Faye Robinson, NHS PASA
- Andrew Larner, Director, South East Regional Centre of Excellence
- Victoria Santer, Commercial Directorate, DH
- Derek Myers, Chief Executive Kensington & Chelsea Borough Council
- Kym Stilwell, Associate Director of Procurement, Collaborative Procurement Hub
- Caitlin Francis, System Reform, DH
- Nick Aldridge, ACEVO

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<sup>i</sup> Accreditation LITE, Office of the Deputy Prime Minister, March 2005



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