

### **The National Third Sector GIRFEC Project**

The National Third Sector GIRFEC project (the 'Project') is a Public Social Partnership (PSP) of Barnardo's Scotland, The Improvement Service and Voluntary Action Scotland with support from other partners including the Coalition of Care and Support Providers in Scotland (CCPS). The aim of the project is to reduce inequalities for children, young people and their families by creating, nurturing and enabling partnerships within and between the third and statutory sectors to ensure the best use of resources.

### **Introduction**

The Project has worked in ten different local authority areas to support more effective third sector engagement with the work of Community Planning Partnerships, to raise awareness of the contribution the sector makes to improving the lives of children, young people and families, and to link this more effectively with the implementation of GIRFEC. Better design and delivery of children's services has been a common theme in all areas and is a key pillar of the Christie Commission and Scottish Government programme of public service reform.

This 'snapshot' paper:

- discusses how the third sector can engage with the new children's services planning framework introduced in the Children and Young People (Scotland) Act 2014 (CYP Act);
- provides a basic overview of joint strategic commissioning and its place in the new CYP Act planning framework;
- explains where 'procurement' fits into the commissioning cycle and summarises new procurement rules for social care;
- argues why the competitive tendering model of procurement may not be the best way to arrange for children's services and suggests some alternatives; and finally
- notes some of the ongoing work to develop more evidence based and participative commissioning of children's services, including through the Scottish Government's [Realigning Children's Services](#) project

## Part 1 - The legislative context: Children and Young People (Scotland) Act 2014

Part 3 of the CYP Act introduces new joint children's services planning duties for local authorities and the NHS that replace the previous requirements for integrated children's services plans. It lays out the aims of children services:

- to promote wellbeing
- to shift resource to prevention and early intervention
- to be integrated from the perspective of children, young people and families; and
- to make best use of available resources

The CYP Act also provides a framework for the planning process, which should be strategic and broadly participative, reflecting the Christie Commission principles of public service reform.

Local authorities and the local health board have a duty to consult with organisations that represent children, young people and families, and third sector organisations providing services to these groups when preparing their children's services plan. Consultees may also be obliged to 'participate in' or 'contribute to' the preparation of the plan, which is framed in the legislation as an obligation to 'meet any reasonable request' to participate or contribute.

The Part 3 statutory guidance, which is currently [out for consultation](#), will explain in more detail how this should work in practice. The draft guidance encourages statutory partners to engage with a wide spectrum of organisations (e.g. small and large, local and national) and also flags up the issue of capacity to engage, without directly requiring resources to be put into facilitating engagement (because the Act is silent on this issue).

The new Part 3 duties, which aim to make planning more collaborative and outcome and prevention focused, are to be welcomed. At the same time, evidence from the work of the Project over the past three years has confirmed what we already generally knew, which is that third sector participation in children's services planning and design is quite limited and varies widely across different local authority areas. We have produced a [separate issues paper](#) highlighting some of the challenges of participation and providing some ideas for improvement, which are now of particular relevance because of the new opportunities for third sector involvement.

The CYP Act requires local statutory partners to have their first children's services plan in place for April 2017. A refreshed plan must be published every three years thereafter and a report on progress issued yearly.

The Scottish Government has promoted the idea of joint strategic commissioning or planning (the terms are used interchangeably) as an essential tool in the goal of improving public services. The CYP Act does not prescribe a formal strategic commissioning process for developing the children's services plan. But, as noted above, it is firmly rooted in the wider public services reform agenda based on the Christie Commission principles, including to: 'empower individuals and communities receiving public services by involving them in the design and delivery of the services they use'.

The Care Inspectorate, Education Scotland and Healthcare Improvement Scotland recognise the importance of strategic commissioning and specifically include this area in their [joint strategic inspections of children's services](#). An overview of the 22 inspections done so far, shows that things like strategic needs assessment, identifying emerging needs and risks, sharing resources and agreeing what to decommission, need to be strengthened and are areas where the third sector can make a valuable contribution.

The Scottish Government expectation is that local children's services planning partners will adopt good joint strategic commissioning/planning processes. It has funded a project to work with a small number of local areas to develop their strategic commissioning of children's services. Further details of the Realigning Children's Services project are included at the end of this paper. But first, we provide some basic information about what good joint strategic commissioning looks like.

## **Part 2 - Joint strategic commissioning**

The purpose of strategic commissioning is to understand the needs, resources and existing support and services in a local area and to use these data to plan effective delivery of health and social care services that promote positive outcomes for everyone in receipt of services. The third sector has an important role in strategic planning - both as a sector that delivers services and as a strategic partner bringing expertise and data to inform strategic plan development.

### **What is strategic commissioning?**

[Joint] Strategic commissioning is "the term used for all the activities involved in assessing and forecasting needs; linking investment to agreed outcomes; considering options; planning the nature, range and quality of future services; and working in partnership to put these in place."<sup>1</sup>

The strategic commissioning cycle: 'Analyse, Plan, Do and Review' is now well established, and accepted by community planning partnerships across the country.

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<sup>1</sup> National Steering Group for Joint Strategic Commissioning, 2012

However, for this approach to work effectively it must be underpinned by the development of effective working relationships between public authorities, providers, supported people and their representatives.



In short, the four stages include the following activities:

- **Analyse:** understand the current population of children, young people and their families; their needs; preferences and outcomes (the difference they want to make in their own lives.) Understand the total resource available and how it is currently being used.
- **Plan:** work out what activities, services and interventions are needed that will support children, young people and their families to meet those outcomes.
- **Do:** procure or purchase the services identified (the cycle then moves to some form of procurement); decommission or reshape services in partnership with providers.
- **Review:** find out how services and interventions are working through monitoring and evaluation data, including conversations with children, young people and their families, and other sources; review whether the children's services plan delivered the agreed outcomes, e.g. were the right services funded; did anything change, etc. And most importantly, adjust the children's services plan to reflect the conclusions, e.g. decommissioning and redesigning services, where necessary.

### Part 3 – How does procurement fit into strategic commissioning?

If strategic commissioning is the 'what are we going to do?', procurement is the 'how are we going to do it and who is going to do it?'. Procurement or purchasing are both general terms for the way in which services are selected and purchased by

the public authority. The strategic plan should drive the approach that a public authority takes to procurement with both processes focussed on how to promote improved outcomes for children, young people and families.

Procurement or purchasing can take many forms, though we most commonly think of a process of competitive tendering, required in some circumstances by European Union ('EU') regulation. However, services can be procured or arranged through grants or other more collaborative forms of contracting like [public social partnerships](#) or [alliance contracting](#). Strategic commissioning can, but does not inevitably have to, include a procurement process that adopts the competitive tendering model. In many cases, it can include any of these other models for arranging services.

### Changes to procurement rules for social care

Recent changes to EU and Scottish legislation<sup>2</sup> have increased the opportunity to use more collaborative methods of procuring (purchasing) services. These new rules recognise that social care procurement is different from procurement of other goods and services; that social care is based on relationships, and that continuity, quality and sustainability are key to achieving the outcomes that service users want.

These new rules, in a nutshell, require that public sector procurement continues to adhere to the EU treaty principles of transparency, equal treatment and non-discrimination. However, as a result of a new EU directive (brought into legislation through the 2015 regulations) public bodies may also take into account other issues when procuring social care services such as quality, continuity and availability.

The major change for health and social care is to free up public authorities from the **requirement** to competitively tender for social care services between the value of £50,000 and €750,000. Public authorities can award without tendering (if they are assured they are not breaching the EU Treaty principles in doing so).

For contracts over €750,000 there is a requirement to advertise in the OJEU (the European Journal in which higher value contracts are advertised). The procurement process for this is described as 'light touch'.

Contracts of a value below £50,000 are 'unregulated' and do not fall within the scope of procurement. Some local authorities require procurement processes to be followed even for low value contracts *but they are not legally obliged to!*

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<sup>2</sup> s.12 of The Procurement Reform (Scotland) Act, 2014 <http://www.legislation.gov.uk/asp/2014/12/contents>  
Contracts over €750,000 [http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi\\_20150446\\_en.pdf](http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf)  
Contracts up to €750,000  
[http://www.legislation.gov.uk/sdsi/2016/9780111030868/pdfs/sdsi\\_9780111030868\\_en.pdf](http://www.legislation.gov.uk/sdsi/2016/9780111030868/pdfs/sdsi_9780111030868_en.pdf)

Public authorities are also required to produce a procurement strategy for any spend that exceeds £5M in any calendar year. The procurement strategy can provide a useful source of information to feed back into the commissioning cycle.

*Statutory guidance has been produced to support the implementation of these pieces of legislation and will be available from:*

<http://www.gov.scot/Topics/Government/Procurement>

#### **Part 4 - What's wrong with competitive tendering?**

The third sector has learned a number of lessons from the increased use of competitive tendering in the world of adult social care and support<sup>3</sup>, a practice that has picked up pace in the children's services sector recently. There is concern that funding pressures lead to more competitive tendering as the preferred method of procuring (arranging for) children's services. CCPS has identified a number of reasons why this trend should be resisted:

- In relation to adult care, the predominant use of competitive tendering as a procurement mechanism has resulted in a focus on hourly rates for care rather than on positive outcomes for service users
- A significant decrease in hourly rates for care and support over the past several years has resulted in the stripping out of managerial and oversight structures which may result in compromising support quality<sup>4</sup>
- Continued downward pressure on hourly rates has led to an erosion of salary, terms and conditions, and the flattening of management structures which reduces career progression for third sector workers - thus making recruitment and retention in the sector very challenging
- And consequently, public sector provision often retains more favourable terms and conditions which can lead to workforce 'drain' with third sector providers training and developing new workers for them to move on to public sector roles once qualified
- Because only contracted out services (to the third and private sectors) are subject to procurement via competitive tendering, this creates an unequal playing field for third sector providers. Many councils operate an 'in house first' procurement strategy without fully understanding the actual cost of in-house provision. External providers are subject to a high degree of (sometimes duplicative) oversight including both contract monitoring and external scrutiny from regulators

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<sup>3</sup> See the CCPS website on procurement: <http://www.ccpscotland.org/hot-topics/hot-topic-procurementreform/>

<sup>4</sup> [Ian Cunningham, University of Strathclyde, 2011](#)

- Third sector providers also must grapple with an environment that promotes business instability with the award of 1 year contracts; the increasing use of framework agreements (where no work is guaranteed) and the operation of resource clawback for third sector providers in particular (where any surpluses remaining at the end of a contract term must be returned to the commissioning authority despite full delivery of contract requirements, thus discouraging efficiency savings and often jeopardising accepted reserves policies)
- Competitive re-tendering is destabilising to service users - it is acknowledged that continuity is a key feature of good quality care, and in particular, the quality of relationships between people is key to achieving positive outcomes
- And competitive approaches can lead to a degree of mistrust and a reluctance to share good practice among third sector providers

## Part 5 - Collaborative commissioning initiatives

There have been a few examples of collaborative commissioning initiatives for children's services involving third sector providers. They have mainly adopted the PSP model. [Thrive](#) is a PSP involving several providers working with families experiencing parental imprisonment. The Scottish Government funded a number of Early Years PSPs and some interesting work has been done with the local Third Sector Interface in North Lanarkshire with local children's service providers. However, as noted at the beginning of this paper, evidence of third sector involvement in the higher level strategic planning for children's services remains very patchy. We hope that the new CYP Act provisions will trigger some better engagement with the sector at this level.

The Scottish Government, as noted above, has begun a project called [Realigning Children's Services](#), which aims to support local planning partnerships to strengthen their evidence gathering and use the evidence as part of a joint strategic commissioning process for children's services in their areas. The three areas currently involved are South Lanarkshire, Clackmannanshire and West Lothian. The programme advocates an inclusive process and therefore provides another opportunity to develop better engagement with the third sector in the strategic commissioning cycle in these local areas and hopefully beyond, as the programme expands.

## Conclusion

A key aim of the Third Sector GIRFEC project has been to raise awareness of the contribution the third sector makes to improve the lives of children, young people and their families. Over the last 3 years the Project has highlighted much good work that the third sector has done in partnership with the public sector including collaborative commissioning initiatives such as those set out above. As well as these

examples of innovative commissioning there is now in place a strong legislative framework which requires the promotion of wellbeing and shifting resources to prevention and early intervention.

As this paper argues the procurement of services must be closely linked to the strategic plan for children's services and, depending on what model is adopted, can have a positive impact on outcomes for children and young people. As the project has discovered working across Scotland, the involvement of third sector organisations in commissioning is developing. Although there is an emerging infrastructure, more needs to be done. It is important that there is a level playing field for third sector providers, and that procurement methods focus on embedding sustainability through longer term contracts and continuity of service delivery to ensure more stability for children and young people.

New legislative frameworks should support the involvement of the third sector in planning and in children's services planning in particular. Both the CYP Act and the Community Empowerment (Scotland) Act 2015 will provide opportunities for communities and the third sector to shape the delivery of children's services and continue to work toward improving outcomes for children, young people and families.